



ACT HUMAN RIGHTS COMMISSION

INCORPORATING THE:

CHILDREN & YOUNG PEOPLE COMMISSIONER

DISABILITY SERVICES COMMISSIONER

DISCRIMINATION COMMISSIONER

HEALTH SERVICES COMMISSIONER

HUMAN RIGHTS COMMISSIONER

ANNUAL REPORT

2013 – 2014

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This report is available in print and electronically.

The image on the front of this report (*Health Care 4 Every 1*) is by Victoria, Year 9, and was submitted as an entry to the 2009 Human Rights Commission Art Award.

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ACT HUMAN RIGHTS
COMMISSION

TRANSMITTAL CERTIFICATE

Mr Simon Corbell MLA
Attorney-General
Legislative Assembly for the ACT
CANBERRA ACT 2601

Dear Attorney-General

This Report has been prepared under section 6(1) of the *Annual Reports (Government Agencies) Act 2004* and in accordance with the requirements under the Annual Report Directions. It has been prepared in conformity with other legislation applicable to the preparation of the Annual Report by the ACT Human Rights Commission (the Commission).

We hereby certify that the attached Annual Report is an honest and accurate account and that all material information on the operations of the Commission during the period 1 July 2013 to 30 June 2014 has been included.

We also certify that fraud prevention has been managed in accordance with Public Sector Management Standard 2, Part 2.

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you cause a copy of the Report to be laid before the Legislative Assembly within 3 months of the end of the financial year.

Yours sincerely

Mary Durkin
Disability & Community Services
Commissioner
Health Services Commissioner

Alasdair Roy
Children & Young People
Commissioner

Helen Watchirs
Discrimination Commissioner
Human Rights Commissioner

18 September 2014

CONTENTS

SECTION B – PERFORMANCE REPORTING	1
B1: ORGANISATIONAL OVERVIEW	1
B2: PERFORMANCE ANALYSIS	5
DISABILITY & COMMUNITY SERVICES COMMISSIONER	5
HEALTH SERVICES COMMISSIONER	13
HEALTH SERVICES COMMISSIONER - SERVICES FOR OLDER PEOPLE	26
HUMAN RIGHTS & DISCRIMINATION COMMISSIONER	29
CHILDREN & YOUNG PEOPLE COMMISSIONER	46
B3: COMMUNITY ENGAGEMENT & SUPPORT	60
B4: ECOLOGICALLY SUSTAINABLE DEVELOPMENT	61
SECTION C - GOVERNANCE & ACCOUNTABILITY REPORTING	62
C1: INTERNAL ACCOUNTABILITY	62
C2: RISK MANAGEMENT & INTERNAL AUDIT	62
C3: FRAUD PREVENTION	62
C4: LEGISLATIVE ASSEMBLY INQUIRIES & REPORTS	63
C5: AUDITOR-GENERAL & OMBUDSMAN REPORTS	63
SECTION D - LEGISLATION BASED REPORTING	64
D1: PUBLIC INTEREST DISCLOSURE	64
D2: FREEDOM OF INFORMATION	64
D3: HUMAN RIGHTS ACT 2004	67
D4: TERRITORY RECORDS ACT	68
D5: MODEL LITIGANT GUIDELINES	68
D6: NOTICES OF NONCOMPLIANCE	68
D7: BUSHFIRE RISK MANAGEMENT	68
D8: COMMISSIONER FOR THE ENVIRONMENT	68
SECTION E - HUMAN RESOURCES MANAGEMENT REPORTING	69
E1: HUMAN RESOURCES MANAGEMENT	69
E2: LEARNING & DEVELOPMENT	69
E3: WORK HEALTH & SAFETY	69
E4: WORKPLACE RELATIONS	69
E5: STAFFING PROFILE	70
SECTION F - FINANCIAL MANAGEMENT REPORTING	72
F1: FINANCIAL MANAGEMENT	72
F2: FINANCIAL STATEMENTS	72
F3: CAPITAL WORKS	72
F4: ASSET MANAGEMENT	72
F5: GOVERNMENT CONTRACTING	72
F6: STATEMENT OF PERFORMANCE	73
COMPLIANCE INDEX	75
ALPHABETICAL INDEX	76

**ACT HUMAN RIGHTS COMMISSION
2013-2014 Annual Report**

SECTION B – PERFORMANCE REPORTING

B1: Organisational Overview

The ACT Human Rights Commission (the Commission) is an independent statutory agency established by the *Human Rights Commission Act 2005* (the HRC Act).

