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

REPORT

**CO-DESIGNING AN ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S
COMMISSIONER FOR THE ACT – JUMBUNNA INSTITUTE OF INDIGENOUS EDUCATION AND
RESEARCH**

**Presented by
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Minister for Human Rights
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Co-Designing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT

Jumbunna Institute of Indigenous Education and Research,
Research Unit

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Jumbunna Institute for Indigenous Education and Research acknowledges the ongoing custodianship of Country of Aboriginal and Torres Strait Islander peoples and pay our respects to Elders past and present. We acknowledge the ongoing resistance of Aboriginal and Torres Strait Islander peoples, particularly regarding the forced removal of Aboriginal and Torres Strait Islander children and young people from their families.

This project was commissioned by the Justice and Community Safety Directorate, ACT Government, and completed by a team including Larissa Behrendt, Lindon Coombes, Paul Gray, Jacynta Krakouer, James Beaufils, Wendy Hermeston and Alison Whittaker.

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We acknowledge the engagement and contribution of Aboriginal and Torres Strait Islander and non-Indigenous participants and stakeholders, including the Our Booris Our Way Implementation Oversight Committee, the ACT Aboriginal and Torres Strait Islander Elected Body, the ACT Government, and the ACT Human Rights Commission.

The Jumbunna Institute for Indigenous Education and Research acknowledges that Canberra has been built on the lands of the Ngunnawal people. We also acknowledge the Wreck Bay Aboriginal Community.

We know that the best interests of our children are to grow up with family, knowing our culture, strong in identity as proud Aboriginal and Torres Strait Islander people.¹

We must stop the processes that continue to discriminate against our families and change policies and practices to ensure families are supported to keep their children at home.
We want our kids to be safe and nurtured. We want the self-determination to find and manage our own solutions and support services.
Our community needs confidence that past mistakes will not be repeated.
We don't want our families to be punished for their circumstances. We want to be guided to find the right supports and services in order to be safe and confident parents.²

¹ *Our Booris, Our Way* Final report, December 2019, p. 104.

² *Our Booris, Our Way* Interim report, August 2018, p. 2.

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Executive Summary

Background

The disproportionately high rights of intervention by government agencies in the lives of Aboriginal and Torres Strait Islander children and families, and the poor outcomes achieved for Aboriginal and Torres Strait Islander children and young people has long been a critical concern for communities. A key element of addressing these inequities is the establishment of adequate oversight and accountability mechanisms focused on the rights and interests of Aboriginal and Torres Strait Islander children and young people. The recent *Our Booris, Our Way* Review examined the over-representation of Aboriginal and Torres Strait Islander children and young people in out-of-home care in the ACT. Among the numerous recommendations was a call for greater accountability of child protection systems and practice, including the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner. The recommendation emphasised the need for adequate authority to promote and uphold the rights and interests of Aboriginal and Torres Strait Islander children, to engage closely with the Aboriginal and Torres Strait Islander community of the ACT, and to advise, oversee and where necessary intervene to ensure that all Aboriginal and Torres Strait Islander children and young people have the full enjoyment of their rights.

Subsequent work, including the 2021 *Protection of Rights Services Review* further reiterated the importance of establishing an Aboriginal and Torres Strait Islander Children's Commissioner to provide a "specific, culturally informed, culturally safe and accessible oversight body".³ It noted that contributors to that review envisaged a role with broad functions and responsibilities focused on Aboriginal and Torres Strait Islander children and young people and their families, and spanning health, education, family, justice and community contexts.

The ACT Government agreed in principle to establish an Aboriginal and Torres Strait Islander Children's Commissioner in July 2020.

Building on this work, the Jumbunna Institute for Indigenous Education and Research was invited to facilitate community dialogues to develop a proposed model for the Aboriginal and Torres Strait Islander Children's Commissioner role, including its functions and powers, governance, connection and location, role characteristics and selection processes. Jumbunna undertook a three-phase approach to engage with stakeholders, developing and presenting a community discussion paper, facilitating a series of community dialogues and stakeholder engagements, followed by a final refinement session with Aboriginal and Torres Strait Islander stakeholders including members of the Our Booris Our Way Implementation Oversight Committee, the ACT Aboriginal and Torres Strait Islander Elected Body, representatives of Aboriginal Community Controlled Organisations, and supported by the ACT Justice and Community Safety Directorate and current Commissioners of the ACT Human Rights Commission. Unfortunately, the impact of the COVID-19 pandemic throughout 2021 interrupted the engagement process and required a range of accommodations, including the use of online videoconferencing for most community dialogues. It also limited the opportunity to engage with the Wreck Bay Aboriginal community; an outstanding issue that requires further engagement in subsequent steps towards the establishment of the Aboriginal and Torres Strait Islander Children's Commissioner.

Approach

The Community Discussion Paper stage provided an overview of the conversation to date, including the *Our Booris, Our Way* Final Report and the *Protection of Rights Services Review*. Additionally, it was informed by a review of the literature and the internationally recognised Paris Principles which outline the standards for the establishment of National Human Rights Institutions. These include:

³ Insight Consulting Australia, *Protection of Rights Services Review* (2021), 92.

- a clear mandate and authority to independently exercise its responsibilities, including powers of inquiry and investigation
- engagement with all stakeholders, including community, government, service providers and experts to protect and promote human rights
- cooperation with other human rights bodies
- the opportunity to influence systems and practice
- resources and infrastructure to effectively carry out their responsibilities
- a clear, transparent and participatory appointment process

The foundations of this project were further informed by the analysis of the national Aboriginal and Torres Strait Islander children's peak body, SNAICC - National Voice for our Children, which considered the application of these principles in the context of promoting and protecting the rights and interests of Aboriginal and Torres Strait Islander children and young people. It was also informed by the experiences of Aboriginal and Torres Strait Islander statutory officers appointed to similar roles in other jurisdictions. The Discussion Paper was presented in an online webinar in November 2021. Direct engagements with the ACT Aboriginal and Torres Strait Islander Elected Body and the Our Booris Our Way Implementation Oversight Committee also set the scene for the community dialogues and ensured key input into the process.

Community Dialogues were held throughout November and into December, including online interviews and group conversations with stakeholders. In some circumstances, direct engagements with Aboriginal and Torres Strait Islander organisations and stakeholders were requested, included where possible (given public health settings at that time) in-person conversations. A special session with young people from currently in detention was also arranged. In some instances, community stakeholders expressed frustration with the long process of reform and what was viewed as a lack of commitment to action and structural change to address entrenched inequities affecting Aboriginal and Torres Strait Islander children and families. Community stakeholders outlined their perspective of the opportunity for the role and key elements to ensure it was successful at driving much-needed change. In addition to engagements with Aboriginal and Torres Strait Islander stakeholders, government stakeholders were also invited to participate through their Directorates, including education, health and community services, as well as Commissioners from the ACT Human Rights Commission. Together, these dialogues represented the bulk of the input into the development of the proposed role, and were used to develop a series of key points regarding the functions and powers, governance and connections, and role characteristics and selection process to be tested and finalised through the final refinement phase.

In the final refinement phase, key stakeholders including members of the ACT Aboriginal and Torres Strait Islander Elected Body, the Our Booris Our Way Implementation Oversight Committee, and representatives from Aboriginal Community Controlled Organisations, as well as ACT Human Rights Commissioners and representatives of JACS tested key themes and proposals arising from the Community Dialogues towards finalisation of the proposed models. Using a consensus approach, Aboriginal and Torres Strait Islander participants worked towards agreement on the functions and powers, governance and connections, role characteristics and selection processes. They also identified key non-legislative enablers and additional factors that they felt would be critical to the success of the role.

Findings

Through the three-stage process a proposed model was developed to inform efforts to legislate for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT. Respondents were clear to place their aspirations and expectations for this role within a broader context of persistent inequity and systems failure. While the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner was seen as an important development in achieving greater transparency and accountability of systems affecting Aboriginal and Torres Strait Islander children and

young people (and their families and communities), respondents noted that further structural change is needed to address these inequities. In particular, themes related to self-determination and accountability were raised, and the need for systems and practice that operate from the perspective of Aboriginal and Torres Strait Islander communities. Respondents highlighted the need for healing-based, restorative systems and practices. Further, stakeholders were keen to guard against a 'tokenistic' role, with limited mandate and resourcing to achieve substantive change, or a role 'set up to fail' through an overly broad mandate and accompanying expectations that would be impossible to achieve.

Within this context, respondents outlined a Commissioner role with a broad human rights mandate, including key instruments such as the UN Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous Peoples, and associated optional protocols and publications (such as Committee Comments and other resources) regarding the application of these instruments in the context of Indigenous children and young people, and Indigenous communities more broadly. Consistent with previous engagements, they noted a broad scope, including all areas affecting the lives and wellbeing of Aboriginal and Torres Strait Islander children and young people, including those systems that significantly impact on their families. Respondents emphasised the importance of the Commissioner being suitably empowered to undertake individual and systemic advocacy, including a mandate to intervene in matters early in decision making processes and influence the outcome of such decisions in ways that are consistent with the recognition and full enjoyment of the rights and interests of Aboriginal and Torres Strait Islander children and young people, individually and collectively. While respondents noted the important role of complaints processes, there was a consistent view to prioritise advocacy and intervention. However it was recognised that the Commissioner may nevertheless have an important role supporting existing complaints processes to be more accessible and responsive to the needs of Aboriginal and Torres Strait Islander children and young people and their families. It is important this is carefully communicated and implemented, to ensure that Aboriginal children and families experience a 'no wrong door' service, and don't feel rebuffed or redirected in raising their concerns with the office of the Aboriginal and Torres Strait Islander Children's Commissioner. Systemic advocacy included undertaking investigations and reviews under the Commissioner's own initiative, and influencing systems, policies and practice to safeguard the rights and interests of Aboriginal and Torres Strait Islander children. Transparent reporting that respects the diversity of the Aboriginal and Torres Strait Islander community of the ACT was seen as a key element of building accountability and confidence in the role.

The independence of the role was a key principle that stakeholders valued highly. There was clear consensus that the role must be independent in the exercise of its authority, consistent with the Paris Principles. Stakeholders also emphasised the importance of close relationships with the Aboriginal and Torres Strait Islander community of the ACT, respecting the diversity of this community across the ACT and including the Wreck Bay Aboriginal community. Those was seen as a core responsibility of the proposed Commissioner. However stakeholders were in general agreement that a legislative mandate for the establishment of an Advisory Group was unnecessary, and may constrain the development of effective place-based solutions. Rather, the legislation should effectively enable such approaches, with it being the responsibility of the Commissioner to engage with the Aboriginal and Torres Strait Islander community of the ACT to establish the appropriate mechanisms.

Relationships with government stakeholders and service providers were seen in a more functional light, reflecting the role of the Commissioner in providing effective independent oversight and advocacy to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people. Such relationships were seen as an important part of influencing change and achieving outcomes for children and families. Further, there was a view that the role should be independent of, although enjoy a close working relationship with, the ACT Human Rights Commission, to maximise impact for the community while preserving the distinct positioning desired of the Aboriginal and Torres Strait Islander Children's Commissioner. This is consistent with the Paris Principles emphasising the importance of influencing change and working with other human rights organisations in the promotion of rights. Noting this positioning, stakeholders felt that the Commissioner should be located in an open and accessible space that is welcoming to Aboriginal and Torres Strait Islander children and young people. It was further noted that this may be complemented by 'satellite' locations, including a regular presence within youth detention and other residential facilities to ensure access for Aboriginal and Torres Strait Islander children and young people in these settings.

Finally, stakeholders emphasised the importance of a clear, transparent and participatory selection process, consistent with the Paris Principles. Stakeholders emphasised a focus on values in addition to demonstrated knowledge, skills and experience relevant to the broad scope and responsibilities of the role. The ability to engage effectively with stakeholders, including in particular Aboriginal and Torres Strait Islander children and young people, and families and communities more broadly, was seen as critical. There was also broad consensus on the importance of including representatives of the Aboriginal and Torres Strait Islander community of the ACT in the recruitment process in order to build confidence in the role. However, it was clear that this involvement must be transparent and accountable, guarding against real or perceived conflicts of interest which might undermine this goal. Aboriginal and Torres Strait Islander children and young people were also identified as a key group who might be involved in the selection process, given the importance of effective engagement with this population for the success of the role.

Proposed Model

These views, and others, were tested through the final model refinement session with Aboriginal and Torres Strait Islander stakeholders, towards consensus of the final model. This discussion is outlined in greater detail in the relevant section of the report. The outcome of this process is outlined generally in Table 1, below. Broadly, the role is related to the existing Public Advocate and Children and Young Persons Commissioner role, including oversight, compliance and monitoring, and advocacy and inquiry functions.

In recognition of the needed for broader systemic change, additional issues were identified that must be considered alongside the legislative and establishment processes. First, direct engagement with the Wreck Bay Aboriginal Community is warranted, providing an opportunity for that community to contribute to the legislative framework and key enablers of the Commissioner role, and its relationship with their community. Second, the Commissioner role must be adequately resourced to deliver on its significant mandate. Third, given existing under-resourcing relative to need, and expected increases in demand arising from the work of the Commissioner, there is a need for increased resourcing of Aboriginal and Torres Strait Islander child and family services to enable actions identified through individual and systemic advocacy. Fourth, ongoing reform of various related systems in partnership with the Aboriginal and Torres Strait Islander community of the ACT, including full implementation of the *Our Booris, Our Way* recommendations is necessary to maximise the impact of the proposed role, including mechanisms to realise aspirations for self-determination and self-governance by and for Aboriginal and Torres Strait Islander communities in the ACT. Fifth, further engagement with the Aboriginal and Torres Strait Islander community of the ACT is needed throughout the legislative and establishment process, including a guarantee of community review of draft legislation towards endorsement before moving to establishment. This should be supported by a clear timeline for progress, and transparent conversations with community stakeholders towards agreement on necessary resourcing for the Commissioner and their team. Finally, community stakeholders requested a commitment to a relatively short-term review process following implementation, enabling the Commissioner and community stakeholders to raise challenges and propose refinements in the legislation, policy and resource enablers to effectively deliver on the mandate to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people in the ACT.

Table 1 - Proposed Model

Domain	Legislative	Non-Legislative enablers
Functions and Powers	<p>Explicit mandate to promote and protect the rights of Aboriginal and Torres Strait Islander Children, with a broad scope across all systems affecting Aboriginal and Torres Strait Islander children and young people</p>	<p>Adequate resourcing of Commissioner’s office to enable individual and systemic advocacy, including experienced case managers and advocates, as well as community liaison</p>
	<p>Linked to key human rights instruments (including UN Convention on the Rights of the Child and UN Declaration on the Rights of Indigenous Peoples), aligned to existing human rights legislation in the ACT</p>	<p>Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap.</p>
	<p>Explicit reference to focus on Aboriginal and Torres Strait Islander children and young people, from a cultural standpoint, and noting the importance of connectedness – to family, community, culture and Country – as critical to best interests.</p>	<p>Increased investment in Aboriginal and Torres Strait Islander child and family services to enable action given anticipated increase in demand</p>
	<p>Clear expectation for transparency and accountability to the Aboriginal and Torres Strait Islander community, including at least annual reporting to the ACT Legislative Assembly and Aboriginal and Torres Strait Islander community. Reporting to be independent of government.</p>	<p>Commitment to future review of role design, ensuring functions and framework fit for purpose</p>
	<p>Authorised for individual and systemic advocacy, own-motion inquiry, investigation and research, with a holistic framework that understands children and young people in their developmental context</p>	<p>Effective relationship with government to enable input to policy development activities where relevant, including notification mechanisms for relevant policies that are of particular importance to the role of the Commissioner advocating for Aboriginal and Torres Strait Islander children and young people in the ACT</p>
	<p>Enable active oversight of government systems’ interactions with Aboriginal and Torres Strait Islander children, including those monitoring and compliance responsibilities invested in the current Public Advocate and Children and Young People Commission, as well as strong provisions to enable access to Aboriginal and Torres Strait Islander children, particularly in closed institutions.</p>	
	<p>Inclusion into scope of role the opportunity to provide advice to government regarding relevant policy development activities, at the discretion of the Commissioner</p>	
	<p>Proactive focus. Authorised to recommend action from government agencies and relevant child and family services to promote and protect the rights of Aboriginal and Torres Strait Islander children (individually and collectively), with provision to require a response outlining the steps taken.</p>	
	<p>Authorised to join matters at any stage, including as a party in court proceedings relevant to the rights and interests of an Aboriginal and Torres Strait Islander child or children, to inform the decision makers including the Court</p>	
	<p>Clear authorisation to share and receive information regarding Aboriginal and Torres Strait Islander children and</p>	

	young people, including from government agencies, service providers, and the ACT Human Rights Commission	
Governance and Connection	<p>Clear statutory independence, established as a standalone office (not positioned within the ACT Human Rights Commission)</p> <p>Clear expectations to engage continuously with all segments of the Aboriginal and Torres Strait Islander community of the ACT</p> <p>Enablers for the establishment of an Aboriginal and Torres Strait Islander Community Advisory and/or Children and young People Advisory, at the discretion of the Commissioner and according to their own processes.</p>	<p>Resourcing for continuous engagement, including possible Advisory group(s), accessible office space and 'hub' design (including presence at Bimberi).</p> <p>Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap.</p>
Selection Process	<p>Guidance that the appointment process is to be undertaken in partnership with the Aboriginal and Torres Strait Islander community</p> <p>Appointed by Minister, based on recommendations from transparent and collaborative appointment process</p>	<p>Transparent, multi-staged recruitment strategy, including attributes and expectations, community representation in process and management of possible conflicts of interest</p>

Final Report

Introduction

The *Our Booris, Our Way* Review investigated the disproportionately high rates of intervention by the statutory child protection system in the lives of Aboriginal and Torres Strait Islander children and families in the ACT, finding a system in desperate need of reform. The Review made 28 recommendations for urgent change, spanning systems, policy and practice, intended to end the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, improve the experiences and children and families, and shape a better future through holistic systems that promote healing rather than inflicting further harm.

Among these urgent recommendations from the *Our Booris Our Way Committee* was the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner; an independent and empowered statutory officer to promote transparency and accountability of systems affecting their children. The recommendation specifically noted the need for specific authority and capacity to intervene and engage in child protection processes, making an immediate difference for Aboriginal and Torres Strait Islander children and families.

This recommendation follows similar steps in other jurisdictions, including Victoria, Queensland and South Australia, to appoint independent statutory officers focused on Aboriginal and Torres Strait Islander children and young people, providing varying levels of oversight and accountability of government systems. The need for greater monitoring and accountability of child protection systems has been a central feature of Aboriginal and Torres Strait Islander child protection advocacy nationally for some time, with accountability identified as a core *Building Block* for reform as part of the SNAICC-led *Family Matters Roadmap* released in 2016⁴.

Concurrent and subsequent reviews, including the *Protection of Rights Services Review*, and the *Inquiry into Child and Youth Protection Services*, have likewise emphasised the importance of adequate monitoring and accountability of such systems, and the support of the Aboriginal and Torres Strait Islander community for the establishment of such a role. However the specific design characteristics of the role remained unclear. An expansive remit presented potential challenges in balancing the requirements of different functions, and the foundational point of delivering meaningful outcomes for Aboriginal and Torres Strait Islander children and young people, their families and communities.

Working alongside the *Our Booris Our Way Implementation Oversight Committee* ('OBOWIOC') and the *Aboriginal and Torres Strait Islander Elected Body*, the Jumbunna Institute for Indigenous Education and Research ('Jumbunna') facilitated a series of dialogues to develop a clear model to guide legislative and other efforts towards establishing this important role. These dialogues included community members, local community organisations, nominated government stakeholders and current Commissioners within the ACT Human Rights Commission towards clarifying the functions and powers, governance and connections, location, role characteristics and selection process for the appointment of a dedicated Aboriginal and Torres Strait Islander Children's Commissioner in the ACT.

