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

**CO-DESIGNING AN ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S  
COMMISSIONER FOR THE ACT – GOVERNMENT RESPONSE**

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**ACT**  
Government

# Government Response

Co-designing an Aboriginal and Torres  
Strait Islander Children's Commissioner  
for the ACT

July 2022

# Background

## An Aboriginal and Torres Strait Islander Children's Commissioner for the ACT

The ACT Government is committed to the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT.

In 2019, the *Our Booris Our Way* Review recommended the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner to undertake individual and systemic advocacy and monitoring in relation to Aboriginal and Torres Strait Islander children in the child protection system as well as other areas where Indigenous children and families are disproportionately represented.

The Government committed, in the Parliamentary and Governing Agreement for the 10<sup>th</sup> Legislative Assembly, to fully implement all the recommendations from the *Our Booris, Our Way* Review, in collaboration with Aboriginal and Torres Strait Islander people and organisations.

Further extensive consultation was undertaken with the Aboriginal and Torres Strait Islander community in the ACT as part of the independent 2021 Protection of Rights Services Review. The Review made further recommendations on the establishment of a Commissioner, finding that while there would necessarily be some overlap in functions and powers, the role of a new Commissioner would complement existing statutory oversight roles relating to children and families.

In its response to the Review, the Government re-affirmed its commitment to establishing an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT and agreed to engage an Indigenous consultant to facilitate a co-design process led by Indigenous community members and organisations to design and establish the new Commissioner.

### Co-design process

The Justice and Community Safety Directorate engaged Distinguished Professor Larissa Behrendt and her team at the Jumbunna Institute for Indigenous Education and Research to facilitate a co-design process on the design of the new Commissioner. The co-design process was led by Associate Professor Paul Gray. The process aimed to develop and refine the proposed Commissioner's scope, functions, governance arrangements and recruitment process. Community dialogues, individual conversations, and a final refinement workshop were held in late 2021.

The *Our Booris Our Way* Implementation Oversight Committee, Aboriginal and Torres Strait Islander Elected Body, and Aboriginal community-controlled organisations as well as the ACT Human Rights Commission and government stakeholders were all involved in the co-design process.

The final report, prepared by the Jumbunna Institute, reports on the outcomes of this process including a proposed model for an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT.

The Government thanks the Jumbunna Institute for their expertise and skill in facilitating this important project and supporting the ACT community to design a Commissioner to promote the wellbeing of Aboriginal and Torres Strait Islander children and young people.

The Government also thanks all participants in the co-design project, who generously shared their expertise, experiences and advice to inform the design of the new Aboriginal and Torres Strait Islander Children’s Commissioner.

## Government response to proposed model

### Introduction

The ACT Government welcomes the report on the outcomes of the co-design process. The proposed model set out in the report provides a useful roadmap that provides clear direction for this important reform.

The Government agrees to all aspects of the proposed legislative model and notes the non-legislative enablers identified through the co-design process.

In line with the proposal developed during the co-design process, the Government will establish an Aboriginal and Torres Strait Islander Children’s Commissioner as an independent statutory authority who will work in collaboration with existing oversight mechanisms in the ACT. The new Commissioner will have a broad mandate to promote the rights of Aboriginal and Torres Strait Islander children and a mix of individual and systemic advocacy functions and powers.

The Government notes the support from co-design participants for the Aboriginal and Torres Strait Islander Children’s Commissioner to have powers in relation to ACT Government services delivered in Wreck Bay. The Wreck Bay community is in the Jervis Bay Territory, which is a non-self-governing Commonwealth territory. Any provision of services in the Jervis Bay Territory would require a request from the Commonwealth to provide additional services in the JBT, agreement from the ACT to consider this request and agreement between the Commonwealth and the ACT Governments on the scope and funding of a new service.

### Scope and purpose

Co-design proposal	Government response
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.	Agreed.
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.	Agreed.
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.	Agreed.

The Government will introduce an Aboriginal and Torres Strait Islander Children’s Commissioner with a mandate to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people, with a broad scope across all systems affecting this cohort and their families.

This broad mandate is in line with the outcomes of the co-design process as well as the original *Our Booris, Our Way* Review recommendation: “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”.

The Government supports a strong human rights-based approach to the role, linked to the *Human Rights Act 2004* (ACT) and relevant international instruments including the *UN Convention on the Rights of the Child* and *UN Declaration on the Rights of Indigenous Peoples*. Ensuring that the Commissioner has a focus on the importance of connectedness to family, community, culture and Country as critical to the best interests of Aboriginal and Torres Strait Islander children and young people is aligned with the promotion of cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities, which is enshrined in the *Human Rights Act*.

## Governance and connection

Co-design proposal	Government response
Clear statutory independence, established as a standalone office (not positioned within the ACT Human Rights Commission).	Agreed.
Clear expectations to engage continuously with all segments of the Aboriginal and Torres Strait Islander community of the ACT.	Agreed.
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.	Agreed.
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.	Agreed.

The Government will establish the Aboriginal and Torres Strait Islander Children’s Commissioner as an independent statutory office. The co-design report highlighted that the proposal for an independent Commissioner “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”.

The Aboriginal and Torres Strait Islander Children’s Commissioner will be independent of the ACT Human Rights Commission but it is envisaged that there will be a collaborative approach between these rights protection agencies. Participants in the co-design process emphasised the importance of the two agencies having a close working relationship to maximise impact for the community. Options for the physical

location of the Commissioner’s office are being explored and may include co-location in the same premises as the ACT Human Rights Commission in the initial phase of operation.