Structure of the Commission

The HRC Act establishes five members of the Commission:

- The Children & Young People Commissioner.
- The Disability & Community Services Commissioner.
- The Discrimination Commissioner.
- The Health Services Commissioner.
- The Human Rights Commissioner.

Three people are currently appointed to cover the work of the five positions:

- Mary Durkin: Disability & Community Services Commissioner (appointed 2009), and Health Services Commissioner (appointed 2007).
- Alasdair Roy: Children & Young People Commissioner (appointed 2008).
- Helen Watchirs: Discrimination Commissioner (appointed 2004), and Human Rights Commissioner (appointed 2004).

The Human Rights & Discrimination Commissioner is currently a part time position (0.5FTE).

The Commission does not have an administrative head, and operates from a model of collegiality. Each of the three Commissioners has equal standing within the Commission, and equal decision-making authority.

Each of the three Commissioners has statutory responsibilities in accordance with the titles of their position, and the Health Services Commissioner also has responsibilities in relation to services for older people. At this time, the HRC Act does not prescribe any functions for the Community Services Commissioner.

Additionally, within the Commission, the Children & Young People Commissioner is also responsible for the management and oversight of all of the Commission's corporate and administrative functions. These functions account for approximately 30% of the Children & Young People Commissioner's total workload.

Objects of the Human Rights Commission Act

Section 6 of the HRC Act notes that the main object of the Act is to promote the human rights and welfare of people living in the ACT, and that this is to be achieved by establishing a Commission that will:

- Promote the provision of community education, information and advice in relation to human rights.
- Identify and examine issues that affect the human rights and welfare of vulnerable groups in the community.
- Make recommendations to government and non-government organisations on legislation, policies, practices and services that affect vulnerable groups in the community.
- Promote an understanding and acceptance of, and compliance with, the HRC Act, the *Discrimination Act 1991* (the Discrimination Act), and the *Human Rights Act 2004* (the HR Act).

- Promote improvements in the provision of services for children and young people, disability services, health services, and services for older people.
- Promote the rights of users of services for children and young people, disability services, health services, and services for older people.
- Promote an awareness of the rights and responsibilities of users and providers of services.
- Provide an independent, fair and accessible process for the resolution of complaints about services for children and young people, disability services, discrimination, health services, and services for older people.
- Provide a process to encourage and assist users and providers of services for children and young people, disability services, health services, and services for older people, to make improvements in the provision of services.
- Foster community discussion, and the provision of community education and information, about the operation of the Commission.

Roles & functions of the Commission

The roles and functions of the Commission are established under s14 of the HRC Act, and include:

- Encouraging the resolution of complaints made under the HRC Act, and assisting in their resolution by providing an independent, fair and accessible process for resolving the complaints.
- Encouraging and assisting users and providers of services for children and young people, disability services, health services, and services for older people, to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality.
- Encouraging and assisting people providing services for children and young people, disability services, health services, and services for older people, and people engaging in conduct that may be complained about under this Act, to develop and improve procedures for dealing with complaints.
- Promoting community discussion, and providing community education and information, about:
 - the HRC Act and related Acts.
 - the operation of the Commission.
 - the procedures for making complaints.
- Identifying, inquiring into and reviewing issues relating to matters that may be complained about under this Act, and reporting to the Minister, and other appropriate entities, about each inquiry and review, or advising the Minister and other appropriate entities about the inquiry and review.
- Referring to the Public Advocate of the ACT (PAACT) advocacy matters about individual children or young people for whom the chief executive under the *Children and Young People Act 2008* has parental responsibility.
- Advising the Minister about any matter in relation to the HRC Act or a related Act.
- Collecting information about the operation of the HRC Act and related Acts, and publishing the information.
- Exercising any other function given to the commission under this Act or another Territory law.