This report sets out in brief the background and key considerations for establishing the Commissioner role, the approach taken to engage stakeholders in the development of the model, and outlines the proposed model developed through this process. It briefly outlines the context for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT, including the Paris Principles, internationally recognised standards for human rights institutions, such as a Children's Commissioner,

⁴ SNAICC, *Family Matters Roadmap* (2017)

intended to protect and promote human rights, and that provide a framework for setting out the functions of human rights oversight bodies.⁵

Finally, a summary of themes arising from engagement with Aboriginal and Torres Strait Islander community and other stakeholders are presented, leading to a proposed 'consensus model', and supported by rationale and stakeholder expectations for the dedicated Commissioner role. Stakeholders outlined the need for a broadly defined role to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people in the ACT, emphasising in particular the need to approach considerations about the rights and best interests of Aboriginal and Torres Strait Islander children from the cultural standpoint of the Aboriginal and Torres Strait Islander community, rather than the non-Indigenous community from whose standpoint such systems currently operate to the detriment of Aboriginal and Torres Strait Islander children. We heard about the importance of a clear mandate and statutory authority to scrutinise systems and practices affecting Aboriginal and Torres Strait Islander children, and to proactively intervene to promote systems change and better decision making in those significant processes that affect the lifelong wellbeing of Aboriginal and Torres Strait Islander children and young people, and the future of our communities. Finally, the process emphasised that an appropriately empowered commissioner has a critical role to play, but will only realise the full benefits for Aboriginal and Torres Strait Islander children and young people, families and communities if accompanied by other significant structural and practice reforms, such as those recommended in the *Our Booris Our Way* Report. This theme was clearly stated in that report, which noted:

"There is no one, single policy that will change our children's futures – our recommendations address systemic and practice changes that we know will improve the outcomes for our children. These recommendations need to be implemented quickly – there is no time for slow, steady implementation – this is a child protection emergency."⁶

Background

The *Our Booris, Our Way* review, initiated by the ACT Government in June 2017, investigated disproportionately high numbers of Aboriginal and Torres Strait Islander children and young people involved with the ACT child protection system, including in Wreck Bay.

A co-design process involving representatives from Aboriginal Community Controlled Organisations and other community members outlined the scope and governance of the review, including the establishment of the *Our Booris, Our Way* Steering Committee (the Steering Committee). The review included five key elements, including extensive case reviews, community engagement, interviews with children, parents, carers and families, a public submissions process and data analysis arising from the case reviews.⁷ The Wreck Bay Aboriginal Community, which is located on the south coast of NSW in the Jervis Bay Territory, is governed by the laws of the ACT and receives ACT services, including those affecting children and young people such as child protection and education, and was included in the review.⁸

The *Our Booris, Our Way* Final Report (the Final Report) examined why Aboriginal and Torres Strait Islander children and young people enter care, along with the systemic issues in the ACT statutory child protection system. Its focus was mainly on informing system, policy and practice improvements, including:

- Strategies for reducing the high numbers of Aboriginal and Torres Strait Islander children in care
- Improving children's experiences and outcomes in care, including ties to community and culture

⁵ The Paris Principles are the *Principles relating to the Status of National Institutions*, adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993 and endorsed by the World Conference on Human Rights. See <https://www.un.org/ruleoflaw/files/PRINCI-5.PDF>.

⁶ *Our Booris, Our Way* Final Report, p.103

⁷ *Our Booris, Our Way* Final Report, p. 23

⁸ *Our Booris, Our Way* Final Report, p. 70.

- Exiting children from care via improved, safe and supported pathways to restoration.⁹

The Final Report, released in December 2019, set out its findings based on evidence gathered through the five key elements of the review outlined above, including comprehensive reviews into the cases of over 300 Aboriginal and Torres Strait Islander children and young people who were in contact with the ACT child protection system on 31 December 2017.¹⁰

The Steering Committee spoke plainly about the involvement of Aboriginal and Torres Strait Islander children in the Final Report, who, at the time of the release, were 16.3 times more likely to be in out-of-home care (OOHC) than non-Indigenous children.¹¹

The Steering Committee found the ACT child protection system to be an inherently biased one, that served to discriminate against Aboriginal and Torres Strait Islander children and families. The Committee specifically called out children's experiences as heavily burdened by 'a lack of active efforts, poor consistency in experience and decision making, discrimination, and cultural dislocation.'¹²

Crucial changes were needed to improve a system viewed as continuously failing Aboriginal and Torres Strait Islander children involved with child protection in the ACT, with devastating and enduring consequences for local families and communities. The Steering Committee made some 28 recommendations for reform, including around improving care and protection practice. For the Committee, the report represented a long overdue call to action. The Steering Committee saw the Report's proposed reforms as upholding the rights and cultural security, in the spirit of self-determination, of Aboriginal and Torres Strait Islander children and young people in contact with the system.

The need for a dedicated Aboriginal and Torres Strait Islander Children's Commissioner in the ACT

A major focus identified during the review concerned an ongoing lack of transparency and need for oversight in the ACT child protection sector. Establishing a dedicated Aboriginal and Torres Strait Islander Children's Commissioner (the Commissioner), as highlighted in the *Our Booris, Our Way* Interim Report (the Interim Report), could address the critical need for oversight. The role could carry out 'comprehensive review[s] and [give] advice to the child protection system on issues of culture and equity.'¹³

The Steering Committee laid out the case for a dedicated commissioner in its *Our Booris, Our Way* Final Report recommendations. A Commissioner could step in and support Aboriginal and Torres Strait Islander children and families, not only by carrying out reviews, but also via specific powers to:

[I]ntervene 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.¹⁴

⁹ *Our Booris, Our Way* Final Report, December 2019, p. 12.

¹⁰ *Our Booris, Our Way* Final Report

¹¹ *Our Booris, Our Way* Final report, December 2019, p. 5.

¹² *Our Booris, Our Way* Final Report, December 2019, p. 12.

¹³ *Our Booris, Our Way* Interim report, August 2018, p. 5.

¹⁴ *Our Booris, Our Way* Final Report, December 2019, p. 79.

This recommendation follows the appointment of dedicated Aboriginal and Torres Strait Islander Children’s Commissioners in other jurisdictions, including Victoria in 2013, with similar roles established in Queensland and South Australia. SNAICC, the National Voice for Children and Family Matters have led calls over recent years for the establishment of dedicated Aboriginal and Torres Strait Islander Commissioners for children and young people in each state and territory, as well as nationally (a National Commissioner). Creating a National Commissioner in particular, could build on impetus created by establishment of Aboriginal and Torres Strait Islander Children’s Commissioner roles in Victoria and South Australia, and ‘contribute to more effective, consistent, efficient and accountable systems and services for Aboriginal and Torres Strait Islander children and young people’.¹⁵

A National Commissioner was identified as crucial to improving systems and the oversight of services, transparency and accountability and to improved protection of Aboriginal and Torres Strait Islander children and young people’s rights. SNAICC also proposed that the Paris Principles provide a framework for establishing the national Aboriginal and Torres Strait Islander Children’s Commissioner role.

The Paris Principles are internationally-recognised minimum standards for the establishment of National Human Rights Institutions (NHRIs) that protect and promote human rights, such as a Children’s Commissioner. The Principles are suitable for assessing and establishing such a role, because they provide a guide for ‘the status, structure, mandate, composition, powers and methods of operation of domestic human rights entities.’¹⁶

For a NHRI to effectively meet best practice standards and support improved outcomes for Aboriginal and Torres Strait Islander children and young people, according to the Paris Principles, there are key elements to be incorporated, including:

- A clear mandate and legal authority to undertake the Children’s Commissioner role that ensures its independence and autonomy from other parties (such as government and non-government organisations), including powers of inquiry and investigation
- Engagement with stakeholders, including government, non-government organisations, experts and the broader community, to protect and promote human rights.
- Co-operation with other human rights bodies
- The opportunity to influence systems, policies and practice, including the ability to make recommendations and relevant follow up actions regarding the response to recommendations
- Clear, transparent and participatory appointment processes, with a pre-determined criteria
- Funding and infrastructure necessary to carry out their job effectively.

The principles set out the responsibilities of NHRIs, including:

- Provide advice or recommendations on the promotion and protection of human rights, including legislation and policy
- Inquire into matters where there has been a violation of human rights, whether including individual and systemic circumstances
- Publish reports (for instance, annual reports or reports from inquiries) including tabling with legislature
- Cooperate with other human rights bodies, including international human rights systems
- Raise public awareness about human rights issues.

The Paris Principles provide important guidance for establishing the role of Aboriginal and Torres Strait Islander Children’s Commissioner in the ACT, and for how the role and mandate might best be enshrined

¹⁵ SNAICC, Family Matters – Position Paper – Establishment of a Aboriginal and Torres Strait Islander Children and Young Persons National Children’s Commissioner (October 2019), 5.

¹⁶ SNAICC/Family Matters Options Paper, p.7.

in law.¹⁷ The Principles framed the community dialogue and co-design process around establishing an ACT Aboriginal and Torres Strait Islander Children Commissioner role.

The ACT Government agreed in principle to the recommendation for a dedicated Aboriginal and Torres Strait Islander Children's Commissioner in July 2020. Since then, the case for the role has been building. The community dialogue and co-design process regarding the Commissioner role has taken place in the context of broader reviews into the ACT care system, and Australia-wide conversations regarding the role of a national Aboriginal and Torres Strait Islander Children's Commissioner.

The ACT's Standing Committee on Health, Ageing and Community Services initiated an inquiry into Child and Youth Protection Services, in light of a case involving the unjust removal of five Aboriginal children from their mother. The inquiry centred on the ability to share information in the ACT child protection system in accordance with the *Children and Young Persons Act 2008 (ACT) (Children and Young Persons Act)*, 'with a view to providing the maximum transparency and accountability so as to maintain community confidence in the ACT's care and protection system.'¹⁸ Information sharing is acknowledged by the ACT government as critical to the delivery of effective, equitable and efficient care and protection services.¹⁹

A report from the inquiry, released in July 2020, contained evidence of a lack of appeal and review rights, and barriers to the sharing of important, sensitive information, that was:

[C]ounterproductive to transparent and accountable decision-making ... such a culture is not in the best interests of a child or young person—[who] the system seeks to serve.²⁰

The inquiry Standing Committee's recommendations for reform included proposals for improving information sharing and mechanisms for external review. The Committee explicitly noted the need to open care decision-making to increased scrutiny and transparency, in compatibility with provisions under the *Human Rights Act*.²¹ The proposed Aboriginal and Torres Strait Islander Children's Commissioner role may assist in achieving these recommendations, for example holding the care system to account by challenging decisions early in proceedings, via individual advocacy or systems-level advocacy and review.

The *Our Booris, Our Way* review and the inquiry into Child and Youth Protection Services occurred alongside the *Protection of Rights Services Review*, which commenced in June 2020. This review considered the extent to which protection of rights services reforms implemented in the ACT in 2016, including restructuring the operation of protection of rights services, achieved their intended aims.

The review examined, via community engagement and stakeholder input, the *Our Booris, Our Way* review recommendation to establish a dedicated Aboriginal and Torres Strait Islander Children's Commissioner. The review included a finding that:

[S]elf determination of Aboriginal and Torres Strait Islander people in the ACT ought to include oversight and advocacy. The[ir] current experience ... in terms of outcomes, services and systems warrants a specific, culturally informed, culturally safe and accessible oversight body.²²

The review noted the potential for a Children's Commissioner, if properly supported and resourced, to 'lift all oversight in the ACT for Aboriginal and Torres Strait Islander people [via connections with relevant institutions, including] the HRC, Ombudsman, Human Services Registrar, Inspector of Correctional Services, Official Visitors, etc.'²³

¹⁷ SNAICC/Family Matters Options Paper, p.7.

¹⁸ ACT Govt 9th HACS Report on Child and Youth Protection Services, Part 2 (July 2020), p. 7.

¹⁹ Govt Response to Prot'n of Rights Services Review.

²⁰ ACT Govt 9th HACS Report on Child and Youth Protection Services, Part 2 (July 2020), p. viii.

²¹ ACT Govt 9th HACS Report on Child and Youth Protection Services, Part 2 (July 2020), Recommendations 19-21, pp. 59-61.

²² ACT Govt – ACT JACS Directorate, Protection of Rights Services Review (2021), 92.

²³ Insight Consulting Australia, *Protection of Rights Services Review* (2021), p.84.

The review documented both community support and community expectations around the functions and responsibilities of an independent, dedicated Children's Commissioner, with oversight of matters relating to Aboriginal and Torres Strait Islander families. Participants in the *Protection of Rights Services* review envisaged the role as having broad functions and responsibilities; they agreed the role must:

- 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.²⁴

The *Protection of Rights Services Review* emphasised the need for concentrating the work of the Children's Commissioner on improving universal services and systems and early intervention) to help prevent Aboriginal and Torres Strait Islander children's entry into out-of-home care (OOHC) and the juvenile justice system. This review also highlighted the importance of designing in collaboration with community, a coherent model for the role, that is responsive to community needs and aspirations and able to efficiently and effectively deliver on its mandate.²⁵ It flagged key areas of contention, including how community expectations for complaints handling functions might be positioned alongside strong oversight, accountability and advocacy functions, how the Commissioner might navigate connections with the Aboriginal and Torres Strait Islander community while exercising independence, including oversight of Aboriginal organisations, and community views regarding key attributes of a successful Commissioner to guide appointment processes.

The ACT government agreed to recommendations in the *Protection of Rights Services Review* for a new Aboriginal and Torres Strait Islander Children's Commissioner, with:

- A wider remit to amplify oversight for Aboriginal and Torres Strait Islander services and outcomes more broadly
- Appropriate information sharing powers and,
- An agreed Protocol to provide governance and collaboration between the Children's Commissioner and the HRC²⁶

The ACT government also agreed to the recommendation that the dedicated Children's Commissioner should be Aboriginal and/or Torres Strait Islander. Further, there was agreement in principle to the recommendation that the Commissioner have similar powers and functions to those of the Public Advocate and Children and Young People Commissioner and the ability to actively support complainants to access existing HRC complaints processes. The government viewed details such as the location of the role as to be determined via the present Aboriginal community-led engagement and co-design process.²⁷

It must be noted that local Aboriginal and Torres Strait Islander community and stakeholders have expressed considerable frustration with the multiple reviews into the ACT care system, which some viewed as symptomatic of ongoing failures in the statutory care system that contribute to the continuing over-representation of Aboriginal and Torres Strait Islander children in care in the ACT.²⁸ This echoes the urgency emphasised in the *Our Booris Our Way Report*²⁹, including the recommendation to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

Based on this background literature and reports from prior engagements with the Aboriginal and Torres Strait Islander community of the ACT, Jumbunna was invited in mid-2021 to work with the *Our Booris, Our Way* Implementation Oversight Committee and JACS, to develop a three-phase approach to engaging community and other stakeholders in the further refinement of the role towards its timely establishment. This process was further informed through informal conversations with relevant similar statutory officers in other jurisdictions, to focus the community dialogues on key issues that are informed from their own views

²⁴ Insight Consulting Australia, *Protection of Rights Services Review* (2021), p. 81.

²⁵ ACT Commissioner Project Plan Draft COVID Revision – 2020, p. 1.

²⁶ Govt Response to Prot'n of Rights Services Review.

²⁷ Govt Response to Prot'n of Rights Services Review.

²⁸ ACT Government, Standing Committee on Health, Ageing and Community Services 9th HACS Report 11 – Report on Child and Youth Protection Services, Part 2 (July 2020), citing 90 Submission No. 9—Canberra Restorative Community Network, p. 4.

²⁹ *Our Booris Our Way Report*, above n. 11

and the experiences of similar processes in other jurisdictions. Community dialogues and consultations with other stakeholders focused on clarifying and refining:

- Functions and powers of the proposed Commissioner – the role’s human rights mandate and scope of powers of oversight, inquiry, and investigation, including individual and systemic advocacy, complaints handling and other responsibilities
- Governance, connections, location – including concerning the independence and plurality of the role, how it co-operates with other human rights entities and the relationship between the Commissioner and diverse groups within the ACT Aboriginal and Torres Strait Islander community, including in Wreck Bay
- Role characteristics – including key skills and attributes expected of the Commissioner as well as the recruitment process, and
- How the role might be established and operationalised in the ACT.

The responses of those who took part in consultations will have significant implications for the way the Aboriginal and Torres Strait Islander Children’s Commissioner works.³⁰

Establishing an Aboriginal and Torres Strait Islander Children’s Commissioner for the ACT

The Jumbunna Institute for Indigenous Education and Research at the University of Technology, Sydney (UTS), was asked to facilitate this engagement process to further develop the proposed Aboriginal and Torres Strait Islander Children’s Commissioner role for the ACT. In partnership with the *Our Booris Our Way Implementation Oversight* Committee and the ACT Government Justice and Community Safety (JACS) Directorate, Jumbunna developed a three-stage approach, including development and presentation of a community discussion paper, a series of community dialogues and stakeholder engagements, and a final model refinement session to share the key themes of the community dialogues and finalise the proposed model. In addition to the *Our Booris Our Way Implementation Oversight Committee*, Jumbunna also met with the ACT Aboriginal and Torres Strait Islander Elected Body to discuss the proposed approach. The approach was also submitted to the UTS Human Research Ethics Committee, and was granted ethics approval. This process is outlined in Table 2 – Consultation Process.

While this process was planned to commence in mid-2021, localised lockdowns and border closures in response to the ongoing COVID-19 pandemic delayed the opportunity for direct engagement. Following this delay, and given uncertainty about the possibility of future waves as well as a sense of urgency from the OBOWIOC for the establishment of the role, it was determined the process would commence in November 2021 with a hybrid approach including online platforms and COVID-safe in-person sessions where permitted by public health guidelines. The discussion paper was released in November 2021³¹, including an online Webinar to talk through the key issues and consultation approach. This was advertised through local Aboriginal and Torres Strait Islander community organisations.

Community networks were likewise used to advertise community dialogues, held in late November 2021. A website was developed to host relevant documentation and enable interested community stakeholders to register for co-design sessions³². Community stakeholders were also invited to contact the Jumbunna team directly if preferred, in order to offer the greatest flexibility for community participation. Relevant government directorates were approached by JACS to nominate representatives who were subsequently invited to participate by the Jumbunna team. A similar invitation was made current Commissioners through the ACT Human Rights Commission. Through JACS and staff at the Bimberi Youth Justice Centre, Aboriginal and Torres Strait Islander children in detention were also given an opportunity to participate. Participant information sheets were provided to interested participants, with consent provided in writing prior to the session, or verbally at the commencement of each session.

³⁰ Discn paper (2021), p 4.

