



STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

JEREMY HANSON CSC MLA (CHAIR), MARISA PATERSON MLA (DEPUTY CHAIR), JO CLAY MLA

Inquiry into referred 2019–20 Annual and Financial Reports and Budget Estimates 2020-21
ANSWER TO QUESTION ON NOTICE

Asked by Mrs Elizabeth Kikkert MLA: To ask the Public Advocate and Children and Young People Commissioner

In relation to: **External merits review of child protection decisions**

Ref: ACT Human Rights Commission Annual Report 2019–20, pp. 23, 64

1. The Standing Committee on Health, Ageing and Community Services (HACS) released in July 2020 its Report on Child and Youth Protection Services (Report 11), which specifically recommended ‘that the ACT Government model the amendments to the *Children and Young People Act 2008* on the external review provisions in the comparable Victorian *Children, Youth and Families Act 2005*’ (p. 60). In the commissioner’s professional judgement, would doing so bring the ACT into compliance with the *Human Rights Act 2004* and any other human rights obligations?
2. This HACS report notes that ‘in terms of giving form to an external review mechanism – where contributors made recommendations – Victorian and Queensland provisions were the preferred models’ (p. 59). The commissioner stated in the hearing that she had recently met with officials from both Queensland and Victoria to discuss their approaches and make recommendations. What did the commissioner recommend following this consultation?
3. In the hearing, the commissioner stated that some work related to external merits review was about to be put to tender. What is this tender for specifically?

ACT Human Rights Commission: The answer to the Member’s question is as follows:–

1. As detailed in our submission to the government’s inquiry into whether care and protection decisions made by Child and Youth Protection Services should be subject to review, the Commission considers that the broad discretionary framework under the *Children and Young People Act 2008* to make decisions about a child or young person’s care, combined with the lack of appropriate mechanisms to challenge and remedy such decisions, is incompatible with the *Human Rights Act 2004* (HR Act). The Commission considers that the availability of external merits review of child protection decisions is necessary to fully comply with fair hearing obligations under s21 of the HR Act. The Victorian laws are one example of a model that would achieve compliance with the HR Act. The Queensland provisions are also in our view compatible with human rights. The ACT has the opportunity to take the best elements from both these models and to adapt and improve on them as necessary to ensure that the ACT has the best and most human rights compatible legislation.



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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2. The Commission together with the ACT Government jointly facilitated two stakeholder forums last year to discuss the issue of external review for child protection decisions in the ACT. The roundtable held with ACT community stakeholders on 22 July 2020 heard from keynote speakers from Queensland and Victoria representing a spectrum of viewpoints relevant to care and protection decision-making. The communique from the first roundtable, as well as that of the second local stakeholder roundtable are attached by way of summarising the outcomes of those discussions. The Commission welcomes the ACT Government's investment in these forums and trusts that the learnings from these forums will assist to progress the work to establish an external review mechanism in the ACT in a timely way.
3. The details about the tender process that we understand is due to commence in respect of external merits review of child protection decision-making are best obtained from the Community Services Directorate (CSD), ACT Government. CSD has provided the following input for this brief however I encourage you to contact them directly should you require any further information:

The ACT Government will be undertaking a select tender process to engage a suitably qualified and experienced consultant to assist developing a model for external merits review of child protection decisions in the ACT. The consultant will propose options and recommendations for a model of external merits review that aligns with internal merits review processes and incorporates family-led, trauma-informed, strengths-based, transparent and restorative approaches. This project is intended to enable a unified model of internal and external merits review of child protection decisions to operate in the ACT.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature: 

Date: 9 March 2021

By the Public Advocate and Children and Young People Commissioner, Jodie Griffiths-Cook

Signature: 

Date: 9 March 2021

By the President and Human Rights Commissioner