Additionally, the Children & Young People Commissioner, the Discrimination Commissioner, the Health Services Commissioner, and the Human Rights Commissioner each have a number of specific functions.

The Children & Young People Commissioner is must endeavour to:

- Consult with children and young people in ways that promote their participation in decision making.
- Listen to and seriously consider the views of children and young people.
- Ensure that the Commission is accessible to children and young people.

The Discrimination Commissioner is required to:

- Promote the right of people to be free from unlawful discrimination and sexual harassment.
- Promote the recognition and acceptance within the community of the equality of men and women and of the principle of equality of opportunity for all people.

The Health Services Commissioner is required to:

- Jointly consider, with the relevant National Health Practitioner Boards, all complaints and notifications about health professionals' adherence to standards and suitability to practise requirements.

And, the Human Rights Commissioner is required to:

- Provide community education about human rights.
- Advise the Attorney-General on the *Human Rights Act*.

Other territory laws that give the Commission functions are the *Children & Young People Act 2008*; the *Health Practitioners Regulation National Law (ACT) Act 2010*; the *Health Professionals Act 2004*; the *Health Records (Privacy & Access) Act 1997*; and the *Human Rights Act 2004*.

Clients & stakeholders

The Commission has a broad range of clients and stakeholders, including:

- Users of services for children and young people, disability services, health services, and services for older people and their carers.
- Providers of services for children and young people, disability services, health services, and services for older people.
- Public authorities, and members of the public engaged with public authorities (as defined by the HR Act).
- Consumer, client and advocacy groups.
- The ACT Government.

Additionally, each Commissioner maintains connections with agencies and individuals discharging similar functions in other jurisdictions:

- The Children & Young People Commissioner is a member of the *Australian Children Commissioners & Guardians*.
- The Disability & Community Services Commissioner is a member of the *Australian & New Zealand Disability Services Commissioners*.
- The Health Services Commissioner is a member of the *Australasian Health Complaints Commissioners*.
- The Human Rights & Discrimination Commissioner is a member of the *Australian Council of Human Rights Authorities*.

Organisational environment & relationship to other agencies

Section 16 of the HRC Act states that *'the Commission is not subject to the direction of anyone in relation to the exercise of a function under [the HRC Act] or a related Act...'*. The only exception (as stated at s17 of the HRC Act) is that *'the Minister may, in writing, direct the Commission to inquire into and report to the Minister in relation to a matter that can be complained about under the HRC Act'*.

The Commission is, however, not totally independent, as it is subject to the Justice & Community Safety Directorate (JACSD) in relation to financial reporting and public sector management issues. Additionally, the Commission is dependent on Shared Services ICT for information management and information technology support.

Planning framework & direction setting mechanisms

Throughout the reporting period, overall direction setting for the Commission continued to be guided by the *ACT Human Rights Commission Strategic & Operations Plan 2013-2015* (and the Commission's preceding Strategic & Operations Plan).

The 2013-2015 Strategic & Operations Plan articulates a clear vision for the Commission:

- An ACT community in which rights are respected and promoted, responsibilities are understood and access to quality services is protected.

The Plan also identifies a number of core values that underpin the work of the Commission:

- Fairness and independence.
- Respect and dignity.
- Accessibility and responsiveness.
- Learning and achievement.

Additionally, the Plan outlines a number of clear strategies to allow the Commission to continue to improve service delivery in the areas of:

- Community engagement.
 - Complaints handling.
 - Compliance.
 - Policy and law reform.
 - Accountability.
 - Personal and professional development.
-

The performance of each of the three Commissioners is outlined below in the following order:

- The Disability & Community Services Commissioner (page 5).
- The Health Services Commissioner (page 13).
- The Health Services Commissioner - services for older people (page 26).
- The Human Rights & Discrimination Commissioner (page 29).
- The Children & Young People Commissioner (page 46).