³¹ See, <https://jumbunna.files.wordpress.com/2021/11/act-aboriginal-childrens-commissioner-discussion-paper.pdf>

³² See, <https://jumbunna.institute/2021/11/02/have-your-say/>

Table 2: Consultation process

Consultation phase	Detail
1. Release of a community discussion paper. Aligned with the Paris Principles; released 5 November 2021.	<ul style="list-style-type: none"> • Provided brief overview of conversations arising from the <i>Our Booris, Our Way</i> Final Report and the <i>Protection of Rights Services</i> Review etc. Informed stakeholders about the literature and experiences of other relevant jurisdictions in establishing similar independent oversight roles • Provided main opportunity for community stakeholders to take part in co-design process and shape final Commissioner model • Informed by community stakeholder input. • Jumbunna hosted an online community session to discuss the paper
2. Community dialogue stakeholder engagement Held in November 2021.	<ul style="list-style-type: none"> • Community dialogue sessions (duration approx. 3 hours), intended to maximise community reach and opportunity for participation • One session with the Aboriginal and Torres Strait Islander Elected Body • Four individual interviews and six open sessions held with community stakeholders (five online, one in person). Some organisations rescheduled the pre-booked sessions for interviews at suitable times. • Two sessions held with stakeholder government department nominees • One session held with the ACT Human Rights Commission • One session held with Aboriginal and Torres Strait Islander youth in detention in the ACT. • Topics included the Commissioner’s functions and powers and their prioritisation by stakeholders, governance, recruitment structures. Also discussed location both physically and in relation to other stakeholders (especially community), connections and relationships, and the process for recruitment of a Commissioner and its operationalisation generally. • To ensure participants felt comfortable to speak freely, sessions were not recorded. Instead, facilitators noted discussions and expectations about the role.³³
3. Final co-design or refinement session. Facilitated by Jumbunna 10 December 2021.	<ul style="list-style-type: none"> • Aim was to collaborate on developing the model, and work towards achieving a level of consensus about participants’ expectations for the Commissioner role. • Enabled stakeholders to share insights from the community dialogues and other discussions. • Conducted with stakeholders from government and the ACT Human Rights Commission.

In total, the community dialogue and stakeholder engagement phase included one online information session, and six open online community dialogues, as well as five interviews with community stakeholders or other special sessions. One in-person session was offered but not attended. There were two online sessions with government representatives, and one with Commissioners of the ACT Human Rights Commission. Overall attendance was low, reflecting engagement challenges arising from the ongoing pandemic and community fatigue, as well as the numerous recent processes seeking community input on similar matters (discussed above). The ongoing pandemic particularly limited engagement with the Wreck Bay Aboriginal community, and this remains an outstanding issue that should be addressed in the coming stages including legislative drafting and role development.

Following the community dialogue phase, a final refinement session was hosted in-person in Canberra, facilitated by the Jumbunna team and support by JACS. This session allowed the key themes arising from the dialogues to be shared and tested with community stakeholders in a collective session towards the development of the final model. This session was attended by eight community stakeholders from the

³³ From Next Steps, Jumbunna discn paper, p 7

community dialogues, including members of the Our Booris, Our Way Implementation Oversight Committee and Aboriginal and Torres Strait Islander Elected Body as well as representatives of Aboriginal Community Controlled Organisations. Three Commissioners from the ACT Human Rights Commission also attended, offering their experience in similar roles and knowledge of their enabling legislation to assist the deliberations of community stakeholders.

Emerging themes from the community dialogue sessions are summarised in the next section, 'What we heard'. Outcomes from final refinement session are summarised in the 'Final refinement session' section below.

What We Heard

Community Dialogues

Conversations with community stakeholders revealed a number of key themes related to the areas of interest; functions and powers, governance and connections, location and selection process.

Need for broader systems change

Many respondents were clear to position their input regarding the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in a broader context of persistent system and practice failures, reinforcing the need for significant systems change beyond the appointment of a Commissioner. Put simply, community respondents were clear that the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner would have an important role to play in elevating the need and opportunities for change alongside Aboriginal and Torres Strait Islander communities in the ACT, that must be accompanied by action from government to address the underlying problems of systems, policies and practice that fail to protect and promote the rights and best interests of Aboriginal and Torres Strait Islander children and young people.

Respondents expressed frustration about ongoing systems failures and the harm inflicted on Aboriginal and Torres Strait Islander children and young people, their families and communities, particularly through coercive systems such as child protection and juvenile justice systems. In particular, despite reviews and ongoing community advocacy, many respondents noted very limited substantive change, with Aboriginal and Torres Strait Islander children and young people continuing to be disproportionately affected, particularly with respect to more intrusive interventions such as youth detention and out-of-home care. Many respondents noted the poor performance of these systems relative to other Australian jurisdictions. They felt that the ACT could and should be performing much better for Aboriginal and Torres Strait Islander children, families and communities. This frustration extended to delays enacting the changes recommended by the Our Booris Our Way report in a timely manner, including the appointment of the proposed Aboriginal and Torres Strait Islander Children's Commissioner. As outlined above, many community stakeholders felt a dedicated Aboriginal and Torres Strait Islander Children's Commissioner was essential in providing adequate oversight attuned to the rights and interests of Aboriginal and Torres Strait Islander children and young people. While the existing functions within the ACT Human Rights Commission were noted, respondents felt that there was a critical need for significantly greater focus on promoting and protecting the rights of Aboriginal and Torres Strait Islander children in the ACT.

As part of this broader systemic change, themes related to self-determination and accountability were regularly noted. Respondents wanted to see decisions about Aboriginal and Torres Strait Islander children to be in the hands of their community, with greater transparency and accountability to Aboriginal and Torres Strait Islander communities. Respondents consistently noted the importance that such systems centre and operate from the perspective of the Aboriginal and Torres Strait Islander communities they are intended to serve. This included a focus on systems and practices that were healing-based and restorative, reflecting the importance of connectedness, rather than coercive and punitive, and that contributes to disconnection and isolation of children and families.

It was generally within this context that respondents engaged with questions regarding the functions and powers, governance and connections, location and selection process of the proposed Aboriginal and

Torres Strait Islander Children’s Commissioner for the ACT. Community stakeholders wanted a system that operates on their terms, and a Commissioner role that operated for them. Community stakeholders outlined a large, expansive role for the proposed Commissioner role, in response to the urgent need to address these systems that were variously described as poorly suited, racist and oppressive. Community stakeholders were clear that the role must be properly empowered through legislation, and adequately resourced to fulfill its mandate. There were concerns about the harms of a ‘tokenistic’ role that lacks the necessary mandate and resources to make a substantive difference for Aboriginal and Torres Strait Islander children and young people, individually and collectively. One respondent noted that they “don’t want it to be another tokenistic role. It has to be about practical outcomes that should be achieved.”

At the same time, community stakeholders recognised that the necessary and overdue systems changes were beyond the sole responsibility of the proposed Commissioner role, and did not want to see the role “set up to fail” through an overwhelmingly broad mandate, particularly given concerns about the level of resourcing that would be provided to support the Commissioner to undertake their functions effectively. They did not want to see the role co-opted into almost ‘shadow’ roles – shadow child protection service, shadow judiciary, shadow Minister – but to actively engage with these systems to monitor outcomes, promote urgent change to systems and practices, and hold them accountable to do better for Aboriginal and Torres Strait Islander children, families and communities.

Functions and Powers

Broad human rights mandate with a cultural lens

Community respondents consistently called for the proposed Commissioner role to be guided by a broad human rights mandate, centred specifically on the rights and interests of Aboriginal and Torres Strait Islander children. Respondents consistently noted that properly understanding and promoting the rights and interests of Aboriginal and Torres Strait Islander children requires taking the perspective of Aboriginal and Torres Strait Islander communities, and operating from that ‘cultural lens’. Some respondents felt that including a specific reference to this cultural lens when framing the mandate for the role may be beneficial, noting in particular the importance of connectedness – to family, community, culture and Country, in promoting the rights and interests of Aboriginal and Torres Strait Islander children and young people, as well as the importance of equitable access to opportunities and outcomes.

Many respondents particularly noted that the ‘best interests of the child’, as understood from an Aboriginal and Torres Strait Islander standpoint, should be elevated through this role. Community stakeholders noted that this concept is often not well understood or promoted through existing systems affecting Aboriginal and Torres Strait Islander children, failing to properly value key elements critical to their lifelong wellbeing including genuine lived experience and immersion in culture and community. Further, respondents wanted the Commissioner role to take an ‘active’ stance, with many respondents noting the importance of getting these decisions right the first time, in order to prevent later issues and harms arising from poor decisions that respondents felt were common within these systems. Some respondents specifically noted the existing role of the Public Advocate and the Commissioner for Children and Young People as a useful model or starting point with respect to the legislated functions and powers to consider for the proposed role of an Aboriginal and Torres Strait Islander Children’s Commissioner. However, respondents reiterated that the exercise of these functions and powers must reflect the cultural perspective and expectations of the Aboriginal and Torres Strait Islander community of the ACT.

Broad remit across systems

While respondents were often focused on the harms caused through the juvenile justice and child protection systems as being pressing issues requiring attention, community stakeholders consistently identified a broad scope for the proposed role.

This was clearly articulated by one respondent who noted that the Commissioner role should include “anything that plays a role in our babies’ lives”. Another respondent noted that the role is about ‘standing up for our kids’, holding those who exercise power over our kids accountable. This reflects the breadth of the mandate but also the high interest in particular systems, with many respondents noting the history of

violence and harm perpetrated by child protection and justice systems and their ongoing impacts experienced by Aboriginal and Torres Strait Islander children, families and communities.

Individual and Systemic Advocacy

Respondents consistently outlined a role for the Commissioner that included individual and systemic advocacy on behalf of Aboriginal and Torres Strait Islander children and young people, their families and communities. This mandate should make clear community expectations for a proactive stance and enable the Commissioner to receive and share information about Aboriginal and Torres Strait Islander children, to intervene in systems to promote and protect their rights in real time, and to request action and follow up on steps taken to secure their rights, both individually and collectively. This advocacy should be holistic in nature, breaking down silos within government systems and keeping children at the centre in a way that understands the social, cultural and political context of their lives. Respondents noted this should include powers for inquiry and investigation under the Commissioner's own initiative, and must be supported by an adequately resourced team that is able to respond to community need.

Within individual advocacy, community stakeholders outlined a mandate that extended to the authority to 'intervene' in matters to actively advocate during decision making processes in order to support change for Aboriginal and Torres Strait Islander children and young people that understands their family, community and cultural context. As noted generally with respect to the broad mandate of the role, there was clear consensus from community stakeholders about the importance of culture for Aboriginal and Torres Strait Islander children and young people. Respondents asserted that the Commissioner must safeguard the right of all Aboriginal and Torres Strait Islander children and young people to grow up in culture, particularly those affected by the out-of-home care or juvenile justice systems. Community stakeholders wanted to see the Commissioner making a difference in the lives of Aboriginal and Torres Strait Islander children and young people "in real time", noting the importance of the developmental period for lifelong wellbeing. Stakeholders saw effective early individual advocacy as an important part of preventing systemic harms that were a pressing concern for many respondents, creating a more positive trajectory for Aboriginal and Torres Strait Islander children and young people, their families and communities.

Young people noted the importance of individual advocacy not coming from a place of judgement of Aboriginal and Torres Strait Islander children and families, but is able to empathise with them, value their voices, and advocate for their rights. They outlined a mandate that would enable the proposed Commissioner role to get involved in the circumstances of Aboriginal and Torres Strait Islander children and young people "as soon as possible", to provide advocacy and "help them have a voice". Young people also emphasised the importance of education and awareness, and suggested that the proposed Commissioner might be able to provide young people with advice about the system's response to their circumstances, what else might be done to create a change, and work with young people and their families to achieve that change.

Connection to family was repeatedly raised by stakeholders as an issue for individual advocacy. Respondents noted the need for an empowered or authoritative position that can step in and hold what they experienced as often 'closed' or defensive systems and services to account regarding their efforts to safeguard the cultural rights of Aboriginal and Torres Strait Islander children and young people, including connections to family and community. Community stakeholders felt it important that the Commissioner have the necessary authority and standing across the system to "make the changes happen". For some respondents, current accountability mechanisms lacked the necessary powers to intervene. They suggested creating a pathway for the proposed Commissioner to challenge decisions and promote a better understanding of the rights and interests of Aboriginal and Torres Strait Islander children and young people broadly, as well as the implications of this in specific matters. Such a role might directly advocate with decision makers within government or the judiciary to inform decisions about the future of Aboriginal and Torres Strait Islander children and young people. Another suggestion was to develop an 'injunction' function that might allow the Commissioner to intervene in a decision making process and provide advice.

For some respondents, the Commissioner role should be able to 'compel' action, particularly regarding the connection of Aboriginal and Torres Strait Islander children and young people to family, community,

culture and Country, support for identity formation and development, and guard Aboriginal and Torres Strait Islander children against the harms of systems that perpetuate racial injustice. Some specific actions raised by stakeholders included the ability to review actions taken by Police, Corrections and child protection agencies, to take action if there have been failures in the duty of care, compel documents and testimony, and have strong investigative powers, focused on transparency and building community confidence.

Many respondents also noted that to be effective, the Commissioner may require a team including advocates, guardians, and experienced case managers, with a deep understanding of ethical and professional practice frameworks. These processes should be structured in order to support Aboriginal and Torres Strait Islander children and young people, families and communities navigate complex systems.

Community stakeholders noted the likely relationship between individual advocacy and systemic change, with the opportunity of learnings from an individual matter informing broader systemic change to help every young person in similar circumstances. Respondents also acknowledged that individual advocacy can be an area of high expectation and demand within the community, and this presents potential risks in overwhelming the focus of the role. Respondents noted that effective individual advocacy can be extremely time consuming, and limited resources may result in community expectations not being met. If the role is not adequately resourced to make a difference, it would not be possible to gain the confidence of the Aboriginal and Torres Strait Islander community. Further, clear provisions for the sharing of information would be needed to ensure the Commissioner would have access to all the information they need to provide individual advocacy.

Systemic advocacy was noted as an important aspect of holding governments, services and broader systems affecting Aboriginal and Torres Strait Islander children and young people accountable, including in particular ensuring that government departments and services comply with their own policies and practices, such as the Aboriginal and Torres Strait Islander Child Placement Principle. Some respondents expressed concern that systems continue to co-opt principles and safeguards developed by and for Aboriginal and Torres Strait Islander communities, such as the ATSCIPP, and apply them in ways that detract from their purpose, perpetuating the disconnection of Aboriginal and Torres Strait Islander children and young people through non-Indigenous processes. Providing this oversight and accountability of systems was noted as requiring specific powers of review, including access to information, as well as the opportunity to interview or seek testimony from officials, delegates and other stakeholders.

Systemic advocacy was seen as an important element in promoting systems change, both within specific systems, but also across systems as part of a more holistic, coordinated response that breaks down the 'silos' established by governments. Community respondents again noted the importance of a holistic service system with coverage across the ACT, with a need for "flipping the model" to focus on prevention and early intervention. Respondents noted the need to put a stop to ongoing harms arising from current systems, including in particular the destruction of identity, culture and connections for Aboriginal and Torres Strait Islander children and young people, such as through removals under child protection legislation. The challenges inherent in this role were clearly understood, with community stakeholders raising that achieving change in such systems is often extremely difficult. Stakeholders noted the need to address racism and structural violence that they saw as inherent in the system, and predicted institutional resistance, noting the importance of the role being adequately supported to assert authority with respect to the rights and interests of Aboriginal and Torres Strait Islander children and young people.

The Commissioner was seen as having an important role in shining a light on systems that undermine Aboriginal and Torres Strait Islander families, working alongside the community to put forward alternative approaches that are grounded in the rights and interests of Aboriginal and Torres Strait Islander children. supporting service system (re)design, through their research, advocacy and recommendations – something that young respondents particularly noted. Many respondents noted that key indicators were "going the wrong way", expressing the urgent need for significant systemic reform. The Commissioner should include the scope to follow up on any actions taken in response to their recommendations, to provide oversight of active change.

Systemic advocacy was also seen as including undertaking and publishing research regarding the impact of various systems on Aboriginal and Torres Strait Islander children and young people, elevating statistics

and reporting on outcomes achieved by these systems and practices that are understood from a community standpoint. This should include both immediate outcomes but also 'downstream' impacts, particularly for child protection and other intrusive interventions. Community stakeholders reported that the role should challenge persistent stereotypes and assumptions that underlie these systems, and promote systems change that is oriented towards self-determination and healing, holding services and governments accountable for outcomes experienced by Aboriginal and Torres Strait Islander children, families and communities, and promoting equity in service system design, investment and outcomes. Through these actions, the Commissioner would have a role in identifying where systems, practices or reforms have failed to achieve their stated aims, and guide better alternatives. For example, one respondent noted a family support program that was imposed on community, and poorly suited, but nevertheless implemented. Similarly, calls for family conferencing within systems was noted as another area requiring attention, as some respondents felt this was not done well. There was broad consensus that the scope of systemic advocacy by the Commissioner should include independent review of programs or services, so that programs that underperform for Aboriginal and Torres Strait Islander children and families can be identified and, working with the Aboriginal and Torres Strait Islander community, alternatives can be developed and implemented.

Some community stakeholders noted that the Commissioner's systemic advocacy might also include input into government policy. While there was general support for this, there was also wariness about how this might be managed. There was an awareness that the proposed Commissioner role cannot be required to be everywhere at once, and a mandate requiring input on government policy affecting Aboriginal and Torres Strait Islander children and young people may provide a significant impost on the role that threatens its independence, drawing it towards a government-led agenda of reform. However, the Commissioner may also have a role in undertaking community engagement and consultation about proposed changes, as well as providing oversight and accountability for proposed reforms or recommendations to ensure action. Some respondents expressed concern about governments misunderstanding or re-casting recommendations in a way that is not beneficial to Aboriginal and Torres Strait Islander children, families and communities. Some respondents further expressed frustration that reforms and action on recommendations had become increasingly superficial and failed to grapple with the deeper structural issues necessary to achieve substantive change. Respondents were clear that the proposed Commissioner must be able to hold governments accountable for substantive changes to the systems they administer and their impact on Aboriginal and Torres Strait Islander children, particularly those that are known to cause harm. In particular, the independent Commissioner may have an important role in elevating Aboriginal and Torres Strait Islander voices with respect to proposed reforms or recommendations to promote alignment with community perspectives, particularly given the proposed positioning of the Commissioner as being culturally grounded and exercising its role in close connection with the Aboriginal and Torres Strait Islander community of the ACT.

Community stakeholders also identified the need for transparency, both in terms of clearly outlining the efforts of the Commissioner in advocating for Aboriginal and Torres Strait Islander children and young people, but also in promoting transparency and public accountability of systems affecting Aboriginal and Torres Strait Islander children and young people. Some respondents felt that the Commissioner could have an important role in 'demystifying' systems such as the statutory child protection system through community education.

While there was consensus on the need for the proposed Commissioner to hold systems accountable and 'create social change', there was concern that this increase in scrutiny may in turn increase already high demands placed on under-resourced Aboriginal community-controlled services.

One respondent noted that the role might have legislated powers to hold perpetrators accountable for harm caused to children and young people. This respondent noted that often, even when harms are substantiated (for example in juvenile justice or out-of-home care settings), there are no consequences for those responsible for this harm. It was suggested that this might include the opportunity to make recommendations for prosecution of those causing harm in relevant circumstances.

Complaints

Receiving and responding to complaints had been identified as a key area point of contention through the previous consultations processes, and was a particular area of focus given the specific and often contrasting stance and standards of complaints handling relative to individual advocacy, and their resource intensive nature. Respondents were specifically asked about the role of the proposed Commissioner in receiving and responding to complaints from Aboriginal and Torres Strait Islander children and young people, families and community stakeholders. In short, most respondents prioritised individual advocacy to actively promote and protect the rights of Aboriginal and Torres Strait Islander children, and suggested that while the Commissioner should have a role in supporting access to complaints processes for Aboriginal and Torres Strait Islander children and families and assist in ensuring those processes are culturally safe and responsive, these processes might remain within the specialised system within the ACT Human Rights Commission.

