



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),
Dr Marisa Paterson MLA

ANSWER TO QUESTION ON NOTICE

ELIZABETH KICKERT MLA: To ask the Minister for Human Rights

Ref: Budget Statement D, Strategic Objective 4

In relation to: Aboriginal and Torres Strait Islander Children's Commissioner

1. Given that the ACT Government agreed to the Our Booris, Our Way recommendation that the Aboriginal and Torres Strait Islander Children's Commissioner be given not just 'review and advocacy roles' but also the 'additional capacity to specifically intervene and engage in child protection processes', what specific intervention powers have those drafting the needed legislation been instructed (or will be instructed) to include?
2. Given that the Children and Young People Commissioner's functions and powers include individual and systemic advocacy, investigation, monitoring, and joining matters (including as a party in court proceedings), what additional functions and powers have those drafting the needed legislation been instructed (or will be instructed) to include for the new Aboriginal and Torres Strait Islander Children's Commissioner?
3. What is the expected date by which the legislation creating this new office will be tabled, and what needs to happen between now and then?
4. Can the minister please break down by year what the \$3,592,000 for the new Aboriginal and Torres Strait Islander Commissioner will be spent on this year and across the forward estimates?
5. What will the \$25,000 of capital outlay associated with the new Aboriginal and Torres Strait Islander Commissioner be spent on this year?
6. Given that last year's budget provided \$311,000 to fund a temporary Aboriginal and Torres Strait Islander Children and Families Advocate (plus one staff) pending the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner, and given that JACS began recruitment for the position in December 2021, can the minister explain the reason/s why this position has still not been filled?
7. Have efforts to fill this advocate position ceased, and if so, why?
8. What will happen (or has happened) to the funding appropriated for this advocate position?

Tara Cheyne MLA: The answer to the Member's question is as follows: –

1. The Government is committed to establishing a permanent Aboriginal and Torres Strait Islander Children's Commissioner for the ACT, as recommended by the *Our Booris, Our Way* Review. The Justice and Community Safety Directorate engaged the Jumbunna Institute for Indigenous Education and Research at UTS to facilitate a co-design process with ACT stakeholders to inform the design of this role. The co-design process included participation from the Our Booris, Our Way Implementation Oversight Committee, the Aboriginal and Torres Strait Islander Elected Body, Aboriginal community-controlled organisations, the Human Rights Commission, and government stakeholders.

The process aimed to develop and refine the proposed Commissioner's scope, functions, governance arrangements and recruitment process.

I tabled the final co-design report and Government response in the Legislative Assembly on 4 August 2022. The Government response agreed to all elements of the proposed legislative model developed by co-design participants.

One of the proposed elements set out in the final co-design report was that the Commissioner be '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'. The report provides further examples, including the need for the Commissioner to have specific authority and capacity to intervene and engage in child protection processes. The Government has agreed to this proposal and will give effect to it in the legislation which establishes the Aboriginal and Torres Strait Islander Children's Commissioner.

2. The Government has agreed to all aspects of the proposed legislative model in the Jumbunna report of the co-design process. In line with this proposal, 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 final co-design report noted that while the proposed model shares a number of legislated functions and powers with the existing role of the Public Advocate and Children and Young People Commissioner, the Aboriginal and Torres Strait Islander Children's Commissioner is expected to exercise these similar functions and powers in a distinct way that reflects the rights of Aboriginal and Torres Strait Islander children as Indigenous children and an understanding that their best interests are grounded in their connections to family, community, culture and Country. To this end, as proposed in the co-design process, it is intended that the legislation will guide the Commissioner to focus on Aboriginal and Torres Strait Islander children and young people from a cultural standpoint when exercising their functions and powers.

The new Commissioner will have strong connections to the Aboriginal and Torres Strait Islander community. In line with the co-design proposal, it is intended that the legislation will include clear expectations to engage continuously with all segments of the Aboriginal and Torres Strait Islander community of the ACT; enablers for the establishment of advisory bodies constituted of Aboriginal and Torres Strait Islander community members, including children and young people; and a clear expectation for transparency and accountability including at least annual reporting that is independent from government to both the Aboriginal and Torres Strait Islander community and the ACT Legislative Assembly.

3. The Government is now developing legislation to establish the Aboriginal and Torres Strait Islander Children's Commissioner, which I intend to introduce into the Legislative Assembly later this year.
4. In the 2022-23 Budget, the Government has committed to fully fund the Aboriginal and Torres Strait Islander Children's Commissioner. \$3.6 million over four years will go to establish and staff the Commissioner and their office – so that there is a team dedicated to

improving services and outcomes for Aboriginal and Torres Strait Islander children and young people. The Commissioner will be supported by 4 staff who will undertake a range of functions including community engagement, individual and systemic advocacy, and policy functions. This funding allocation also includes funding for outreach and community engagement activities.

This Budget commitment also continues funding for an interim Aboriginal and Torres Strait Islander Children and Families Advocate until the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner.

5. \$25,000 capital outlay has been allocated in the 2022-23 Budget for the Aboriginal and Torres Strait Islander Children's Commissioner. This funding will support fit out of the office premises for the Commissioner and their staff.
6. Despite a robust recruitment process, with a panel involving distinguished local and interstate Aboriginal and Torres Strait Islander members, the Aboriginal and Torres Strait Islander Children and Families Advocate role has not yet been filled. The recruitment process is ongoing.
7. The recruitment process for the Aboriginal and Torres Strait Islander Children and Families Advocate role is ongoing.
8. The funds allocated in the 2021-22 Budget for the Aboriginal and Torres Strait Islander Children and Families Advocate were unspent in that financial year and returned to the Budget. The 2022-23 Budget makes continuing provision for the Advocate as an Executive level role.

Approved for circulation to the Select Committee on Estimates 2022-2023

Signature:



Date:



By the Minister for Human Rights, Tara Cheyne MLA