Disability & Community Services Commissioner

Complaints received by the Disability & Community Services Commissioner increased from those received in the previous year. While the higher number of complaints was not statistically significant, the increase may represent a greater awareness in the community of issues relating to disability because of the imminent introduction of the National Disability Insurance Scheme. It may also have been attributable to an increasing awareness of the role of the Commissioner as efforts to promote this function continued during the year.

As noted in the previous reporting period, the visibility of the role of the Commissioner has been an ongoing problem as the title of the Commission does not reflect the work of the Commissioner's office. It is often a source of confusion for the public who consider that our focus is quite different to the separate work undertaken by the respective Commissioners. This prompted the Commissioner to develop a strategy of promoting her role separately from that of the Commission to increase community awareness and understanding.

The Commissioner noted during the previous reporting period that additional support from the Community Services Directorate would supplement her resources from one staff member to two, for a two year period. While this position did not supplement the core business of the Commissioner's office and was located predominately offsite, it contributed significantly to the development of the National Disability Insurance Scheme (NDIS) in the ACT, including some emphasis in the latter months of the reporting period on safeguards for the roll out of the NDIS nationally.

Complaints & enquiries

Complaints made to the Disability & Community Services Commissioner increased in the reporting period after a decrease in complaints in the previous year. Twenty-seven complaints were allocated to the Commissioner, compared to the 22 complaints received in the previous reporting period, representing a 23% increase.

As noted above, complaints may have increased because of a greater national focus on disability issues with the imminent commencement of the NDIS. The NDIS was preceded during the reporting year with two rounds of additional funding for people with disabilities through an Enhanced Service Offer (ESO) to fund additional supports that may have not previously been available. The Commissioner received only one enquiry about the ESO, which was not followed up with a written complaint.

A continuing theme in previous reports has been a concern that the relatively small number of disability services complaints reflects reluctance on the part of people with disabilities to complain because of fear of repercussion. This is regularly stated by people with disabilities when they

contact the office. It is hoped that the introduction of the NDIS, which will provide people with disabilities their own funding (instead of direct funding to service providers), will increase people's willingness to assert their rights to receive respectful and appropriate services.

The Commissioner received 40 enquiries regarding delivery of services to people with a disability and/or their carers, a number of which proceeded to written complaints.

Of the 27 complaints received in this reporting period, 13 were about community service providers and 14 related to government providers (across four directorates and one statutory office). Twelve complaints were made by the individual receiving the service being complained about; ten were made by parents, carers or guardians on behalf of a person with a disability; one was made by an advocate on behalf of the person; and the remaining five were made by another person, usually referrals from service providers about individuals of concern.

One of the complaints was from 15 parents or guardians who were concerned about the closure of an ACT Government-managed respite service.

Case study

The Disability & Community Services Commissioner initiated a consideration after receiving a complaint from multiple families about the closure of a disability respite facility. It was alleged that there was a lack of consultation with clients and misuse of available data in deciding to close the facility. It was also alleged that unreasonable respite options and transition periods were offered to parents and carers. The complainants considered that closure of the facility posed an unacceptable risk to clients, families and their carers. The Commissioner invited the provider to respond to the concerns raised. The provider detailed the decision making process and the context in which the decision was made to close the facility. The Commissioner provided an analysis of the response to the families, indicating that she did not consider the response to be unreasonable. The Commissioner invited any families who experienced disadvantage as a result of the closure to lodge individual complaints. No complaints were received.

Complaint issues

The major themes and trends in relation to complaints were conduct of staff (26%), accommodation services for people with a disability (11%), supported employment (11%), transport (11%), education (11%) and personal care services (7%).