Respondents noted that complaints processes can often be a difficult space for community members to navigate, including concerns about racial discrimination, noting in particular the different standards and processes associated with formal complaints mechanisms. However in the absence of other empowered mechanisms to get systems to listen to their concerns for their children and young people, such processes often become a key site for engagement in trying to create the necessary change to safeguard their children's rights and wellbeing. Some stakeholders noted that complaints should likewise be approached from an Aboriginal and Torres Strait Islander standpoint, requiring a cultural lens as well as effective community engagement. For other respondents, there was a need for 'balance', acknowledging the issue of organisations or systems 'investigating' or resolving complaints about their own systems and conduct, but concern about placing too much responsibility and expectation in this proposed role. Rather, it was suggested that the Commissioner role could provide oversight and escalation of other complaints processes. That is, the Commissioner may support existing complaints mechanisms within the Human Rights Commission, assisting Aboriginal and Torres Strait Islander complainants to engage with and navigate these processes when and as required, and promoting access and cultural safety of these processes.

Ultimately, it emerged through the community dialogues that the informal language of 'complaint' is used somewhat interchangeably with that of advocacy. The focus of community stakeholders were relatively consistent – the need for an accessible, authoritative mechanism that was able to engage with decision makers across the system, particularly at the time of decisions, and use their voice to challenge the status quo that undervalues the specific needs of Aboriginal and Torres Strait Islander children and elevate their rights and interests, as well as the concerns of their family and community, to create immediate and substantive change for Aboriginal and Torres Strait Islander children and young people, their families and communities – something that will “make a difference”. While review of past actions and accountability for process failures was a part of this, there was acknowledgement that the necessary elements of complaints processes often occur after harm has incurred. Stakeholders acknowledged that complaints processes can be an important aspect of accountability, however there was a consistent view across community respondents to prioritise a focus on proactive processes that can ensure cases progress on the right trajectory as early as possible.

Access

Many respondents noted the importance of the Commissioner being accessible to Aboriginal and Torres Strait Islander communities, particularly children and young people. Young people themselves noted that there should be many avenues for engagement and advocacy, so that children and young people, families and communities can easily raise issues, and have confidence that the Commissioner will be able to make a difference. Accessibility should include consideration of the diverse needs of community members, including children and young people, and families, with disability, so that access is “easy and inclusive”, and anyone that needs help is able to come forward. It was noted that this could include delegates in juvenile justice facilities, connections with Official Visitors, and other opportunities to streamline access for all members of the community.

Reporting

There was clear consensus about the importance of reporting for the proposed Commissioner role, providing an opportunity for transparency and informing the community about their work, including key concerns, opportunities and challenges. However, community stakeholders were clear that they do not want the role to be overly focused on formal written reporting – they expect to see the Commissioner out in the community, engaging with them and taking practical steps to make a difference. Community stakeholders were adamant that reporting should be public and transparent, while protecting the privacy of children and families, and in particular distributed to the Aboriginal and Torres Strait Islander community, consistent with principles of transparency, accessibility and accountability.

Governance and Connections

Independence

There was clear consensus among community stakeholders that the role must be independent, carrying its own legislated mandate to undertake its work, free from interference, and on an equal footing to other similar roles in the ACT.

Community stakeholders generally noted the importance of a strong connection and relationship with the Aboriginal and Torres Strait Islander community (see below), however noted that the authority, and responsibility, must sit independently with the Commissioner. While some respondents noted the significant overlap with existing Commissioners (including in particular the Public Advocate and the Commissioner for Children and Young People), community stakeholders were clear that the proposed role was a standalone role with full authority, rather than a deputy or delegated role that has emerged in other jurisdictions. There was a concern that such a positioning may create a view that the role, and therefore the rights and interests of Aboriginal and Torres Strait Islander children and young people, were in some way secondary or not as important. Respondents also noted that administrative processes, particularly funding and resourcing decisions, may undermine the important principle of independence and the ability of the Commissioner to fulfil its mandate.

Relationship with the Aboriginal and Torres Strait Islander community

Stakeholders agreed that a strong relationship between the proposed Commissioner and the Aboriginal and Torres Strait Islander community is a key feature that is critical to the success of the role. Respondents emphasised the importance of regular and consistent engagement with children and young people, families and community stakeholders, and noted that this should be a core responsibility of the Commissioner.

Community stakeholders noted their expectation for the Commissioner to regularly be out in community, purposefully engaging with Aboriginal and Torres Strait Islander children and young people and the broader community, with a particular focus on those in specific settings like detention or out-of-home care.

Young people noted that consistency was an important feature, identifying the importance of a regular, ongoing presence to enable relationships to form, particularly with respect to children and young people themselves. They also noted the importance of good working relationships with Aboriginal community organisations and services. This was echoed by all community stakeholders. Respondents were clear that the role must serve the whole community, including Wreck Bay, and work hard to engage children and families who are the most isolated.

Positive relationships with the Aboriginal and Torres Strait Islander community were also identified as being critical to the wellbeing of the Commissioner, given the importance of connectedness for Aboriginal and Torres Strait Islander people. Such support would be a key factor in guarding against burnout.

Respondents were specifically asked about the establishment of a community advisory group, and whether that should be mandated, permitted or avoided. There was general consensus about the importance of ongoing community engagement, promoting access to community voices and community and cultural advice. A community advisory council was broadly seen as a possible mechanism for promoting these connections, however there were mixed views regarding whether such a body should be

mandated or not. Some respondents noted that a mandated community advisory group may be a 'headache' for a Commissioner, particularly if vulnerable to 'community politics'. Additionally, some respondents noted that various organisations already have youth advisories that may be able to be utilised to inform the Commissioner. There was general agreement across a number of stakeholders that the Commissioner should engage with the community to consider how best to develop and manage these relationships in the exercise of their responsibilities, including the core role of ongoing and respective community engagement. This should have respect for the diversity of the ACT Aboriginal and Torres Strait Islander community, including but not limited to the Aboriginal and Torres Strait Islander Elected Body and Aboriginal Community Controlled Organisations.

Where a community advisory is established, respondents felt it should have a diverse representation, reflecting the diversity of the Aboriginal and Torres Strait Islander community in the ACT. This could include Elders, advocates, service providers, and those with lived experience. Hearing the voices of those most affected by these systems was seen as particularly important for the Commissioner, including children and young people, however it was noted that doing so requires special consideration and support to ensure that all community members are safe and supported in their engagement with the Commissioner.

Relationship with Government and non-Indigenous service providers

Community stakeholders identified that the proposed Commissioner's relationship with government and other stakeholders should be characterised by the Commissioner's exercise of independent, empowered oversight and accountability of these systems to the Aboriginal and Torres Strait Islander community, and should include functional relationships across agencies to promote change in systems and practice that protect and promote the rights of Aboriginal and Torres Strait Islander children and young people.

Community stakeholders noted the importance of effective relationships with systems affecting Aboriginal and Torres Strait Islander children, including in particular child protection, police, youth justice and corrections, with an identified need for strong relationships at both the practice and management levels. Young people noted the importance of the Commissioner having effective relationships with management within systems to influence change and ensure that the experiences of Aboriginal and Torres Strait Islander children improve through both systemic and individual advocacy. Respondents noted this can be challenging due to the often 'closed' nature of these systems, as well as relatively high staff turnover in some cases, which can affect the development of functional relationships in the longer term.

Relationship with ACT Human Rights Commission

Community stakeholders were asked specifically about the positioning of the proposed Aboriginal and Torres Strait Islander Children's Commissioner relative to the existing Human Rights Commission. There were mixed views about whether the Aboriginal and Torres Strait Islander Children's Commissioner should be positioned within or independent from the ACT Human Rights Commission, with stakeholders debating the benefits and limitations on both sides. There appeared to be more support from community stakeholders for the Aboriginal and Torres Strait Islander Children's Commissioner to be independent from the ACT Human Rights Commission. There was however agreement that their work is deeply interrelated, with both the Commissioner and the ACT Human Rights Commission anticipated to benefit from close reciprocal relationships between their respective roles.

There was broad consensus about the important role played by the Human Rights Commission, and their ongoing role in representing the rights and interests of Aboriginal and Torres Strait Islander people within their areas of responsibility. Noting the particular similarities with the role of the Public Advocate and Commissioner for Children and Young People, community stakeholders reported that the proposed role is not about 'duplicating' those mechanisms but providing a clear focus on the specific rights and interests of Aboriginal and Torres Strait Islander children and young people. One respondent noted that "there has to be something written into it to get those positions to work together", noting that often complex circumstances affecting a child or family requires a coordinated response. It was anticipated that the proposed Aboriginal and Torres Strait Islander Children's Commissioner would likely complement the work of the Human Rights Commission through close, collegiate relationships, providing an important Aboriginal and Torres Strait Islander standpoint to inform protection of rights services more generally.

However, while the proposed Commissioner should work on a similar basis as existing Commissioners, there were mixed views on whether it should nevertheless be positioned distinct from the Human Rights Commission. A number of considerations were raised. For some, the existing Commission had not created sufficient change to systems and practice, and it was hoped that a different positioning might be helpful, with an explicit goal towards substantive change. Others felt that a distinct positioning emphasises the specific focus and independence of the Aboriginal and Torres Strait Islander Children's Commissioner, and enables greater relationships with the Aboriginal and Torres Strait Islander community on a different footing from the established systems. On the other hand, placement within the Human Rights Commission may provide a unique, supportive environment for the Commissioner to undertake their role. Similar to the emphasis on independence, some raised concerns that the proposed role, if placed within the Human Rights Commission, may be shaped by the established 'culture' and approach of the Human Rights Commission, constraining the need for this role to be shaped by and for the Aboriginal and Torres Strait Islander community. It was also noted that responsibility for Aboriginal and Torres Strait Islander perspectives within the Human Rights Commission can be a heavy burden for an individual senior executive within a broader non-Indigenous organisational space, whereas having the opportunity to shape the role as an Aboriginal and Torres Strait Islander space may be particularly beneficial as the role evolves.

Location

The majority of community stakeholders identified that the Aboriginal and Torres Strait Islander Children's Commissioner should have their own physical space, oriented towards engagement with members of the Aboriginal and Torres Strait Islander community of the ACT. Respondents emphasised the importance of promoting accessibility and suggested an outreach model that might actively engage with the diversity within the Aboriginal and Torres Strait Islander community of the ACT, including in particular a regular presence at closed institutions to safeguard the rights and interests of Aboriginal and Torres Strait Islander children.

Community stakeholders stated that the Commissioner should develop an open and accessible space where Aboriginal and Torres Strait Islander people, and particularly children and young people, feel welcome. Some noted that 'central' locations within the ACT can raise challenges for access, particularly given the need for transport and greater police presence in city areas, which can increase negative interactions between Aboriginal and Torres Strait Islander community members and police.

One approach that was proposed and received support from stakeholders was to establish a 'hub' model, that included a key location as well as 'satellite' sites to increase community engagement, providing multiple points of contact for community. This might include a regular or semi-regular presence at Aboriginal and Torres Strait Islander services and community-controlled organisations, providing ease of access across the ACT, and thereby reaching a broader cross-section of the Aboriginal and Torres Strait Islander community in the ACT. These satellite sites could include youth detention facilities, providing a clear presence and opportunity for engagement for Aboriginal and Torres Strait Islander children and young people affected by these systems. It was noted that COVID-19 had created challenges in terms of access, and these would need to be resolved to ensure that the Commissioner has adequate powers to ensure access to children and young people, particularly those experiencing higher degrees of coercion or control by the state.

Role Characteristics and Selection

Community stakeholders were asked about their expectations for the skills and characteristics of a successful Aboriginal and Torres Strait Islander Children's Commissioner, as well as the process for selection. Stakeholders identified a range of key attributes and characteristics to guide the appointment of the Commissioner, including in particular community engagement and relationship building, integrity and authenticity, influence and advocacy, as well as a deep understanding of Aboriginal and Torres Strait Islander families and communities, and demonstrated impact working to promote and protect their rights and interests. Stakeholders clearly expressed a desire for community representatives to participate in the recruitment process, which should be multi-staged and include an opportunity to demonstrate their skills engaging effectively with Aboriginal and Torres Strait Islander children and young people. Community

representation in the appointment process must be transparent and manage possible conflicts of interest so as to not undermine the standing of the role and the Commissioner in the community.

Young people in particular noted that the Commissioner must be someone who listens and is able to understand the experiences of Aboriginal and Torres Strait Islander children and young people. That young people feel heard and understood was seen as key to the success of the role, with a young person noting that young people are likely looking for “people who are like us. People we can connect with”. Young people noted that authenticity and integrity were critical, someone who is genuine in their engagement with children and young people, and are committed to making a difference, even if they don't have all the answers. Young people expect the Commissioner to take a collaborative stance in their work, and are committed to coming to following through, and following up.

Community stakeholders more broadly noted the importance of someone who understands the sorts of systems that affect Aboriginal and Torres Strait Islander children and young people and their experiences of injustice, and are committed to achieving positive outcomes. Familiarity with legislative frameworks was seen as useful, as were skills in research, engagement and advocacy – someone who is prepared to stand up for children and young people, to hold government and services to account. Demonstrated ability to effectively engage with Aboriginal and Torres Strait Islander communities was identified as a key skill, particularly engagement with Aboriginal and Torres Strait Islander children and families, along with a record of creating social change. There was limited support for stringent formal qualifications requirements. Rather, respondents emphasised the importance of considering holistically the contribution of qualifications alongside a broader understanding of relevant skills and experience in determining the right person for the role. Respondents noted that this should also include demonstrated contribution to Aboriginal and Torres Strait Islander communities. Put simply, a key indicator of capacity to effectively promote and protect the rights and interests of Aboriginal and Torres Strait Islander people was demonstrated evidence of impact for Aboriginal and Torres Strait Islander communities in relevant fields. Respondents further expressed that successful candidates should be well grounded in the history, values and perspectives of Aboriginal and Torres Strait Islander communities, with an understanding of how our communities operate, particularly within the local ACT context. The Commissioner should be professional, open to criticism and respectful of Aboriginal and Torres Strait Islander people and community structures. Most respondents felt strongly that it should be an Aboriginal and Torres Strait Islander person, and further emphasised the importance of a deep understanding of the ACT Aboriginal and Torres Strait Islander community. While many felt this would be best served by someone with strong community connections in the ACT, some respondents noted that the Commissioner need not necessarily be from the ACT but should nevertheless have a demonstrated capacity to build the relevant relationships and community connections deemed critical to the role.

Community stakeholders also identified the importance of providing ongoing professional and cultural support to the successful applicant and their team, given the scope and demands of the role, and the need to ensure they were actively supported to manage the pressures and challenges that will inevitably face the role. Providing adequate supports to the Commissioner was seen as necessary to enable them to be successful in the role.

Community stakeholders expressed a strong interest in community members being actively involved in the selection process for the proposed role. However many expressed caution, noting that community involvement in the selection process is about building community confidence in the role, and as such should take care not to undermine the independence of the role and its mandate to serve the whole community. Some respondents expressed that the panel may include ‘one or two’ community representatives, as well as a highly regarded external or independent panel member. Some respondents similarly suggested that community representation might be served by relevant Aboriginal Community Controlled Organisations supporting Aboriginal and Torres Strait Islander children and young people, however others noted this should carefully consider potential conflicts given the proposed role of the Commissioner in promoting accountability in service provision. Some respondents further noted that an existing Human Rights Commissioner may be well placed to contribute an independent perspective, bringing an informed view of the broad work before the Commissioner.

There was consensus regarding the importance of an open and transparent recruitment process, with clearly defined criteria and expectations aligned to the senior executive nature of the role. A multi-staged

process that includes children and young people received some support, and may additionally include references that demonstrate the applicant's effective work with Aboriginal and Torres Strait Islander communities.

Other System Stakeholders

Representatives of government agencies (including both Aboriginal and non-Indigenous respondents) and current serving Commissioners within the ACT Human Rights Commission also participated in consultations as key stakeholders for the proposed Aboriginal and Torres Strait Islander Children's Commissioner. Representatives of government agencies provided insights based on their individual perspectives and experiences, and is not understood as representing the views of the government, or any directorate, at large. Serving Commissioners were well positioned to offer important insights regarding the operation of similar roles, including the exercise of their functions and powers, and relationship with government and community stakeholders, with implications for the proposed role.

Functions and Powers

Cultural input and oversight of systems

Government stakeholders felt that an Aboriginal and Torres Strait Islander Children's Commissioner would promote cultural safety and responsiveness of systems and practice. This was seen as a key anticipated benefit of the appointment of an independent Aboriginal and Torres Strait Islander statutory officer, providing a touchstone for government regarding its work with Aboriginal and Torres Strait Islander children and young people, in a way that promotes 'cultural safety' in this work. It was anticipated that the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner may play an important role in enabling systems and services that are culturally safe, emphasising the important cultural standpoint anticipated of the role.

Broad remit across systems

Government respondents echoed those of community stakeholders in suggesting a broad scope that spanned systems and policies that affect the lives of Aboriginal and Torres Strait Islander children, similar to the existing legislated functions and powers of the Public Advocate and Children and Young People Commissioner. There were concerns that an overly broad remit may be unachievable and lessen the impact of the Commissioner, emphasising the importance of managing expectations and focusing on impact for Aboriginal and Torres Strait Islander children and young people.

Government respondents particularly noted the range of relevant systems and policy initiatives that might fall within the Commissioner's purview, including early years, First 1000 days, education strategy, maternal and child health, justice health, juvenile justice, mental health, alcohol and other drug services, family violence, and child protection services.

Like Aboriginal and Torres Strait Islander community stakeholders, both government and Commission respondents raised concerns about a possible unwieldy scope for the role, which may reflect or establish expectations that are unachievable within the functions and resources of the role. It was suggested that developing a relatively narrower scope, that can be clearly communicated and understood by all stakeholders, may be beneficial rather than this role attempting to tackle all current challenges, and trying to meet the needs of all stakeholders. Importantly, outcomes for Aboriginal and Torres Strait Islander children and young people should be prioritised.

Broadly, government stakeholders proposed the existing Public Advocate and Commissioner for Children and Young People as a possible model, anticipating similar functions and powers for the proposed role focused on the needs of Aboriginal and Torres Strait Islander children and young people. However, Commissioners noted that role is currently managed under some 42 different legislative instruments, making the role difficult to conceptualise and communicate clearly. Commissioners particularly focused on the need for clear information sharing provisions to enable the Commissioners role, including what information is able to be shared or accessed, in what circumstances, and through which processes.

Individual and Systemic Advocacy

Respondents from government agencies and the ACT Human Rights Commission supported a role that included both individual and systemic advocacy, noting the relationship between the two. These responsibilities were noted as the key mechanisms for achieving change and should be undertaken in a way that is holistic and culturally grounded. It was noted these functions need to be enabled through appropriate mandates, including information sharing and the authority to make recommendations and follow up on actions undertaken, whether related to individual advocacy or systems reform. Enablers also included an adequately resourced team, with individual advocacy noted as particularly resource intensive to achieve substantive change for children and families.

Respondents from government agencies acknowledged the opportunity for advocacy, guidance and support for children and families. There was a sense that an independent voice could be helpful in providing an alternate perspective of matters and help agencies to “get it right” when working with Aboriginal and Torres Strait Islander children and families. Similar to community stakeholders, it was noted that individual advocacy should include a role to ‘intervene’ in proceedings, and to provide independent oversight on matters to ensure that efforts are coordinated and effective, and that agencies and services are delivering on their responsibilities. This might include participating in case conference and action review processes, and include an opportunity to escalate urgent or persistent challenges within the agency, or with the responsible Minister, to ensure timely resolution.