Continuous engagement with the Aboriginal and Torres Strait Islander community of the ACT, as proposed in the co-design report, will be critical to the success of this role. The *Our Booris, Our Way* Review identified this as a priority: “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 Government will include provisions in the legislation to ensure that regular community engagement is a requirement for the Aboriginal and Torres Strait Islander Children’s Commissioner.

The Government will also include a provision in the legislation that enables the new Commissioner to establish an Advisory Group at their discretion which can provide advice to inform the Commissioner’s activities and engagement.

Annual reporting to both the ACT Legislative Assembly and Aboriginal and Torres Strait Islander community, as proposed during the co-design process, will promote transparency and provide an important avenue for the new Commissioner to highlight their activities and areas of focus.

## Functions and powers

Co-design proposal	Government response
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.	Agreed.
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 Commissioner, as well as strong provisions to enable access to Aboriginal and Torres Strait Islander children, particularly in closed institutions.	Agreed.
Inclusion into scope of role the opportunity to provide advice to government regarding relevant policy development activities, at the discretion of the Commissioner.	Agreed.
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.	Agreed.
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.	Agreed.

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.

Agreed.

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The Government will establish an independent Commissioner with the powers and functions they need to promote the rights of Aboriginal and Torres Strait Islander children and young people. This includes ensuring the Commissioner has a combination of individual and systemic advocacy functions, has access to the information that they need to fulfil their role, and can undertake monitoring and oversight functions.

The *Our Booris, Our Way* Review identified that individual advocacy is critical for the success of this new role. A strong focus on individual advocacy will differentiate the new ACT Aboriginal and Torres Strait Islander Children’s Commissioner from similar Commissioners in other Australian jurisdictions who have a focus on systemic advocacy. The Government will introduce legislation that allows the new Commissioner to support children and their families through individual advocacy and to join matters at any stage, including as a party in court proceedings.

The co-design process identified the important links between individual and systemic advocacy. The Government will ensure that the Commissioner’s systemic review powers enable them to undertake inquiries into matters affecting the rights of Aboriginal and Torres Strait Islander children and young people in the ACT and to make recommendations for system improvements.

The Government will introduce legislation to enable active oversight of government systems’ interactions with Aboriginal and Torres Strait Islander children and young people in the ACT. Given the overlap in functions and powers between the Public Advocate and the new Aboriginal and Torres Strait Islander Children’s Commissioner, Government will seek to avoid duplication in monitoring functions between the two roles, while ensuring equivalent access to information and collaboration between the two office holders.

Access to information and information sharing will be critical to the Commissioner’s individual and systemic advocacy functions. The Government will continue to work through the detail of what is required in this area with stakeholders to inform development of the legislation.

## Selection and appointment

Co-design proposal	Government response
Guidance that the appointment process is to be undertaken in partnership with the Aboriginal and Torres Strait Islander community.	Agreed.
Appointed by Minister, based on recommendations from transparent and collaborative appointment process.	Agreed.

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The Government agrees with co-design participants that the involvement of the Aboriginal and Torres Strait Islander community will be an important aspect of future recruitment processes for the new Commissioner. The Government will include a requirement in the legislation that the ACT Aboriginal and Torres Strait Islander community must be involved as part of the recruitment and appointment process.

The Government proposes to align the appointment process for the Aboriginal and Torres Strait Islander Children's Commissioner with appointments of Commissioners in the ACT Human Rights Commission. These appointments are signed off by two Ministers, consistent with this recommendation.

The Government is committed to a transparent and collaborative appointment process for this role.

## Non-legislative enablers

The Government notes the recommendations for resourcing of the Commissioner's functions including in relation to staff and community engagement. The Government will closely monitor the ongoing resourcing needs of the Commissioner, and will work with the successful appointee to ensure any requests for enhanced resourcing are properly considered through the budget process.

Following the establishment of the Aboriginal and Torres Strait Islander Children's Commissioner, the Government will work with community stakeholders to ensure that an appropriate and transparent recruitment process is undertaken to appoint the Commissioner.

Government will work with the new Commissioner in the establishment phase to consider any adjustments needed to the role, and to determine the appropriateness of a future review of the role design.

The co-design report includes proposals for non-legislative enablers which will be useful considerations for the Aboriginal and Torres Strait Islander Children's Commissioner when they are appointed. This includes a collaborative work agreement with the Human Rights Commission and the importance of developing effective relationships with government. Government will work with the new Commissioner to support them to establish collaborative working arrangements with government and other stakeholders.

## Next steps

The establishment of an Aboriginal and Torres Strait Island Children's Commissioner for the ACT will contribute to the wellbeing of Aboriginal and Torres Strait Islander children and young people through individual and systemic advocacy. This oversight and monitoring body will be independent from government, have strong focus on human rights in its work across systems, and engage with community and institutions to promote the rights of Aboriginal and Torres Strait Islander children, young people and their families.

This reform is part of the Government's commitment to implementing all recommendations from the *Our Booris, Our Way* Review. The co-design process, facilitated by the Jumbunna Institute for Indigenous Education and Research, provides a roadmap for the next steps forward.

The Government will develop legislation to establish the Aboriginal and Torres Strait Islander Children's Commissioner for introduction into the Legislative Assembly, informed by the proposed model set out in the co-design report. As part of this work, Government will continue to engage with stakeholders including the Our Booris Our Way Implementation Oversight Committee, Aboriginal and Torres Strait Islander Elected Body, and Aboriginal community-controlled organisations to ensure that the Commissioner has the framework, powers and functions needed to achieve positive outcomes for children and young people.