The conduct issues arose from a number of referrals from service providers or concerned third parties, which represents a shift in the source of complaints to the Commissioner. Service providers who are concerned about staff or former staff have been reluctant to report concerns to the Office of Regulatory Services (ORS), which administers the Working with Vulnerable People (WWVP) Scheme, because of privacy issues. The Commissioner is able, following the investigation of a matter, to provide a third-party report to the ORS under the *Human Rights Commission Act 2005*, with recommendations that the ORS conduct its own inquiries into a matter if a person applies for a WWVP clearance. The Commissioner only provides such reports to ORS following appropriate procedures to provide the person with natural justice i.e. the opportunity to respond to any adverse comment made by the Commission following investigation. The Commission has written to the Attorney-General recommending that the legislation for the WWVP Scheme be amended to enable reporting to ORS by service providers when they, in good faith, have concerns about the suitability of persons to work with vulnerable people.

Case study

A man complained to the Commission about inadequate service from a disability service provider. The man said he had particular needs in relation to his care and had received reassurances from the provider that staff were adequately trained to meet those needs. The man said after engaging the service provider he discovered that staff did not have the skills required and he had to provide training to a small number of carers. The man said the provider was not responsive to his concerns and did not provide reasonable assistance to find a resolution. The Commission invited the service provider to respond to the man's concerns and, through consultation, agreement was reached about changes to applicable policies and procedures, including client service agreements, record keeping procedures, training policies and support for staff in managing challenging client behaviours.

Complaint outcomes

Throughout the reporting period the Commissioner's office finalised 33 complaints. In line with the Commissioner's strategy to assist service providers and complainants to resolve matters themselves, many outcomes were achieved in this way. Complaint outcomes included:

- A personal care provider and their client resolved issues regarding quality of care following informal intervention from the Commission. The provider agreed to amend a number of related policies and procedures and also agreed to ensure clients were made aware of these as a part of client orientation.
- Following advice from Commission staff, a supported employment provider worked with a client to resolve a number of grievances regarding their level of service. The provider agreed to work more closely with the client to achieve the outcomes being sought and to improve communication and timeliness of responses.
- A service provider worked closely with a client to find appropriate accommodation to enable her to continue to access essential services, her social and support network and meet her complex medical needs.
- Following advice from Commission staff a service provider in collaboration with other service agencies put in place measures to improve the standard of care to a client and maintain and monitor service standards into the future.

Case study

A report was made to the Commission regarding inappropriate and potentially unlawful conduct by a disability support worker. The Commissioner initiated a consideration and invited a response from the service provider. The Commission worked closely with the service provider to identify how its response to the incident could have been better managed and how it could reduce the risk of a similar incident from occurring again. Following consultation with the service provider and other relevant agencies the Commissioner made a number of recommendations. The provider agreed to modify policies and procedures and has continued to liaise with the Commission in relation to implementation of the Commissioner's recommendations.

Satisfaction levels

The Commission measures satisfaction with its services by requesting that the parties complete an evaluation form on the closure of complaints. High levels of satisfaction with the Commission's services are outlined elsewhere in this Report. Comments from respondents in relation to disability services included:

- It was good for us to see our procedures/forms are up to date and accurate. David was very thorough and gave us lots of suggestions.
- Fair non-biased third party assessing what we do and giving advice if needed. Can confirm the process is fair and equitable.
- Improvement of processes within organization.
- It was a nerve-wracking process but we found the investigators reasonable and treated us with respect and fairness.
- As a result our changed processes improve our service and reduce risks.
- I would like to thank David for his handling of my complaint and commend him for his most courteous manner.

Case study

A man complained to the Commission regarding poor customer service from a provider who was supplying him with equipment to support his disability. The man said he attended the office of the service provider to exchange a piece of faulty loan equipment and the receptionist was unhelpful and hostile towards him. The Commission invited a response from the provider who apologised for his unsatisfactory experience and gave an explanation about the equipment services available to the man. They confirmed that permanent equipment had been supplied to him since he lodged the complaint. The provider explained that witnesses to the incident had given a different version of events to those described by the man. The Commission was unable to determine which version was correct but was satisfied that the man had appropriate access to equipment to meet his needs and the case was closed.