Commissioners likewise noted the important role of individual advocacy, and how this informs understanding of systemic issues that may warrant attention and broader systemic change. Commissioners recommended that connecting these issues is important to making the most of limited time and resources, approaching individual advocacy with a systems lens and seeing the systemic issues within it. Commissioners further noted that matters for individual advocacy often involve considerable complexity, requiring effort and engagement to “shift the tide”. Commissioners advised that in their experience this is most often achieved through relationships and strategic advocacy, rather than simply an application of statutory powers, which may be limited. It was further noted that existing statutory language, such as section 879 of the ACT Children and Young People Act (2008), notes that the Public Advocate “may ask an ACT child welfare service to provide information, advice, guidance, assistance, documents, facilities or services in relation to the physical or emotional welfare of children and young people”. However, such entities are defined somewhat narrowly relative to the proposed scope outlined by community stakeholders and may need to be expanded in order to adequately enable the provision of assistance from relevant services working with Aboriginal and Torres Strait Islander children and families consistent with the expectations of stakeholders.

Importantly, Commissioners noted the resource intensive nature of individual advocacy, and how this can quickly consume the time, focus and efforts of a Commissioner, particularly given community expectations for representation which are likely to be considerable for an Aboriginal and Torres Strait Islander Children’s Commissioner. Compliance review responsibilities similarly create significant challenges for resource management for Commissioners.

Government stakeholders also noted the important opportunity for systemic oversight offered by the proposed role, establishing a voice that comes from a cultural perspective or standpoint in the operation of important systems affecting children and young people. It was further suggested that the role might engage with relevant recommendations, and generate their own, regarding system reforms for Aboriginal and Torres Strait Islander children and young people, and provide ongoing monitoring, oversight and advocacy about those reform efforts. It was also suggested that the proposed Commissioner may have an ongoing role monitoring the implementation of key policy safeguards such as the ATSI CPP or provide advice about specific merits or factors in decision making, such as in child protection systems. It was suggested that there is an important opportunity to address the power imbalances between Aboriginal and Torres Strait Islander families and communities, and government agencies and services providers.

Some respondents emphasised the need for focus across systems, including those that are often ‘indicators’ for downstream challenges for children and young people. For example, school absences and exclusions were noted as often being the ‘tip of the iceberg’ indicating other challenges facing children and families, and the Commissioner may have a valuable role in pulling together the threads of these

different systems, raising these complexities and encouraging systems to work more effectively together in serving Aboriginal and Torres Strait Islander children and young people.

Commissioners noted that systemic advocacy is often where the biggest impact can be achieved, as well as raising the interactions between individual and systemic advocacy. Experiences emerging from individual matters often elucidate broader systems issues that can be taken forward to achieve changes to systems and practice. Commissioners also noted that recommendations can be made, at both the individual and systems level, with provisions to follow up and report on actions taken by responsible parties, and that such provisions can be used to place pressure on decision makers to achieve change. They noted that achieving change for children and young people is the key focus and is often achieved through ways that are not always direct, but through providing different perspectives to a given problem, in addition to the awareness of independent scrutiny.

Complaints

Respondents from government agencies and the ACT Human Rights Commission broadly suggested that complaints handling might best be managed through relationships with existing processes within the ACT Human Rights Commission, with the Commissioner supporting these mechanisms and providing opportunities for escalation if needed.

There was general consensus from respondents within government and Commissioners regarding the opportunity to leverage rather than duplicate existing complaints processes, particularly through the Human Rights Commission, which were generally considered to be working well following recent changes to streamline and specialise those processes. For some, it was suggested that complaints processes are not always the most appropriate, and are often positioned at a different point in the system than those where they felt Aboriginal and Torres Strait Islander stakeholders are most likely to want to see change. However it was recognised that complaints processes can be an effective way for children and families to raise issues and get them on the agenda for resolution, an opportunity for 'feedback' about the experience of community members of government systems and services. Commissioners noted that it is important to identify early in engagement with community members whether their concern is best managed through a complaints process or individual advocacy, given the different standards and requirements of each – a structured, formal conciliation process, or support and advocacy while navigating complex systems. Some respondents from government noted that the proposed Commissioner may have some role in complaints handling, alongside existing systems, perhaps as an option of last resort, with a focus on getting agencies and services to work effectively with families and each other in the first instance and providing avenues for escalation if necessary.

Access

Government stakeholders and Commissioners agreed that accessibility of the role to the Aboriginal and Torres Strait Islander community would be critical to the success of the role. Commissioners in particular noted the importance of community members knowing that they can pick up the phone and reach a person about their concern, and that person will listen and respond in some meaningful way.

Reporting

Representatives of government agencies and Commissioners all agreed that public reporting is an important responsibility of the Commissioner, proposing annual reporting as a minimum benchmark that provides transparency while ensuring that the Commissioner is not unduly weighed down by burdensome reporting requirements.

Reporting was identified as critical to transparency and accountability of the Commissioner role back to the community, communicating clearly to the community how they have been promoting and safeguarding the rights and interests of Aboriginal and Torres Strait Islander children and young people.

However there was also agreement that overly burdensome reporting requirements can take Commissioners away from their key responsibilities of actively making a difference for the community. Others noted that there is already a considerable library of reports and inquiries, suggesting that a focus on further proliferation of reports would have limited success, with efforts focused on overseeing reforms

and response to identified issues. It was suggested that communities would like someone 'hands on', someone they can see doing the work on the ground.

Annual reporting was seen as a good minimum benchmark, with some respondents suggesting this may be an important area for flexibility, to see what it looks like in practice, allowing the role to develop. This would lead to a greater understanding of the expectations and needs of community members, with an opportunity to further adapt the role including through legislating more specific or more regular reporting requirements if warranted.

Governance and Connections

Independence

Government and Commission respondents consistently acknowledged the importance of the role being connected to the Aboriginal and Torres Strait Islander community, however emphasised that independence of the role is critical to the success of the role.

Relationship with Aboriginal and Torres Strait Islander community

Government and Commission respondents agreed that the Commissioner's relationship with the Aboriginal and Torres Strait Islander community is critical to the role. It was noted that there are many ways this might be achieved, including through a formal community reference or advisory group, however this should be left to the Commissioner to manage as part of their core engagement responsibilities. Enablers including resourcing for sitting fees, and community liaison roles, were also noted as supporting this connection.

Stakeholders emphasised the importance of this relationship being established and negotiated between the Commissioner and Aboriginal and Torres Strait Islander communities themselves, noting the diversity of the ACT Aboriginal and Torres Strait Islander community and the importance that the Commissioner engages broadly. There was broad consensus amongst these respondents about the value of a community reference group, with the Commission noting the presence of a reference group as part of their cultural safety charter. Commissioners noted that there are various ways to establish such an advisory and suggested a mix of community representatives including Elders and children and young people.

A community advisory group may provide an important feedback mechanism for the Commissioner, as well as the opportunity to hear about 'what's happening on the ground', informing their work. However, this is not a role that is exclusive to an advisory group, with the Commissioner having a significant responsibility to engage broadly with the Aboriginal and Torres Strait Islander communities they serve, including in particular children and young people. Such relationships also support the Commissioner culturally, and provides an opportunity to inform the community about their work. However, the input of the advisory should not be determinative in the work and direction of the Commissioner. Respondents noted that there must be clarity about the role and expectations of such groups, retaining the independence and authority of the Commissioner. Finally, sitting fees were raised as an important element in valuing the time and contribution of advisory panel members. Commissioners further noted the important role that community liaison officers play within their teams, serving as important connection points between the Commissioner and the community.

Relationship with government and services

Government respondents noted that the relationship with government agencies and service providers is characterised by the need to provide oversight and accountability of those agencies and services. Respondents particularly noted the opportunity of the role in promoting greater 'cultural responsiveness', influencing government directions and contributing to setting the agenda for reform. Some respondents also noted that government agencies may be able to consult with the Commissioner about proposed actions and reforms, not to duplicate or replace community consultation, but serves as an additional opportunity for feedback and expertise. Again, safeguarding the independence of the Commissioner was emphasised, with respondents expressing caution about how the provision of advice is structured so as to not create the possibility for a Minister to direct the work of the Commissioner. However, Commissioners

noted the importance of functioning relationships with Ministers and other leaders in terms of influencing change. They noted the broad 'tool kit' available to the Commissioner to achieve change, utilising not just their statutory powers but also soft skills and relationship management as well as the opportunity to independently raise issues with the community of the ACT, such as through the media.

Relationship with the Human Rights Commission

Government respondents and Human Rights Commissioners noted the anticipated benefits and efficiencies of positioning the proposed Commissioner within the ACT Human Rights Commission, while acknowledging that the Aboriginal and Torres Strait Islander community must be comfortable with how the Commissioner is positioned.

Respondents in government agencies noted the importance of a close working relationship between the proposed Aboriginal and Torres Strait Islander Children's Commissioner and the Human Rights Commission, with some suggesting they might be co-located. It was noted there would likely be mutual benefits to this, with the collegiate relationships provided by the Commissioners supporting the proposed Commissioner in their work, while the Commissioner can contribute a unique cultural perspective across the Human Rights Commissions. However, these respondents also expressed caution about the risk of duplicating existing processes, encouraging operational and procedural clarity so as to not weigh down oversight and advocacy bodies that should be agile and responsive with unnecessarily complex bureaucratic processes.

Commissioners likewise identified similar opportunities, including the ability to work collaboratively across the Commission, providing agility and responsiveness for community members, and increasing options for communities to engage with the work of the Commission. Commissioners noted that co-location would create efficiencies, particularly when navigating the often high level of intervention in the lives of children and young people and their families who come to the attention of the Commission, and in providing a coordinated response. Commissioners also emphasised the importance of clear information sharing provisions, particularly if the Aboriginal and Torres Strait Islander Children's Commissioner is not structurally positioned within the Human Rights Commission, to ensure that relevant information can be shared in a timely way.

Role Characteristics and Selection

A similar array of role characteristics was identified by government respondents and Commissioners, including community engagement and genuineness, being trusted by the Aboriginal and Torres Strait Islander community, and the ability to strategically influence change in complex systems under significant pressure. They should have a strong understanding of human rights frameworks and their application, particularly with respect to Aboriginal and Torres Strait Islander communities. It was expressed that the Commissioner should be an Aboriginal or Torres Strait Islander person, appointed through a rigorous and transparent processes that appropriately includes community representatives.

Government respondents identified a range of characteristics they felt would be associated with success in the role. This included an individual who was seen as 'authentic' and thereby able to gain the confidence of the Aboriginal and Torres Strait Islander community of the ACT, and was seen as having the appropriate authority to advocate for Aboriginal and Torres Strait Islander children and young people, as well as the skills to appropriately and effectively engage with the diverse stakeholders associated with the role - Aboriginal and Torres Strait Islander children and young people, families, communities, government agencies, service providers, senior bureaucrats, and Ministers. Engagement with children and young people was particularly identified as a critical skill – being able to make children and young people feel comfortable, to listen to the voices of Aboriginal and Torres Strait Islander children and young people, and to effectively represent their voices in conversations with government, community and other stakeholders, so their voices are heard and that their experiences, opportunities, and outcomes are improved.

As with community stakeholders, values were identified as much as skills or experience, including a strong ethical core, demonstrated application of human rights principles, as well as discretion and an understanding of privacy and cultural sensitivity. Some respondents noted curiosity as an important characteristic – someone that doesn't think they are the expert in all things, but is able to engage broadly,

is committed to understanding the issues in their complexity, and works collaboratively to address challenges and promote the rights and interests of Aboriginal and Torres Strait Islander children and young people.

There was general consensus that the Commissioner should be an Aboriginal and Torres Strait Islander person, someone who is respected by the community, and is able to navigate the systems and relationships both within the Aboriginal and Torres Strait Islander community of the ACT, but also with government.

Commissioners reflecting on their own experience in similar roles noted characteristics such as resilience and pragmatism, particularly given the size of the task facing the Commissioner, and the slow pace of change. It is important that the Commissioner is experienced managing significant pressure and competing demands and is able to manage these issues effectively. Strong communication skills, including written and oral, formal and informal, were seen as important in achieving the Commissioner's underlying goal of creating change that promotes the rights and interests of Aboriginal and Torres Strait Islander children and young people. Like other stakeholders, engaging with children and young people effectively was highly important, being able to understand their perspective and engage without being patronising.

Importantly, Commissioners reflected that while it is important that an adequate mandate is provided through legislation, the parameters of the oversight role are such that achieving change is often about the strategic application of those responsibilities, the positioning and stance of the Commissioner, and how they manage these structures and relationships. Commissioners noted that the individual in the role is the biggest factor in the success of the role, rather than the legislated powers that they wield. This emphasises the importance of getting the selection process right, to identify and appoint an individual with the right skills, values and determination to make a difference for Aboriginal and Torres Strait Islander children and young people.

With respect to the selection process, government and Commission respondents identified the importance of involving young people in that process. It was suggested that given the importance of effective engagement with children and young people, an opportunity to assess these core skills in action may be a beneficial step in a multistage recruitment process. Further, while respondents also noted that Aboriginal and Torres Strait Islander communities may like to be involved in the selection process, and were generally supportive of this feature, it was noted that it would be important to manage real and perceived conflicts of interest, to ensure a fair and transparent process.

Generally, it was suggested that the role be advertised broadly, utilising a diverse range of networks, with a clear description of the high-level skills, attributes and experience required of this executive level role. An appropriately skilled panel, including some appropriate community representation, could be convened to assess applicants and oversee a multi-stage process that includes direct observation of their skills. From this process, recommended candidates can be provided to the Minister to make the final determination about the role, consistent with other similar roles.

Finally, and as identified by other stakeholders, Commissioners and government respondents noted the importance of providing adequate support to the Commissioner to enable them to function effectively within the job. The high pressure and high expectations of the role, particularly for the Aboriginal and Torres Strait Islander community, and the likelihood of persistent barriers and slow change creates difficult social and emotional circumstances for the individual occupying the role. There was a strong consensus of the need to ensure that the successful applicant was actively supported as part of the occupational safety for the role.

Final Model Refinement session

Following the Community Dialogues and conversations with other systems stakeholders including government representatives and the ACT Human Rights Commission, a final refinement session was held providing an opportunity to test emerging themes and reach agreement regarding expectations for the role. This session was attended by community stakeholders, JACS representatives as well as existing Commissioners with the Human Rights Commission. To organise this facilitated session, a table of key

themes from previous individual and group consultation was developed and provided to all attendees. Through the session, stakeholders worked through the table towards refinement of the proposed model.

The table included areas of consensus arising from the series of community dialogues (green cells), areas requiring further clarification or resolution (orange cells) and finally additional suggestions for testing (red cells), either to be further developed and included within the consensus model, or to be declined and discarded by community representatives. This organising schema was applied across key areas explored through the community dialogues: Function and Powers, Governance and Connection, and Role Characteristics and Selection. The contents of this table are outlined below in sets of Tables related to 'consensus points', 'clarification points', 'test points', along with outcomes of those discussions.

Through the community dialogues, additional considerations were raised by various stakeholders that, while not specifically within the scope of establishment of the Aboriginal and Torres Strait Islander Children's Commissioner role, were nevertheless considered to be important to its establishment, function and, ultimately, its success. These were also raised during this session, to test stakeholder agreement, and invite additional input.

Functions and Powers

Participants agreed that the proposed Aboriginal and Torres Strait Islander Children's Commissioner should be legislated to include the following functions and powers (see Tables 3-5 below):

- A clear, legislated human rights mandate related to the education, promotion, protection and oversight of the enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people, with a link to key human rights instruments including the UN Convention on the Rights of the Child, UN Declaration on the Rights of Indigenous Peoples, and other relevant optional protocols. This may include specific reference to the obligation to protect and uphold the rights of children and young people affected by coercive systems, for example the child protection system, juvenile justice, and other similar systems.
- That this mandate should explicitly centre the distinct rights of Aboriginal and Torres Strait Islander children and include reference to this cultural standpoint. For example, this might include a statement about the Commissioner's responsibility to promote an understanding of the best interests of Aboriginal and Torres Strait Islander children consistent with their cultural rights, as well as language on the importance of connectedness in understanding, promoting and protecting the rights and best interests of Aboriginal and Torres Strait Islander children – connection to family and kin, connection to community, connection to culture, and connection to Country.
- That the mandate should be broad, authorising the Commissioner to include any system, policy or practice that affects the enjoyment of the rights and interests of Aboriginal and Torres Strait Islander children and young people. This should take a holistic lens, and include consideration of relevant issues affecting their parents, families and communities, and their particular implications for full enjoyment of rights by Aboriginal and Torres Strait Islander children and young people. This approach should centre Aboriginal and Torres Strait Islander children within a holistic conceptual framework of social and emotional wellbeing that understands the importance of their family, community and cultural context. As such, it includes broader services to parents and families, in recognition that the impact of those services is directly relevant to the rights and interests of Aboriginal and Torres Strait Islander children and young people.
- That the legislation enshrines and protects the statutory independence of the Commissioner
- Outline the expectation that the Commissioner exercises their duty in a way that is fair, transparent and accountable to the Aboriginal and Torres Strait Islander community of the ACT
- Outline the expectation that the Commissioner is authorised to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people individually and collectively, including individual and systemic investigation, inquiry, research and reporting.

- The role should be authorised and resourced to undertake reviews, inquiries and research under their own motion regarding matters affecting Aboriginal and Torres Strait Islander children and young people and the full enjoyment of their rights, individually and collectively.
- The role should be authorised and resourced to engage in individual advocacy, including interaction with government systems and judicial processes. This includes the authority to join such processes as a party, in order to raise awareness of issues related to the full enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people, individual and collectively.
- Advocacy should be positioned as proactive and restorative, it should be forward focused, grounded in the rights and wellbeing of Aboriginal and Torres Strait Islander children and young people, towards preventing systemic harms and placing children and young people on positive trajectories as early as possible, given the developmental implications for children and young people over their lives.
- Through this advocacy, the Commissioner should be authorised to make recommendations and direct government agencies and relevant services to undertake actions to promote and/or protect the rights and interests of Aboriginal and Torres Strait Islander children and young people, individually or collectively. Such agencies or services should be required to provide feedback on a reasonable timeframe specified by the Commissioner regarding what actions they have taken to address the issues raised by the Commissioner, and the outcome of those actions.
- The mandate should not confer a standalone complaint handling responsibility, but should outline connections with the existing complaints processes administered by the Human Rights Commission, enabling the Commissioner to further support efforts to promote access, safety and responsiveness of the complaints process for Aboriginal and Torres Strait Islander people in the ACT.
- To enable the effective exercise of these functions, the mandate should clearly authorise the Commissioner to receive and share information and data about Aboriginal and Torres Strait Islander children and young people, relevant to its role to promote and protect the full enjoyment of their rights. Information sharing provisions should extend to government, services providers, and the Human Rights Commission. Information sharing provisions should include appropriate provisions requiring government agencies and services to provide data and respond to questions and requests for information from the Commissioner.
- Consistent with the existing compliance and monitoring responsibilities of the Public Advocate and Children and Young Persons Commissioner, government agencies must inform the Aboriginal and Torres Strait Islander Children's Commissioner of key actions and engagement through the exercise of their authority regarding a child known to be, or who may reasonably be believed to be, an Aboriginal and Torres Strait Islander child.
- The mandate should further include, at the discretion of the Commissioner, an opportunity to review and provide recommendations about legislative and policy changes that may impact on the rights and interests of Aboriginal and Torres Strait Islander children and young people. This may include establishing processes whereby government agencies complete an impact statement or otherwise inform the Commissioner about proposals that may impact the full enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people.
- That the mandate includes strong authorisation that enables a regular presence for Aboriginal and Torres Strait Islander children in detention or out-of-home care to protect and uphold their rights. This should include strengthened authority for access, with the COVID-19 pandemic revealing concerning limitations that undermined the opportunity for scrutiny and accountability of these systems.
- That the Commissioner has a responsibility to report to the ACT Legislative Assembly and the Aboriginal and Torres Strait Islander community of the ACT at least annually regarding their work. Public reporting and engagement with community in a broad way that demonstrates respect for

the diversity of the Aboriginal and Torres Strait Islander community of the ACT is a key consideration for transparency and accountability of the role.

