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THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY



ACT
Government

GOVERNMENT RESPONSE TO
AUDITOR-GENERAL'S REPORT

No 2 of 2019:
*Recognition and Implementation of Obligations
under the Human Rights Act 2004*

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Introduction

The ACT Government welcomes the Auditor-General's Report No. 2 of 2019: *Recognition and Implementation of Obligations under the Human Rights Act 2004* (the Report). The Report presents the results of a performance audit of ACT Government agency compliance with public authority obligations under the *Human Rights Act 2004* (the HR Act).

The Report focuses on three areas of ACT Government: Community Corrections and the Human Rights Unit, both within the Justice and Community Safety Directorate (JACS); and Bimberi Youth Justice Centre within the Community Services Directorate (CSD). It examines how these agencies recognise human rights and the requirements of the HR Act, and the support provided to ACT Government agencies in relation to their human rights obligations.

The Report provides a timely update on ACT Government progress in ensuring that human rights obligations are recognised and implemented across all agencies. The Report recognises a range of positive steps already taken by agencies and makes constructive recommendations regarding further actions that can be taken to strengthen a culture of human rights in the ACT.

Support for Government Agencies

The Report finds that the Human Rights Unit within JACS provides effective support and advice to ACT Government agencies in the assessment of government bills for compatibility with the HR Act. However, the Report identifies an opportunity for the Unit to improve its guidance and support to public authorities with respect to human rights obligations in day-to-day administration and decision making, through the provision of updated information resources. The Report also finds that annual reporting requirements regarding human rights could be improved to better measure agencies' progress.

Development of a Human Rights Culture

The Report notes that JACS and CSD have taken steps to build a human rights culture through whole of Directorate strategic and organisational policies and documents. It finds that various policies and documents in each Directorate expressly or implicitly recognise and articulate the importance of human rights to the activities of the Directorate. However, the Report finds that human rights considerations could be expressly incorporated in other key policies and procedures to enhance the development of a human rights culture.

Operational Practice and Professional Development

The Report finds that JACS and CSD have implemented practices to support staff to comply with their obligations as public authorities under the HR Act. However the report notes the opportunity to improve human rights training for staff at Bimberi and the documentation of human rights considerations for key decision-making processes in both Directorates.

As the first State or Territory in Australia to enact a legislative bill of rights, the ACT has played a pioneering role in recognising and implementing international human rights obligations. We recognise that building a human rights culture is an ongoing effort and that it is important to monitor and build on our progress. The insights provided by the Report help to identify current strengths and highlight opportunities for improvements. The Report provides important guidance for the Government and will assist to focus our efforts to ensure that human rights are embedded in the culture of all Government agencies.

Government Position on Recommendations

Recommendation 1 - Guidance and support for ACT Government agencies

In order to more effectively support public authorities to comply with their obligations under the Human Rights Act 2004 and contribute to the development of a human rights culture in ACT Government agencies, the Justice and Community Safety Directorate should develop administrative guidance for ACT Government agencies in relation to their obligations as public authorities under the Human Rights Act 2004. This could involve the progression and completion of the Human Rights Toolkit or an updated version of it.

Government Position

Agreed

The Government agrees with the Auditor-General's recommendation. JACS will progress the Human Rights Toolkit, which will be made available across Government once finalised.

Recommendation 2 - Annual reporting on human rights

In order to improve the quality and comprehensiveness of ACT Government agencies' reporting under the Human Rights Act 2004, the Chief Minister, Treasury and Economic Development Directorate, in consultation with the Justice and Community Safety Directorate, should amend the Annual Report Directions to:

- a) specify minimum standards and formats for human rights activities to be reported by ACT Government agencies; and*
- b) identify additional, meaningful information required to be reported by agencies that allows for an assessment of the development of a human rights culture in each agency.*

Government Position

Agreed

In January 2019, the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) commenced a review of the annual report directions. Following the release of the Auditor-General's report, JACS provided suggested changes to the reporting requirements for the annual report directions to CMTEDD to improve the quality and comprehensiveness of reporting under the *Human Rights Act 2004*.

Human rights reporting will continue to be reported as a whole-of-government report within the JACS annual report. JACS will issue further advice to reporting entities on the format of the human rights requirements. The Annual Reports (Government Agencies) Directions 2019 giving effect to this recommendation came into force on 15 May 2019.

Recommendation 3 - Community Corrections operational policies and procedures

In order to promote administrative decision - making in accordance with the Human Rights Act 2004, the Justice and Community Safety Directorate should review Community Corrections' existing administrative policy and procedural documents and include in these documents relevant references to human rights considerations under the Human Rights Act 2004.

Government Position

Agreed

JACS ACT Corrective Services (ACTCS) are fully committed to ensuring that its policies and procedures are consistent with the *Human Rights Act 2004*. In the development and review of policies and procedures for Community Corrections, where relevant, references to human rights considerations under the Human Rights Act 2004 will be considered and included where appropriate. Policy implications under the *Human Rights Act 2004* will continue to be carefully considered. Human rights will be considered as part of the standard Policy Impact Assessment process which is provided to the ACTCS Executive Governance Committee as part of the approval processes. This ensures that appropriate consideration is given to human rights within all ACTCS policies and procedures.

Recommendation 4 – Human Rights Considerations in Decision-Making

In order to demonstrate consideration of human rights in administrative decision-making processes for which there are significant human rights implications, the Justice and Community Safety Directorate and Community Services Directorate should include, in key decision-making documents, a section for the explicit consideration and documentation of human rights in the decision.

Government Position

Agreed in principle

The report notes that the overarching policy and procedure documents currently in place for the operation of Bimberi already highlight and explicitly address the relevant sections of the *Human Rights Act 2004*. Collectively, the documents provide a sound framework for operational and administrative decision making to comply with the *Human Rights Act 2004*.

Key decision-making documents at Bimberi will be updated to include an explicit consideration and documentation of human rights in the decision, where there is significant engagement with a young person's human rights, such as a decision to search, Segregations Directions or a refusal to allow a person to visit a young person in custody.

JACS supports the principle of the recommendation and importance for agencies to demonstrate that they have considered relevant human rights in administrative decision-making processes that have significant impact on human rights. JACS will consider the documentation of human rights consideration in decision-making in the development of the human rights toolkit and in training provided to agencies in relation to compliance with human rights obligations.

Recommendation 5 – Training and professional development for human rights

In order to improve staff knowledge and awareness of their obligations under the Human Rights Act 2004 the Community Services Directorate should develop an ongoing program to ensure all staff undertake human rights training specifically targeted to working in a youth justice environment.

Government Position

Agreed

All staff who commence at Bimberi undertake a seven-week induction program. This includes an introductory session by the Children and Young People Commissioner and the Public Advocate on the role of the Human Rights Commission, specifically tailored to Bimberi, including in relation to the *Human Rights Act 2004*. All staff must complete the induction program to be found suitable for appointment.

The Community Services Directorate has made a commitment that all operational staff available for shifts within Bimberi will complete the *Human Rights Act Introduction: e-learning module* by 30 April 2019. All staff currently available for shifts at Bimberi have completed the Human Rights Act Introduction: e-learning module, with the remaining staff to complete the training within a week of their next shift within the workplace.

The Community Services Directorate will revise the e-learning module provided to ensure specific content to the youth justice environment.