Conciliation

Three disability service matters were referred to conciliation during the reporting period. While other matters were referred to the Commissioner's conciliator for consideration, they were resolved in the process of negotiation leading up to a potential conciliation.

The timing of conciliation has a significant influence on the likely success of the outcomes. The Commission does not tend to hear about the complaints that were resolved directly between a service provider and a client, so there are undoubtedly many instances where service providers are welcoming complaints and managing these effectively. The complaints that the Commission receives from complainants who have had a lengthy relationship with the service provider tend to be more complex and difficult to resolve as there are often a series of things that have occurred over time that have not been managed well. This can build resentment and damage the trust that is of paramount importance to an effective ongoing relationship. The Commission's practice of referring complaints to conciliation early where there is an ongoing relationship has enabled some matters to be resolved very quickly and this on its own has been influential in restoring interactions between the parties.

Case study

The sister of a young man with a range of complex health issues made a complaint about a mental health service treating her brother inappropriately due to his intellectual disability. She also raised concerns about communication between service providers, including disability services. The issue with the disability service was resolved during the course of conciliation, which was held between the woman, her mother and mental health services. A number of agreements were reached to ensure that staff would provide a safe and effective service to the brother and included procedures to promote more effective communication between the family and service providers.

The Commissioner's office will continue to work with both service providers and people with disabilities and their families to promote effective communication and service provision. The Commissioner is hopeful that the National Disability Insurance Scheme will also result in a greater choice of service providers who are better resourced to assist people with disabilities and their families.

Working partnerships with key stakeholders

As in the previous reporting period, the Commissioner reduced the level of outreach activities undertaken in earlier years, with a view to focusing on strategic initiatives. The Commissioner continued to meet regularly with executives from the Community Services Directorate, the Minister the ACT Disability Advisory Council and Ethnic Disability ACT. Meetings were held with a number of service providers and advocacy organisations regarding complaint issues. The Commissioner held a number of meetings with the newly established official visitors for disability services.

The Commissioner worked with the community sector in relation to the development of a crisis service for women with disabilities seeking to escape domestic violence and sexual assault, discussed elsewhere in this report.

Two meetings were held during the reporting period with Australian and New Zealand Disability Services Complaints Commissioners. These meetings are a valuable opportunity for the Commissioner to discuss issues with colleagues who undertake similar work to the Commissioner and to inform national disability initiatives, in particular the development of safeguards for the roll out of the National Disability Insurance Scheme.

Community engagement & education

As noted during the previous reporting period, the Commissioner significantly reduced the level of community engagement activities undertaken in earlier years, with a view to focusing on strategic initiatives, primarily in relation to the NDIS. As noted earlier, a focus has been on promoting the functions of the Commissioner's office separately from the Commission, due to ongoing confusion in the public about the diverse jurisdictions covered by the Commission.

During the year, the Commissioner and her staff conducted a number of community engagement activities designed to reach a broader public than can be achieved by site visits and presentations to service providers and staff. The Commissioner's office continued, however, to deliver lectures to CIT students undertaking training to be disability support workers.

The Commissioner met with Ethnic Disability ACT to discuss specific concerns that arise for people with disabilities from culturally and linguistically diverse backgrounds and ways to better target this population. Promotional materials were developed to inform the community about avenues for complaint to the Commissioner's office. Staff and the Commissioner also participated in a stall at the National Multicultural Festival to promote the Commission's work in this area.

A number of media opportunities were also progressed, with advertising in the Canberra Times supplement on disability services. The Commissioner provided comment to the media on a number of disability issues and also wrote to the Editor of the Canberra Times to seek assistance in ensuring that reporters are aware of issues associated with the media's portrayal of people with disabilities. No response was received to this letter. The Commissioner also participated in a 2XX panel forum with Graeme Innes, the national Disability Discrimination Commissioner, on people with disabilities and the criminal justice system.