- The Commissioner may provide advance copies of their report to stakeholders, including the ACT Government or relevant Minister, at their own discretion, but with assurances on independence and transparency in reporting.

In outlining this proposed role, respondents expressed a number of concerns, including how such a culturally grounded mandate might be expressed in legislation, the need for strong provisions that reflect the broad role, and the opportunity to test these positions, including how complaints are managed, through implementation, and to make timely adjustments if required.

There were concerns about how this mandate might be reflected in the language of any proposed legislation. Elevating and giving effect to Aboriginal and Torres Strait Islander cultural standpoints was particularly seen as a potential site of difficulty, given that government and legal systems are designed from a significantly different cultural standpoint. Further, while noting that the proposed role includes many of the functions already invested in the Public Advocate and Children and Young People Commissioner role, it was suggested to streamline the legislative instruments to promote clarity on the role's functions and powers. Given the already high expectations and pressure that the role faces, community clarity on its responsibilities is a key element to managing those expectations and promoting community confidence. This can be achieved by including all the functions of the role in a consolidated legislative instrument, instead of being distributed across numerous pieces of legislation. Finally, community stakeholders noted that the ACT Government should commit to an ongoing process of partnership, continuing to involve Aboriginal and Torres Strait Islander stakeholders in the legislative drafting process and ensuring an opportunity for feedback and revisions, towards final agreement. Community stakeholders noted in particular that the Wreck Bay Aboriginal community must be involved in this process, given challenges experienced to date.

Stakeholders noted that the positioning of complaints handling was a particular area for future consideration. Respondents particularly focused on the need for empowered proactive advocacy and were concerned about the risk of dividing or overwhelming the capacity of role through including a full complaints handling function as well. However it is also recognised that Aboriginal children and families may approach the Aboriginal and Torres Strait Islander Children's Commissioner with a range of concerns, including complaints, and should feel heard and supported whatever avenue they choose to engage. It was felt that benefits could be gained by connecting with existing complaints mechanisms within the Human Rights Commission, reviewing relevant complaints and data, providing warm referrals, and otherwise supporting access and progress of complaints, simultaneously managing resources. However respondents noted this is difficult to gauge until implementation, when the results of this proposed arrangement can be assessed. Community members requested the opportunity to review this arrangement, among others, after a period of implementation, and to make changes as required to ensure equitable access to effective advocacy and complaints handling for Aboriginal and Torres Strait Islander people in the ACT. Importantly this should be carefully communicated and transparently implemented with a focus on ensuring all community members are supported in raising concerns related to the rights and interests of Aboriginal and Torres Strait Islander children and young people.

Respondents expressed caution regarding the suggestion that the role might exercise more significant powers to make legal findings or recommend prosecution where individuals or agencies are found to be responsible for harms. There was broad agreement in the importance of holding accountable those responsible for harm to children and young people, including breaches in duty of care, however it was noted that such provisions may undermine the broader work of the role. It would require significant formal structures to exercise these functions in line with established standards and may reduce the likelihood of engagement from key stakeholders. Given the priority for monitoring, oversight and accountability of systems and practices, and the desire for proactive advocacy, stakeholders felt that extending the role in this way was not currently desired.

Finally, it was suggested that alterations to existing processes may be needed to address known challenges. For example, the COVID-19 pandemic has raised concern about challenges regarding access to children and young people in closed institutions, necessary for ongoing scrutiny and oversight. It is important that the Aboriginal and Torres Strait Islander Children's Commission has suitable authority

for reasonable access. Similarly, it was suggested that the current definition of 'welfare services' created uncertainty about the scope of services that may be subject to direction from the Commissioner. It is important that the Commissioner is authorised to recommend action from any relevant child and family service, and require feedback on action taken to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children, individually or collectively.

Table 3 - Consensus Points – Functions and Powers

Consensus Points	Outcome
Functions and Powers	
Clear human rights mandate – education, promotion, oversight of the enjoyment of rights etc, centred on the rights of Aboriginal and Torres Strait Islander children (noting that the ACT Human Rights Act includes that, but also perhaps limited). Link to Human Rights standards – UNCRC, UNDRIP, optional protocols	Agreed by Co-Design group
Broad scope – all issues affecting Aboriginal and Torres Strait Islander children with scope.	Holistic, culturally based understanding that centres children but appreciates and includes their broader context within family, community and culture
Independence	Agreed by Co-Design group, office and spaces.
To be, and to promote, transparency and accountability	Agreed by Co-Design group, noting this is across various communities
Systemic advocacy functions – able to undertake reviews and inquiries under their own motion into systems/issues affecting Aboriginal and Torres Strait Islander children and the full enjoyment of their rights. Supported by powers to access share information, interview relevant officials, etc	Agreed by Co-Design group, noting the holistic approach including families agreed above.
Individual advocacy functions – include information sharing provisions (and any relevant protections), ability to join/intervene in legal matters where the rights of an Aboriginal or Torres Strait Islander child (or children, collectively) may be affected, information sharing provisions, requirement that government departments/delegated services (in case of NGOs) provide a response detailing how the concerns raised by the Commissioner have been addressed. Also information sharing provisions – similar to existing powers PA/Children’s Commissioner	Agreed by Co-Design group, noting proactive stance and expectation that the Commissioner be involved in making a difference for children and families

Consensus Points	Outcome
<p>Joining as a party in court matters was understood not as duplicating the role of the judicial officer, but in ensuring that all of the relevant information was available to the judicial officer with respect to the rights and interests of the child and young person.</p>	<p>Agreed by Co-Design group</p>
<p>Share information with relevant parties, particularly Human Rights Commission</p>	<p>Information and understanding. Knowledge sharing roles</p>
<p>Individual advocacy must be supported by case managers, working with the authority of the Commissioner.</p>	<p>Agreed by Co-Design group</p>
<p>Access for community, and particularly Aboriginal and Torres Strait Islander children, seen as essential</p>	<p>Agreed by Co-Design group. Multiple locations – ‘hub’ model with community presence</p>
<p>Requirement for transparent reporting, preferably to ACT Legislative Assembly/public.</p>	<p>Agreed by Co-Design group, noting need to report transparently to the Aboriginal and Torres Strait Islander community of the ACT, respecting the diversity of this community.</p>

Table 4 - Clarification Points – Functions and Powers

Clarification Points	Outcomes
Functions and Powers	
<p>Include language about cultural standpoint, perhaps linking to best interest (promoting understanding of the best interests of Aboriginal and Torres Strait Islander children consistent with their cultural rights).</p>	<p>Agreed by Co-Design group. Queries regarding how this will be built into the legislation as processes not structurally suited to understand and apply Aboriginal and Torres Strait Islander standpoints</p>
<p>Language on importance of connectedness – to family, community, culture and Country, in enjoyment of rights.</p>	<p>Agreed by Co-Design group</p>
<p>Advocacy should be forward looking, solutions focused, and grounded in the rights and wellbeing of Aboriginal and Torres Strait Islander children.</p>	<p>Agreed by Co-Design group. Emphasised the proactive stance, intent to prevent harm through systems, inappropriate decision making.</p>
<p>Existing mechanisms associated with the Public Advocate (such as being informed of particular events involving children etc) should also be extended to the proposed Commissioner, where those events are known to involve Aboriginal or Torres Strait Islander children, or when it becomes known that a child involved may be Aboriginal or Torres Strait Islander. (Again emphasises the importance of good relationships with the work of the Human Rights Commission)</p>	<p>Agreed by Co-Design group.</p>
<p>Complaints handling (as a formal process) not broadly a priority relative to a more empowered individual advocacy role. Potential to divide attention of the Commissioner in a way that consumes significant resources. Could be adequately managed by effective relationship with current complaints handling process. This might include supporting and reviewing complaints involving/related to Aboriginal and Torres Strait Islander children and young people, making warm referrals for community members to the complaints process, and otherwise supporting access and progress of complaints related to Aboriginal and Torres Strait Islander children and young people.</p>	<p>Agreed by Co-Design group. However the group noted that this is difficult to assess until implementation. As such, there should be further opportunity to evaluate this approach during implementation and consideration of alternatives if necessary</p>
<p>Strong community visitor’s role, to enable regular presence for children in detention or in OOH in a way that promotes their engagement with rights protection services.</p>	<p>Agreed by Co-Design group. Critical. COVID-19 has revealed limitations in access in some circumstances, may need to be strengthened.</p>

Clarification Points	Outcomes
Should reports go through a process with the relevant Department first? Careful not to undermine independence, but have heard that this can ensure accuracy of information, promote opportunities for change, and strengthen advocacy through responding to feedback.	Agreed

Table 5 - Test Points – Functions and Powers

Test points	Outcome
Functions and Powers	
<p>May include specific reference to children affected by coercive systems, and obligation to promote and uphold those rights (justice and child protection)</p> <p>Provisions for exercise of stronger powers akin to prosecutorial or other similar roles, to make findings or adverse findings about a person, (could be seen as stronger complaints handling involvement). Would need to carefully consider how this would be structured legally, how the provisions for procedural fairness and other legal standards would be reflected, etc. Remains challenges in moving to action.</p>	<p>Agreed by Co-Design group</p> <p>Not agreed by Co-Design group – stakeholders raised concerns about the potential ‘chilling’ effect this might have on fulfilling the core monitoring, oversight, and investigation functions of the role. Effective and timely exercise of these responsibility considered priority in achieving meaningful change for children and young people. Other processes exist for the investigation of harm of children and young people.</p>
<p>Informed about policy development, or require government departments to complete an impact statement regarding the rights of Aboriginal and Torres Strait Islander children under the proposed policy or reform (and provide that to the Commissioner)</p>	<p>Agreed by Co-Design group – could be broadly referenced in legislation and then be operationalised as impact statement or other process. Needs to retain independence of the role, who exercises their discretion in how to focus their time and resources in serving the interests of Aboriginal children and young people</p>
<p>Legislation that the Commissioner simultaneously reports to ACT Legislative Assembly and a relevant Aboriginal body or bodies? Would need to determine which bodies.</p>	<p>Agreed by Co-Design group that it was important that the Commissioner report to the Aboriginal and Torres Strait Islander community of the ACT, as part of positioning community engagement as a primary responsibility. Legislation should note responsibility to report to the ACT Legislative Assembly and publicly/to the community. However there was agreement that this should not explicitly prioritise any particular community entity or organisation, given the diverse nature of the Aboriginal and Torres Strait Islander community of the ACT.</p>
<p>Ability to impose ‘injunction’ was noted, reflecting intent to prevent decisions considered to be harmful to go forward without review. Given separation of roles with the judiciary, this is challenging, but important to work out given the developmental implications of decisions and the way systems</p>	<p>Not agreed by Co-Design group</p>

Test points	Outcome
reinforce themselves. It could be that giving the Commissioner power to join as a party might allow adequate time (with the permission of the Court) to provide the necessary advice.	

Governance and Connection

Stakeholders in the final deliberations of this project noted the following characteristics related to the governance and connections of the Aboriginal and Torres Strait Islander Children’s Commissioner role (see Tables 6-8 below):

- emphasised that a strong relationship with the Aboriginal and Torres Strait Islander community was critical to the role. The Commissioner’s role should explicitly encourage engaging widely with the Aboriginal and Torres Strait Islander community of the ACT, including Wreck Bay, and particularly Aboriginal and Torres Strait Islander children and young people.
- The role should have a clear relationship and agreement with the Human Rights Commission, including information sharing provisions (outlined above), that outlines how they will work in a coordinated manner to protect and promote the rights of Aboriginal and Torres Strait Islander children and young people
- That the role develops effective relationships with government stakeholders and service providers to promote oversight, accountability and influence that protects and promotes the rights and best interests of Aboriginal and Torres Strait Islander children and young people.
- The legislation should enable the establishment of an Aboriginal advisory board, at the discretion of the Commissioner and established through their own process. Respondents noted this can be a useful structure to support effective consultation and should reflect the diversity of the Aboriginal and Torres Strait Islander community of the ACT, including children and young people. As noted above, the key principle is the Commissioner’s responsibility to engage widely with the Aboriginal and Torres Strait Islander communities they serve. Importantly, exercise of authority remains with the Commissioner.
- Aboriginal and Torres Strait Islander community stakeholders requested that the role be established as a standalone office, external to the Human Rights Commission, although connected to it through information sharing provisions and other cooperation agreements. Dedicated liaison officers may assist in operationalising this relationship to the mutual benefit of all stakeholders
- Stakeholders expressed support for a ‘hub’ model that would enable the Commissioner to have a regular presence across the community, including Aboriginal child and family organisations, out-of-home care, and youth detention facilities. How this may operate in partnership with the Wreck Bay community must be further explored, but should consider the importance of community connection, consistent service provision, and the wellbeing of staff delivering challenging services in a community setting. These processes must be determined in partnership with the Wreck Bay Aboriginal community directly, including the necessary resources to realise these relationships in practice.

Respondents further noted that relationships with all stakeholders should be two-way connections, sharing knowledge and expertise to promote the full enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people. However, these are largely interpersonal in nature and not legislative, although are enabled by information sharing provisions and the broad mandate of the role.

Managing relationships with government agencies was seen as a key element to influencing policy and practice, and should include functional relationships across systems and organisations. Further, it was determined that the Aboriginal and Torres Strait Islander Children’s Commissioner should be positioned external to the Human Rights Commission, to safeguard and strengthen the Aboriginal and Torres Strait

Islander cultural standpoint in the operationalisation of the role. Respondents also noted the additional cultural load that can be carried by Aboriginal and Torres Strait Islander people in non-Indigenous organisations and systems, and this positioning is intended to promote the office of the Aboriginal and Torres Strait Islander Children’s Commissioner as an Aboriginal and Torres Strait Islander space. However it was noted that the Commissioner should develop a strong relationship with the Human Rights Commission, including mutual support and coordination of key, interrelated functions. Finally, connections with the Aboriginal and Torres Strait Islander community should recognise the diversity of the local community, and should not structurally prioritise any specific organisation, but engage broadly in order to protect and promote the rights of all Aboriginal and Torres Strait Islander children in the ACT.

Table 6 - Consensus Points – Governance and Connection

Consensus Points	Outcomes
Governance and Connection	
Strong relationship with Aboriginal and Torres Strait Islander community. Consensus regarding the ability/commitment to engage with diverse community stakeholders. In particular, access of children, families and communities in the Wreck Bay community	Agreed by Co-Design group. Acknowledged importance of engagement with Wreck Bay community – more is needing to be done to include them in this process.
Strong relationship with Human Rights Commission	Agreed by Co-Design group. Two-way relationships.
Strong relationship with government and service providers (oversight and monitoring role)	Agreed by Co-Design group. Two-way relationships.
Able to manage relationships with government departments and service providers to influence systems and practice. In particular, relationships with senior managers within child protection, youth justice and police.	Agreed by Co-Design group. Relationships to engage with and influence key decision makers, including practitioners and administrators/executive.
Potential value of an advisory board, including young people and those with lived experience of these systems – centred on the child.	Agreed by Co-Design group. Responsibility of the Commissioner.
Legislative enablers of an advisory group, but not necessarily a requirement. Clear provision outlining role of community engagement with diverse community.	Agreed by Co-Design group. Should include resources to support active involvement of community stakeholders, valuing of their time
Independence assured – any advisory is not positioned to direct the commissioner.	Agreed by Co-Design group

Table 7 - Clarification Points - Governance and Connection

Clarification points	Outcomes
Governance and Connection	
Extent to which these relationships should be reflected in legislation (beyond information sharing provisions)	Agreed by Co-Design group. Stakeholders noted two-way relationship.

Clarification points	Outcomes
<p>Whether the establishment of an Aboriginal Children and Young Persons advisory group should be required/enabled. Is this distinct from the community advisory group?</p> <p>General sense that the Commissioner should be outside the current ACT Human Rights Commission, but closely connected. Raises question about the extent to which the separation is structural or physical. There could be efficiencies to aligning some of the administrative components, but care to preserve the standpoint and authority of the role. It was noted that while the collegiate nature of the Commission can provide support/strengthen the role, there can be issues of cultural load when establishing an Aboriginal role in a non-Indigenous organisation, even in leadership positions. How is this relationship best structured, including in legislation?</p> <p>A community hub model has been suggested, through which the role (team) might regularly work at local ACCOs and Bimberi, in order to promote access for community.</p> <p>Community hub model would include at least two staff positioned in Wreck Bay, with role designed to reflect broad mandate to promote rights of Aboriginal and Torres Strait Islander children (with connections back to their colleagues/well-being supports).</p>	<p>Agreed by Co-Design group. Responsibility of the Commissioner though – should not be compelled, but is an expression of their approach to engagement (and alternate avenues as well)</p> <p>Agreed by Co-Design group. Role should be established outside of ACT Human Rights Commission, but closely connect. Aim to preserve independence and unique positioning, cultural context, and focus.</p> <p>Agreed by Co-Design group</p> <p>Co-Design group reiterated that model for the relationship with the Wreck Bay Aboriginal community must be established in partnership with that community and with their consent</p>

Table 8 - Test Points - Governance and Connection

Test points	Outcome
<p>Governance and Connection</p> <p>More formalised structure that connects Commissioner to Aboriginal community. May be a positive step towards Aboriginal self-determination (exercise of political authority to appoint empowered oversight of child rights). Consistent with potential role within a strong self-determination model in which Aboriginal community exercises jurisdiction in relevant areas (see for example BTH recommendations). Challenges in positioning, building authority in diverse local community.</p> <p>In addition to team resource and structure to deliver on function and role (individual and systemic advocacy), could include a liaison team to foster connection across Human Rights Commission and the exercise of their power, complementing existing resources and providing peer support for Aboriginal staff in those roles. Aim to build connection and further strengthen service delivery to Aboriginal and Torres Strait Islander communities.</p>	<p>Not agreed by Co-Design group – independence of the role was considered to be a key organising principle. Relationship with community through engagement as a key responsibility of the Commissioner.</p> <p>Agreed by Co-Design group. However depends on the broader resourcing envelope, given anticipated high demand on the Commissioner and team</p>

Role Characteristics and Selection Process

Stakeholders finally considered the appointment process, with unanimous agreement on the importance of a transparent process that protects the role from challenges of real or perceived conflicts of interest, thereby promoting legitimacy and community confidence in the role (see Tables 9-11). This should include clearly defined description and role expectations, key attributes, and a participatory selection process that includes appropriate community representation and independent panellists, as well as offering an opportunity for applicants to demonstrate core skills, including engagement with Aboriginal and Torres Strait Islander children and young people.

Respondents noted that the role must be recognised as a senior executive position, and should be recruited as such, with specialist recruitment support to identify appropriately skilled Aboriginal and Torres Strait Islander applicants and encourage them to apply. Local Aboriginal and Torres Strait Islander networks can also be utilised to encourage a strong talent pool for the role.

The role should have clearly defined expectations in promoting and protecting the rights of Aboriginal and Torres Strait Islander children and young people. Key attributes included community engagement, strong values and advocacy skills, The ability to engage effectively with Aboriginal and Torres Strait Islander communities, particularly children and young people, was seen as a core skill. Stakeholders suggested that this might be demonstrated through the recruitment process, as part of a multi-stage process that includes application, panel interview, and direct assessment of short-listed candidates. For example, short-listed applicants might join with the Public Advocate and Child and Young People Commissioner to facilitate an engagement with Aboriginal and Torres Strait Islander children and young people. Such an arrangement allows for direct observation of core skills that may be difficult to assess indirectly,

The panel should include independent and community representatives, with stakeholders suggesting this might include a current Commissioner as an experienced independent panel member, as well as Aboriginal and Torres Strait Islander stakeholders. It was emphasised that a large selection panel may become unwieldy, and that a single trusted community representative may be selected. This process must ensure appropriate management of conflicts of interest and offer appropriate transparency to ensure community confidence in the process. The panel might also include an external Aboriginal and Torres Strait Islander person with experience in similar executive level roles (for example, Aboriginal and Torres Strait Islander people serving in similar positions in other jurisdictions). The resulting recruitment report would nominate candidates for the consideration of the Minister for final appointment.

The consultation also tested whether the Commissioner might be appointed through an Aboriginal body or process. This would enhance the exercise of self-determination by the Aboriginal and Torres Strait Islander community and create direct accountability to the community through the appointment process. Stakeholders again noted the need to ensure engagement across diverse communities that may be undermined through such an approach. As such this suggestion was not supported at this time.

Table 9 - Consensus Points - Role Characteristics and Selection

Consensus Points	Outcomes
Role Characteristics and Selection	
Ability to understand the standpoint of Aboriginal people in the ACT, and the rights and interests of Aboriginal and Torres Strait Islander children.	Agreed by Co-Design group. Through engagement with all community groups.
Strong values of advocacy	Agreed by Co-Design group
Strong connections in the ACT community or demonstrated ability to build them and work with the community.	Agreed by Co-Design group

Consensus Points	Outcomes
Agreement that the community, and in particular children and young people, should play a role in the appointment.	Agreed by Co-Design group, noting the need for transparency, particularly around the management of conflicts of interest
Important that it is seen as a fair and impartial process. Critical to community confidence in the role.	Agreed by Co-Design group

Table 10 - Clarification Points - Role Characteristics and Selection

Clarification points	Outcomes
Role Characteristics and Selection	
Selection process for community representatives in recruitment	Agreed by Co-Design group noting that community involvement necessary. Should be impartial, respected, free from conflicts. Better to not have too many, as this can be unwieldy
Suggestions range from one or two community representatives on the panel, a respected community member and a highly regarded external Aboriginal person with experience in similar appointments (for example, could call on an established Aboriginal commissioner to fulfil a role as independent panel member), or a panel comprised of Aboriginal community stakeholders (like the OBOWIOC, or in the longer term, any established advisory group.	Agreed by Co-Design group – few representatives, identified through consultation with particular focus on experience, wide community respect, to ensure community confidence
Preferred way to involve young people in the appointment process. Suggestion that shortlisted candidates meet/engage with Aboriginal and Torres Strait Islander children and young people (would need to be careful to do so in a way that is not exploitative – for example, could partner with the current commissioner to ensure that information provided in the consultations can be gathered and actioned.	Agreed by Co-Design group – active demonstration of engagement with children and young people considered particularly useful, and could partner with Public Advocate. This would ensure process is not performative or exploitative, and respect the time and input of children and young people by contributing to a meaningful process
Suggested that a sitting member of the Commission might also assist on the panel.	Agreed by Co-Design group
Establish a shortlist/recommendation that is broadly acceptable to the community, for the Minister to select.	Agreed by Co-Design group

Table 11 - Test Points - Role Characteristics and Selection

Test points	Outcome
Role Characteristics and Selection	
Appointment by an Aboriginal body. However this may create community tensions, place additional pressure on the role and the Aboriginal body (for example, Elected Body or other structure), and undermine the role. Would require very sensitive development of the Aboriginal community body to ensure diverse representation and community confidence	Not agreed by Co-Design group – rather, Co-Design group expressed priority for principle of independence and as such should not be structurally aligned to any particular existing structure.

Additional Considerations

Additional considerations were also raised by stakeholders which were not directly part of the process to establish the Aboriginal and Torres Strait Islander Children's Commissioner but were considered to be critical to its success. This includes action on broader systems and practice change to promote and protect the rights of Aboriginal and Torres Strait Islander children and communities, increased investment in critical child and family services, and the need for ongoing engagement with the Aboriginal and Torres Strait Islander community through the legislative and establishment process, but also following a period of implementation, to provide an opportunity to further adjust the role to meet community needs and expectations.

There remains an urgent need for significant structural change, including those recommended through the *Our Booris Our Way Report*. The recommendation for the Aboriginal and Torres Strait Islander Children's Commissioner specifically noted the important relationship with existing community structures as well as the recommended Aboriginal Child Care Association in demonstrates explicitly the interrelated nature of reforms, and the way that various recommendations may enhance or limit the benefit of others. Systemic change that enhances recognition of the right to self-determination, particularly in the administration of child protection and juvenile justice systems, remains an outstanding enabler of transformational improvement.

Other specific issues reiterated through this model refinement process included the anticipated need for increased investment in Aboriginal and Torres Strait Islander child and family services, and the need for an ongoing process of partnership in the development of the role, including the legislative process and resourcing, to ensure that the recommendations are adequately implemented. Stakeholders also noted the need to review the role, as opposed to the inaugural Commissioner, following its establishment, to ensure that the role functions as intended for Aboriginal and Torres Strait Islander children and young people. This review might be planned for 12 to 18 months following establishment and may be led by the Commissioner in partnership with the community, providing an opportunity to address any unanticipated gaps or issues associated with the role's mandate, functions or authority that may emerge during implementation.

Proposed Model

Through these dialogues, a proposed model was developed, outlining the functions and powers, governance and connections, and role characteristics and selection processes, to inform subsequent legislative and implementation processes. This proposed model is outlined below, identifying areas to be reflecting in legislation as well as additional considerations for establishing the role.

The proposed model shares a number of legislated functions and powers with the existing role of the Public Advocate and Children and Young Persons Commissioner, including oversight, compliance, monitoring and advocacy functions. It would exercise a broad scope and human rights mandate, with all issues affecting Aboriginal and Torres Strait Islander children within its remit. However, the proposed Aboriginal and Torres Strait Islander Children's Commissioner is expected to exercise these functions and powers in a distinct way that reflects the rights of Aboriginal and Torres Strait Islander children as

Indigenous children, understanding that the best interests of Aboriginal and Torres Strait Islander children are grounded in their worldview, and connections to family, community culture, and Country. For example, Section 27 of the *Human Rights Act 2004* recognises the distinct cultural rights of Aboriginal and Torres Strait Islander peoples, with a particular focus on cultural and spiritual practices, language and knowledges, kinship ties, and relationship to Country. The expectations of community respondents regarding the application of a cultural standpoint in the exercise of the role's functions and powers are consistent with this understanding of the distinct rights of Aboriginal and Torres Strait Islander peoples, including children and young people, however clearly go beyond the limited cultural rights outlined. Rather they reflect a broad understanding and application of the distinct rights of Aboriginal and Torres Strait Islander children and young people as indigenous children, outlined through various human rights instruments (including the Declaration on the Rights of Indigenous peoples, as well as relevant guidance in the application of the Convention on the Rights of the Child and General Committee Comments regarding implications for indigenous children and young people) from an Aboriginal and Torres Strait Islander perspective, consistent with established principles of self-determination and self-governance. The Aboriginal and Torres Strait Islander Children's Commissioner's exercise of its functions and powers for oversight and accountability must be consistent with this broader understanding in order to adequately promote and protect the rights of Aboriginal and Torres Strait Islander children and young people in the ACT.

The role would engage in both individual and systemic advocacy, understanding the clear connections between these two functions. Like the existing Public Advocate and Children and Young Persons Commissioner role, government agencies should be required to inform the proposed Aboriginal and Torres Strait Islander Children's Commissioner when they undertake particular actions involving Aboriginal or Torres Strait Islander children or young people. This should include interactions with police and justice systems, child protection interventions, as well as relevant actions related to mental health and education systems (such as non-voluntary in-patient treatments and reporting related to school exclusions).

It is proposed to be explicitly authorised to request, receive and share relevant information regarding Aboriginal and Torres Strait Islander children and young people, and is expected to take a proactive stance to promote and protect their rights and interests. This includes explicit powers to join legal matters as a party, informing agencies and courts in the exercise of their responsibilities in matters affecting Aboriginal and Torres Strait Islander children and young people. It also includes the opportunity to make recommendations and direct action on safeguarding the rights of Aboriginal and Torres Strait Islander children and young people, and receive timely feedback from those agencies about the actions they have taken in response, with appropriate provisions for transparent reporting that balances individual privacy for children and families and the need for public transparency and accountability of agencies, particularly those that exercise considerable powers.

The role is further proposed to be able to undertake inquiries and research under its own initiative, spanning beyond and across systems in applying a holistic and intergenerational understanding of development and wellbeing. It is expected to report publicly, both to the ACT Legislative Assembly and directly to the Aboriginal and Torres Strait Islander community of the ACT, with respect for the diverse mechanisms for community engagement within the ACT and with the intent of ensuring transparency and accountability to the community. To deliver on this mandate, it must be adequately resourced, including in particular skilled case managers and advocates to support children and families requiring assistance. It was further suggested that the mandate for this role be consolidated to provide greater clarity of the scope of the role and its responsibilities as part of promoting transparency and accountability, managing community expectations and building confidence in the role.

The proposed role is expected to be positioned independent from the existing Human Rights Commission, but work in close collaboration with them in promoting the rights and interests of Aboriginal and Torres Strait Islander children and young people. The role is not proposed to exercise a significant complaints handling function, but will work with existing processes to support the accessibility, safety and responsiveness of those mechanisms. While not directly an application of self-determination, being appointed and authorised through non-Indigenous processes, this is intended to emphasise its distinct positioning and orientation towards the Aboriginal and Torres Strait Islander community it serves and enable greater opportunity for the Commissioner to develop critical relationships with the community. This

is also potentially an important part of 'future-proofing' the role. As the community, supported by the Commissioner role, continue to progress the significant transformational change necessary to truly meet the needs of Aboriginal and Torres Strait Islander children and families grounded in self-determination, this position offers a clearer opportunity to transition the role to offer the independent oversight of Aboriginal and Torres Strait Islander designed and administered systems, including in child protection and juvenile justice.

To support primary connections to the Aboriginal and Torres Strait Islander community, the Commissioner will be enabled to establish, at its own discretion, and according to its own processes, an Aboriginal and Torres Strait Islander Community Advisory Group. While the responsibility of the Commissioner, stakeholders clearly expressed that such groups would be most beneficial if representing the diversity of the Aboriginal and Torres Strait Islander community of the ACT, and might particularly include children and young people, and those with lived experience of those systems that most impact the lives of Aboriginal and Torres Strait Islander children. Respondents noted the importance of appropriate sitting fees to value the time of community stakeholders invited to serve on the Advisory Group. In addition to the opportunity for an Advisory Group, respondents also proposed a 'hub' model to enable greater accessibility and engagement, with particular provisions for engagement with Aboriginal and Torres Strait Islander children and young people in out-of-home care, and a regular independent presence within juvenile justice facilities.

The proposed Commissioner's relationship with government agencies and service providers is expected to be characterised by its function and powers as an oversight and monitoring body. It was also noted that the Commissioner should have an opportunity to provide advice to government when considering or implementing reforms to policy and practice that it feels may affect the lives of Aboriginal and Torres Strait Islander children and young people and the enjoyment of their rights. This might include a clear legislative enabler that positions the provision of such advice as 'in-scope' for the function of the role, but without creating an unworkable mandate that delays policy development and interferes with general governance processes or compromising the independence of the role by requiring ongoing engagement with policy development activities. Respondents expressed the importance of independence from government in particular, including transparent funding to provide confidence that the role is not undermined through such processes.

Finally, for many, the skills and attributes of the Commissioner, and their team, were as important as its mandate and legislative authority. Given the broad scope of the role, how the Commissioner directs its efforts and intentions will have significant implications for the accountability of the systems and services it oversees, and the confidence of the community it serves. Respondents provided an outline of the diverse skills and attributes of an effective Aboriginal and Torres Strait Islander Children's Commissioner, noting in particular the importance of engagement with Aboriginal and Torres Strait Islander communities, and particularly children and young people. Similarly, an inclusive, multi-stage process was also proposed, with appropriate community representation, while managing any possible conflicts of interest to ensure community confidence in the process, and therefore community confidence in the Commissioner. It is important that this is an ongoing process alongside Aboriginal and Torres Strait Islander community representatives and is seen as transparent, fair and impartial by community stakeholders.

Table 12 - Proposed Model

Domain	Legislative	Non-Legislative enablers
Functions and Powers	<p>Explicit mandate to promote and protect the rights of Aboriginal and Torres Strait Islander Children, with a broad scope across all systems affecting Aboriginal and Torres Strait Islander children and young people</p>	<p>Adequate resourcing of Commissioner’s office to enable individual and systemic advocacy, including experienced case managers and advocates, as well as community liaison</p>
	<p>Linked to key human rights instruments (including UN Convention on the Rights of the Child and UN Declaration on the Rights of Indigenous Peoples), aligned to existing human rights legislation in the ACT</p>	<p>Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap.</p>
	<p>Explicit reference to focus on Aboriginal and Torres Strait Islander children and young people, from a cultural standpoint, and noting the importance of connectedness – to family, community, culture and Country – as critical to best interests.</p>	<p>Increased investment in Aboriginal and Torres Strait Islander child and family services to enable action given anticipated increase in demand</p>
	<p>Clear expectation for transparency and accountability to the Aboriginal and Torres Strait Islander community, including at least annual reporting to the ACT Legislative Assembly and Aboriginal and Torres Strait Islander community. Reporting to be independent of government.</p>	<p>Commitment to future review of role design, ensuring functions and framework fit for purpose</p>
	<p>Authorised for individual and systemic advocacy, own-motion inquiry, investigation and research, with a holistic framework that understands children and young people in their developmental context</p>	<p>Effective relationship with government to enable input to policy development activities where relevant, including notification mechanisms for relevant policies that are of particular importance to the role of the Commissioner advocating for Aboriginal and Torres Strait Islander children and young people in the ACT</p>
	<p>Enable active oversight of government systems’ interactions with Aboriginal and Torres Strait Islander children, including those monitoring and compliance responsibilities invested in the current Public Advocate and Children and Young People Commission, as well as strong provisions to enable access to Aboriginal and Torres Strait Islander children, particularly in closed institutions.</p>	
	<p>Inclusion into scope of role the opportunity to provide advice to government regarding relevant policy development activities, at the discretion of the Commissioner</p>	
	<p>Proactive focus. Authorised to recommend action from government agencies and relevant child and family services to promote and protect the rights of Aboriginal and Torres Strait Islander children (individually and collectively), with provision to require a response outlining the steps taken.</p>	

	<p>Authorised to join matters at any stage, including as a party in court proceedings relevant to the rights and interests of an Aboriginal and Torres Strait Islander child or children, to inform the decision makers including the Court</p> <p>Clear authorisation to share and receive information regarding Aboriginal and Torres Strait Islander children and young people, including from government agencies, service providers, and the ACT Human Rights Commission</p>	
<p>Governance and Connection</p>	<p>Clear statutory independence, established as a standalone office (not positioned within the ACT Human Rights Commission)</p> <p>Clear expectations to engage continuously with all segments of the Aboriginal and Torres Strait Islander community of the ACT</p> <p>Enablers for the establishment of an Aboriginal and Torres Strait Islander Community Advisory and/or Children and young People Advisory, at the discretion of the Commissioner and according to their own processes.</p>	<p>Resourcing for continuous engagement, including possible Advisory group(s), accessible office space and 'hub' design (including presence at Bimberi).</p> <p>Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap.</p>
<p>Selection Process</p>	<p>Guidance that the appointment process is to be undertaken in partnership with the Aboriginal and Torres Strait Islander community</p> <p>Appointed by Minister, based on recommendations from transparent and collaborative appointment process</p>	<p>Transparent, multi-staged recruitment strategy, including attributes and expectations, community representation in process and management of possible conflicts of interest</p>

Conclusion

The recommendation to appoint an Aboriginal and Torres Strait Islander Children's Commissioner follows from the *Our Booris Our Way* Report, which focused on the experiences of Aboriginal and Torres Strait Islander children and families, and community in the ACT. It is one of twenty-eight significant recommendations put forward by Aboriginal and Torres Strait Islander community representatives through the report, which span structural, systemic, policy and practice reforms to address the devastating impacts of these systems and improve outcomes and wellbeing for their children and families.

Like the *Our Booris Our Way* report, we consistently heard about the community's deep concerns, particularly associated with the imposition of statutory systems that disproportionately affect Aboriginal and Torres Strait Islander children and young people in the ACT. Echoing the Standing Committee on Health, Ageing and Community Services *Report on Child and Youth Protection Services*, which outlined an opaque system with limited accountability, we heard about the need for independent and empowered oversight to ensure transparency and promote accountability. Community stakeholders expressed their disappointment at the results achieved by current systems, including the high rates of child removal relative to other jurisdictions. We heard community expectations that a jurisdiction like the ACT, with a relatively small population and geographic size, must do better for Aboriginal and Torres Strait Islander children and young people.

Similarly, the Standing Committee on Health, Ageing and Community Services identified that many of the concerns related to child protection systems are fundamentally about trust. Specifically, they noted that “despite numerous reviews and inquiries into various aspects of the system stretching back over a decade or more – trust in the system by the people to whom the system seeks to serve and the community of which the system is a part continues to remain at low levels.” The issue of trust of statutory child protection systems specifically, and government services more generally, takes on a particular hue for Aboriginal and Torres Strait Islander communities, for whom these systems have imposed significant harms over generations. Establishing the trust of Aboriginal and Torres Strait Islander communities is not a matter of building the trust of “the community of which the system is a part”, as these systems have never been of our communities, but imposed upon us. There remains significant work to transform systems affecting Aboriginal and Torres Strait Islander children and young people, grounded in recognition of the right of Aboriginal and Torres Strait Islander peoples to self-determination and self-governance. Promoting greater transparency and accountability of these systems to the Aboriginal and Torres Strait Islander community similarly remains an outstanding area for reform.

Most importantly, community stakeholders remain committed to working together with government to drive the urgent change necessary to safeguard their children's rights, and their futures.

The appointment of an Aboriginal and Torres Strait Islander Children's Commissioner is a key piece of this reform agenda, providing independent and authoritative oversight of systems affecting Aboriginal and Torres Strait Islander children and young people in the ACT, as well as the responsibility to intervene when necessary to promote and protect their rights. Drawing on the *Principles Relating to the Status of National Human Rights Institutions* ('Paris Principles'), dialogues were held with Aboriginal and Torres Strait Islander communities, government stakeholders and existing Commissioners within the ACT Human Rights Commission, towards consensus on the key functions and powers, governance and connections, location, and role characteristics and selection process.

In general, there was a clear call for a specific focus on the rights and interests of Aboriginal and Torres Strait Islander children and young people, reflecting the unique application of these rights for Indigenous children and young people³⁴, and the importance placed on centring Aboriginal and Torres Strait Islander perspectives and culture in advocacy about Aboriginal and Torres Strait Islander children. The specific parameters of the role are outlined in detail above, including its broad human rights mandate, authority for proactive monitoring and oversight including individual and systemic advocacy, and important

³⁴ UN Committee on the Rights of the Child (CRC), *General comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child]*, 12 February 2009, CRC/C/GC/11, available at: <https://www.refworld.org/docid/49f6bd922.html> [accessed 20 January 2022]

connections to the Aboriginal and Torres Strait Islander community, the ACT Human Rights Commission, government agencies and other relevant service providers.

Community stakeholders focused particularly on the significant challenges experienced by Aboriginal and Torres Strait Islander children, families and communities, and the poor outcomes achieved through various systems, including child protection and juvenile justice systems, for Aboriginal and Torres Strait Islander children. They raised concerns that this context creates potential risks when establishing such a role, namely the need to manage impossible expectations to drive immediate change across entrenched structures, which in turn may undermine confidence in the role when it fails to achieve them. These concerns were echoed by government respondents and existing Commissioners within the ACT Human Rights Commission. While it was clear that community stakeholders had high expectations for the role and its potential to provide oversight and accountability of systems and services, as well as unapologetic advocacy for their children and young people, there was also keen awareness of the limitations of the Commissioner role. The many challenges and demands facing the role from its inception were also on the mind of respondents when emphasising the importance of ongoing support to promote the social and emotional wellbeing of the Commissioner and their team.

The proposed model outlined through this process is broadly consistent with the Paris Principles in that it proposes a clear human rights mandate and legislative authority, with powers of inquiry and investigation independent from government and other organisations. It includes engagement with community and respect for community diversity, and is expected to work in cooperation with other human rights bodies to influence systems, policies and practice affecting Aboriginal and Torres Strait Islander children and young people. It is expected to report public at least annually, raising awareness of human rights issues affecting Aboriginal and Torres Strait Islander children and young people. Finally, it is expected to be appointed through a transparent and participatory process, including in particular Aboriginal and Torres Strait Islander children and young people, to ensure suitability and gain the confidence of the community.

There have been limitations in this process, as well as additional issues identified that will have significant implications for the success of the role. As such, it is important that they are considered alongside the establishment process. First, the ongoing pandemic made usual processes of engagement difficult. Engagement with the Wreck Bay Aboriginal Community was particularly limited, and warrants further attention throughout the legislative process, to ensure that the proposed role fulfils its mandate to safeguard the rights of all Aboriginal and Torres Strait Islander in the ACT. This includes determining how the proposed Commissioner engages with the Wreck Bay Aboriginal community in an ongoing way, and the resources required to support these functions. Second, the Commissioner role should be adequately resourced to deliver on this mandate, with particular attention to the anticipated high level of expectation and need present within the community.

Third, an anticipated effect of increasing scrutiny of how systems promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people is a significant increase in demand on Aboriginal and Torres Strait Islander Community-Controlled Organisations to deliver services to Aboriginal and Torres Strait Islander children and families. Such services are generally under-resourced relative to need, and increased investment in these services will be necessary to ensure that the service system, and community more broadly, may respond to that need. Fourth, ongoing reform of various systems, including full implementation of the Our Booris Our Way recommendations, is critical to making the most of the proposed role. This includes commitment to realising in systems and practice the exercise of self-determination and self-governance by and for Aboriginal and Torres Strait Islander communities.

Fifth, it is important that the ACT Government continue to engage with the Aboriginal and Torres Strait Islander community of the ACT in the development and implementation of the role. This includes genuine partnership through the legislative processes, and the opportunity to review, edit and endorse the final proposed legislation. The legislative drafting process should start immediately, working with Aboriginal and Torres Strait Islander community stakeholders to develop a consolidated Bill to establish the Commissioner in a timely way. This process should include specific engagement with community representatives regarding the draft legislation, and a clear timeframe for progress to ensure that the establishment of the role remain on track. This should also include transparency on the resourcing dedicated to the Commissioner and their team, which should be reflective of the significant ongoing over-

representation of Aboriginal and Torres Strait Islander children in child protection and juvenile justice, as well as the poor outcomes achieved by various systems for Aboriginal and Torres Strait Islander children and young people more generally, in order to meet the significant demand for oversight, accountability and advocacy that is anticipated to face the role from its establishment.

Finally, we heard that much will be learned about the role throughout implementation. As such, the role should be reviewed early in the term of the inaugural Commissioner, providing an opportunity for the community, the Commissioner, and other stakeholders to propose refinements or enhancements to the role, for strengthening its mandate and authority. Importantly, this is not a review of the Commissioner's performance, but of the legislative, policy and resource enablers of the role, and whether it is satisfactorily meeting the needs of the Aboriginal and Torres Strait Islander community.



OUR BOORIS
our way



UTS

UNIVERSITY
OF TECHNOLOGY
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Background

In 2019, the *Our Booris Our Way* review of the Australian Capital Territory (ACT)'s child protection system was published. The report's findings were clear:

“The experience of Aboriginal and Torres Strait Islander children in contact with the child protection system in the ACT is one of: a lack of active efforts, poor consistency in experience and decision making, discrimination, and cultural dislocation.”

Our Booris, Our Way Steering Committee (2019)

The *Our Booris, Our Way Steering Committee* made 28 recommendations for urgent reform. A key recommendation was to create a dedicated Aboriginal and Torres Strait Islander Children's Commissioner role to provide active oversight and promote improved outcomes for children and families. The *Our Booris Our Way Steering Committee* stated that they wanted:

“The Commissioner to provide monitoring, advice and advocacy on systemic and individual cases, on an ongoing basis. The Commissioner should 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 ACT Government has committed to establishing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT, to be enshrined in legislation. The community must play a key role in designing the Aboriginal and Torres Strait Islander Children's Commissioner role, its priorities and focus, positioning and characteristics, to have confidence that it is able to effectively meet the needs of children, families and communities. This process will be facilitated by UTS Jumbunna, working closely with the *Our Booris Our Way Implementation Oversight Committee*, and include a series of community dialogues to develop the:

- functions and powers,
- governance structures,
- most appropriate location,
- connections and collaborative relationship with other stakeholders, including the community and other oversight agencies, and
- process for recruitment.

This paper has been prepared to help the ACT Aboriginal and Torres Strait Islander community make decisions about an appropriate model for an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT that is able to promote and protect the rights of their children.

Principles for Human Rights Oversight Bodies

The Paris Principles are internationally-recognised standards for institutions intended to **protect and promote human rights**, such as a Children's Commissioner. These principles include:

- A clear **mandate** and **legal authority** to undertake their role **independent** of other parties (such as government and non-government organisations), including powers of **inquiry and investigation**
- **Engagement** with stakeholders, including **government, non-government organisations, experts** and the **broader community**, to protect and promote human rights.
- **Cooperation with other human rights bodies**
- The opportunity to **influence** systems, policies and practice, including the ability to **make recommendations** and relevant **follow up actions** regarding the response to recommendations
- **Clear, transparent** and **participatory** appointment processes, with a pre-determined criteria
- **Funding and infrastructure** necessary to carry out their job effectively.

Together, these principles outline the functions of human rights oversight bodies, such as:

- **Make recommendations** regarding human rights issues, including legislation and policy.
- **Inquire** into matters where there has been a **violation of human rights**, whether including individual and systemic circumstances.
- **Publish reports** (such as annual reports or inquiries) including tabling with the legislature
- **Cooperate with other human rights bodies**, including international human rights systems
- **Raise public awareness** about human rights issues.

Self-determination is not an element of the Paris Principles, as this is generally assumed, however requires specific attention when considering efforts to promote and protect the rights of Indigenous peoples. It is worth considering how self-determination is reflected in the design and implementation of this role, particularly given its prominence in delivering improved outcomes for Indigenous children, including child welfare and youth justice, with self-determination a key recommendation of the *Bringing Them Home* Report.

An Aboriginal and Torres Strait Islander Children's Commissioner should **monitor and report on** human rights issues affecting Aboriginal and Torres Strait Islander children and young people, holding governments and systems to account, promoting transparency and public accountability for the Aboriginal and Torres Strait Islander community, and respecting Aboriginal and Torres Strait Islander governance.

These principles have been enacted in different ways in various jurisdictions. In many circumstances, the legislated mandate of Children's Commissioners has been on systemic issues, with limited mandate for individual advocacy or intervention, with direct reporting to parliament, sometimes following a feedback process with the Minister or relevant department. Some are narrowly focused on specific systems, or part of the systems (such as out-of-home care), while others have a broader remit.

You can read more about similar roles in SNAICC's *Options Paper – Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People*, available [here](#).

Key considerations for the ACT Aboriginal Children's Commissioner

As noted above, the Paris Principles provide important guidance for establishing the role of Aboriginal and Torres Strait Islander Children's Commissioner in the ACT, and how the role and mandate might best be enshrined in law. This is the focus of these consultations, and will have significant implications for the way the Aboriginal and Torres Strait Islander Children's Commissioner goes about their work.

This section will outline the broad areas for discussion towards developing a model for the ACT. It includes exploring issues such as:

- Whether the role will **focus on systemic issues** (such as regulation, monitoring and oversight of the child protection system) **or individual cases** (such as inquiries into child deaths in child protection or individual advocacy), **or both**, and if so, how these functions will be managed, and what powers might be required
- Whether the Aboriginal and Torres Strait Islander Children's Commissioner will have a **complaints handling function**, and, if so, how this will be positioned alongside other key roles such as individual or systemic advocacy, which reflect different assumptions and standpoints.
- Whether the Aboriginal and Torres Strait Islander Children's Commissioner will have a **broader focus on multiple systems** (whether their role will go beyond child protection and youth justice, to also focus on education, health, etc.).
- If the Aboriginal and Torres Strait Islander Children's Commissioner is **attached to the existing ACT Human Rights Commission, or has its own standalone office**.
- The **relationships** between the Commissioner and other key stakeholders, including the ACT Human Rights Commission, the judiciary, and the Aboriginal and Torres Strait Islander community
- The **requirements and process for selection** of the Commissioner, including the key characteristics, skills and values of an effective Commissioner, and how the Aboriginal Torres Strait Islander community, including Aboriginal and Torres Strait Islander children and young people, might be involved in the selection process.
- **The duration of the term the Aboriginal and Torres Strait Islander Children's Commissioner will serve** (the specific period of appointment, and whether Commissioners can serve multiple terms).

Function and Powers

There are a broad range of potential functions to be considered for defining how the Aboriginal and Torres Strait Islander Children's Commissioner will protect and promote the rights of Aboriginal and Torres Strait Islander children, consistent with community expectations. This will include clearly describing the role's mandate, and how the functions and powers might best be positioned to deliver on this mandate.

Through *Our Booris Our Way*, the Aboriginal and Torres Strait Islander community expressed an interest for the proposed Aboriginal and Torres Strait Islander Children's Commissioner to provide monitoring, advice and advocacy on both systemic issues and individual matters, and across key areas including education, health, housing, child protection, and culture and equity. Different jurisdictions have approached this in different ways, including providing an explicit rights-based mandate, or outlining broad values such as safety, welfare or best interests, focused on a single system (such as child protection), or across multiple systems.

The Commissioner role might include a regulatory function regarding the implementation of the Aboriginal and Torres Strait Islander Placement Principle in child protection, and include

consideration of issues affecting the broader family, taking a holistic approach. This broad mandate may introduce challenges in effectively delivering for the community, creating potential conflicts in delivering on various functions, resource strain, or create structural difficulties when engaging with stakeholders to influence change.

One key area for consideration is whether the Commissioner should include a specific complaints handling role, which may require significant resourcing, and duplicate existing structures. However, providing a complaints handling role may improve access and choice for Aboriginal and Torres Strait Islander children and families. Alternatively, the Commissioner may play an oversight function regarding existing complaints processes (such as with the Human Rights Commission), with an interest in supporting improved complaints handling for Aboriginal and Torres Strait Islander people across the Human Rights Commission, as well as the discretion to intervene where needed.

In thinking about the roles and functions of the Commissioner, it is important to consider how certain roles functions might interact or even create challenges or potential conflicts (for example, the relationship between individual advocacy and impartially handling complaints), and the unique role that the Aboriginal and Torres Strait Islander Children's Commissioner might play within the ACT community. This includes relationships with existing human rights bodies, government agencies and the judiciary, all of which play a role in the lives of Aboriginal and Torres Strait Islander children and young people (discussed below).

1. What are the specific roles and functions that are desirable for an effective Aboriginal and Torres Strait Islander Children's Commissioner for the ACT?
2. Which of these roles or function are **most important** in meeting the expectations of Aboriginal and Torres Strait Islander Children's Commissioners?
3. In providing monitoring, advice and advocacy on individual matters, what should be the scope of the Commissioner's responsibility, and its relationship with other complaints handling and advocacy processes?

Governance, connections and collaborative relationships

Independence is an essential principle for an effective Aboriginal and Torres Strait Islander Children's Commissioner. However, effectively monitoring and influencing systems and practice to protect and promote the rights of Aboriginal and Torres Strait Islander children also requires good relationships with Aboriginal and Torres Strait Islander communities, as well as strong connections and collaborative relationships with a range of stakeholders, including community, government, and other oversight bodies, such as the ACT Human Rights Commission.

These relationships might be included in legislation, reflected through organisational structures, as well as the physical location and environment of the Commissioner (discussed below).

Governance should prioritise the principle of independence, and consider how to effectively promote representation of the community, influence government and key stakeholders, and provide accountability to the community. Community and cultural accountability is a key part of promoting confidence in the role. This might include a clear mandate for broad community engagement, including access to specific cohorts and populations (such as children and young people in out-of-home care or in youth justice). It may also include a requirement or option to establish an Aboriginal and Torres Strait Islander Advisory Council, or youth council, to assist the Commissioner in exercising their responsibilities. There may be options to link governance of the ACT Aboriginal and Torres Strait Islander Children's Commissioner in with existing Aboriginal advisory or governance mechanisms as well but, if that is the case, the independence of the role should be preserved.

Other considerations include organisational decision making and the opportunity to direct adequate resources to fulfil their mandate, and whether the Commissioner is part of the ACT Human Rights Commission, or structurally independent. If so, what should the relationship be between the Aboriginal and Torres Strait Islander Children's Commissioner and other related roles in the ACT Human Rights Commission that would promote greater reach and impact through coordinating effort and influencing the exercise of these functions (such as advocacy and complaints handling roles). Effective collaboration across these structures is likely to increase reach and impact, and promote improved outcomes for Aboriginal and Torres Strait Islander

children and young people in the ACT. Similarly, other key relationships, such as with child protection and juvenile justice systems, are also worth considering, including if it is desirable for the Commissioner to be able to participate in child protection matters before the Courts, and if so, at what times and in what capacity.

Finally, reporting processes should also be considered, including annual, special and thematic reports, and how these processes promote transparency and accountability, particularly to the Aboriginal and Torres Strait Islander community. This might include a mandate to table reports simultaneously with Parliament and relevant Aboriginal and Torres Strait Islander community bodies, such as the ACT Aboriginal and Torres Strait Islander Elected Body.

4. What governance structures are necessary to effectively fulfil the mandate of the ACT Aboriginal and Torres Strait Islander Children's Commissioner?
5. What relationships are expected with respect to the Aboriginal and Torres Strait Islander community, and the ACT Human Rights Commission?
6. What should the Commissioner's mandate be with respect to reporting?
7. What mechanisms need to be put in place to ensure the ACT Aboriginal and Torres Strait Islander Commissioner is accountable to community?

Location

In addition to expectations and mandates to engage collaboratively with community and other stakeholders, the physical location and space occupied by the Commissioner can send a clear message about the Commissioner's role, independence and relationships. It is also a clear opportunity to communicate to Aboriginal and Torres Strait Islander children and young people, and the community more generally, about the priorities and values of the Commission.

The physical location of the Commissioner will also have impact on the nature of relationships. Co-locating the Commissioner with the Human Rights Commission, even if established through distinct legislation, is likely to foster closer relationships with other oversight bodies and support collaboration across the broader remit. Co-locating the Commissioner's role with an Aboriginal Community Controlled Organisation might signal an intent to work in a community-based way but may introduce potential conflicts and diminish the perception of independence.

8. Where should the Commissioner be located? Are there other considerations regarding the location and setting of the Commissioner to effectively deliver on its mandate?

Role requirements and selection

Appointed Commissioners should have the confidence of the community they serve. This can be promoted by involving the community in shaping the role, as well as the skills, knowledge and experience to undertake the role effectively, and the process for recruitment. It is important that these are clearly defined prior to appointment, promoting transparency in the selection process. Relevant skills, knowledge and experience might include community engagement, navigating government systems and processes, strategic engagement, sector experience or formal qualifications, as well as cultural authority, integrity and community standing. Some of these features may be of more value to the community than others, while overly narrow or strict requirements may exclude some candidates from consideration.

Selection should involve a clear, transparent and participatory process. This could involve multiple stages and could include the active participation of representatives of the Aboriginal and Torres Strait Islander community (including children and young people specifically) in various ways such as publicising the role within the community or forming part of the selection panel. For example, it might be mandated that community members and children and young people participate on the selection panel, or include tasks intended to explore the candidate's competency in working with children and young people.

9. What personal and professional characteristics are essential for the ACT Aboriginal and Torres Strait Islander Commissioner to possess?
10. How should recruitment and selection be undertaken?

Next Steps

Aboriginal and Torres Strait Islander community members and other stakeholders including government and statutory officers are invited to share their views on the function and powers, governance structures, locations, connections and relationships, and process for recruitment of a Commissioner for Aboriginal and Torres Strait Islander Children in the ACT.

A series of community dialogues will be organised to provide an opportunity for community members to have their say. These will be facilitated by the Jumbunna Institute for Indigenous Education and Research team, led by Associate Professor Paul Gray, Distinguished Professor Larissa Behrendt, and Professor Lindon Coombes, working in partnership with the *Our Booris Our Way Implementation Oversight Committee*, and the ACT Justice and Community Safety Directorate.

Sessions will be advertised throughout the community and in partnership with local community organisations. We will also hear from government representatives and service providers. A final model will be developed through a final workshop with Aboriginal and Torres Strait Islander and government stakeholders. A report of the process will be developed and published for the community.

Relationships of the Aboriginal and Torres Strait Islander Children's Commissioner



Summary Table

	Principles	Comments
Functions and powers	Human rights mandate Inquiry and investigation	<p>Some similar roles have an explicit mandate to promote and advocate for the rights of children. Others refer to broad concepts such as safety, wellbeing, or best interests.</p> <p>Some roles are given a broad mandate, while others might be specifically oriented towards particular systems – child protection, youth justice etc.</p> <p>Many statutory officers tend to have a focus on systemic issues affecting children. Some include scope for individual advocacy or complaints resolution, while others are limited in their mandate for individual matters.</p> <p>Some include specific powers of inquiry, including under their own motion, or at the request of the Minister. This can include powers to compel documents, access to sites, or other requirement to complete investigations. In some circumstances, this includes offence provisions for non-compliance.</p>
Governance and connections	Independence Plurality Cooperation with other human rights bodies Relationship with community	<p>Commissioner roles in Australia tend to be independent statutory officers, invested with their own authority.</p> <p>Some report to the Minister, while others may report directly to parliament, or to a parliamentary committee.</p> <p>Commissioners may be able to establish relevant advisory councils, including involving young people, or be mandated to establish advisory councils.</p> <p>Commissioners may be positioned as part of a broader institution (such as the ACT Human Rights Commission, or the Australian Human Rights Commission), or established in a standalone fashion. Some existing Aboriginal officers (see for example Queensland, Victoria and NSW) are within child-focused statutory bodies, which may include delegated authority, or other statutory connections to a principle commissioner/statutory officer.</p> <p>Many develop working relationships with other statutory officers, such as Ombudsman or Guardians, whether or not this relationship is established in legislation.</p> <p>Few have explicit formal relationships to Aboriginal community structures established in legislation, however tend to foster strong working relationships through regular, respectful engagement with the community.</p>
Role Characteristics and Selection	Selection	<p>Commissioners most often tend to be appointed by the Minister for a fixed term, and may follow a publicly advertised recruitment process.</p> <p>In some circumstances, key stakeholders have been involved in recruitment processes, for example including young people or community representatives on the selection panel, contributing to recommendations to the Minister. Some include specific tasks to demonstrate capacity to engage effectively with children and young people.</p>