Significant dates in the calendar were celebrated with the Commissioner releasing the Commission's Disability Action Plan on the International Day of People with Disability, and attending an International Women's Day breakfast organized by the ACT Women's Services Network.

A member of the Commissioner's staff was represented on the panel for the ACT Disability Support Worker Awards and the Commissioner attended the presentation ceremony. The Commissioner and her Principal Adviser also marched in the Annual Gay and Lesbian Mardi Gras in Sydney with the People With Disabilities float.

Promotional materials were updated during the reporting period and distributed at the Multicultural Festival, the Choice and Control Expo, the Mental Health and Wellbeing Expo and the Post School Options Expo. The Commissioner also used Twitter to promote events and issues associated with disability.

Strategic work

The Commissioner contributed to policy debates through meetings and submissions. As well as the substantial work on a number of specific initiatives discussed below, comments were provided on a range of matters, including:

- The ACT Transport Plan.
- Design of the new court precinct in relation to disability access.

- Disability ACT's restraint policy, through independent membership on the Restrictive Practices Committee.
- The National Restrictive Practices Framework.
- Disability ACT's complaint management policies.
- Disability considerations relating to the Royal Commission into Institutional Responses to Child Sexual Abuse.
- A recommendation to the Attorney General, in conjunction with the Victims of Crime Commissioner, that a Disability Justice Strategy be developed for the ACT.
- The ACT's progress report on the National Disability Strategy.
- An intervention in the ACT Civil and Administrative Tribunal in the *Matter of ER* regarding the capacity of a woman to make her own decisions.
- The application of the Working with Vulnerable People Scheme to people with disabilities who are employees.
- The ACT contribution to the national report on the Convention to Eliminate All Forms of Discrimination Against Women.
- The Review of the ACT's Respect, Equity and Diversity Framework.

Disability Action Plan

The Commissioner's office initiated the development of a Disability Action Plan (DAP) for the Human Rights Commission during the reporting period. The resulting DAP was launched on the International Day of People with Disability on 3 December 2013 and copies were provided to relevant Ministers. The DAP is championed by the Commissioner, with a staff steering committee taking responsibility for the implementation of a number of the initiatives in the Plan. The Commissioner met with the Disability Advisory Council, who agreed to act as the reference group for ongoing monitoring of the Plan.

A number of initiatives in the DAP have been progressed. A Disability Access Audit was commissioned to ensure that any barriers to accessing the Commission, and the premises in which the Commission is located, are addressed. The recommendations of the Audit were being progressed at the end of the reporting period. The Commission's website has been reviewed and changes are being progressed to ensure that it complies with the WCAG 2.0 AA standard for accessibility for people with disabilities. The Commission became a member of Australian Network on Disability and the Commissioner spoke to a meeting of the Network about the role of the Commission in relation to disability issues.

Staff from the Commissioner's office spoke to the ACT Legal Aid Forum about the Commission's processes in developing the DAP and to encourage the development of a sector-wide DAP for the legal community.

The Commissioner met with the Commissioner for Public Administration to discuss progress on the Disability Employment Strategy in the ACT public sector. She also presented to the People and Performance Council to encourage the development of DAPs in ACT Directorates and agencies, and to discuss ways in which to progress the Disability Employment Strategy. It was agreed that disability awareness training in the public sector is warranted. Towards the end of the reporting period the Commissioner was in consultation with NICAN regarding possibilities for the Rebus Theatre Forum to present plays on disability awareness to the public sector. Rebus is an interactive theatre group, comprised of actors with and without disabilities. The Commissioner committed to fund a Forum in the coming reporting period.

Official visitors

Two official visitors were appointed during the reporting period to conduct visits to people with disabilities in specified places of accommodation. The Commissioner has had regular meetings and contact with the official visitors for disability services. The official visitors have referred some issues

of concern to the Commissioner, when informal processes have failed to produce positive results. The formal powers available to the Commissioner to facilitate the resolution of concerns have been valuable in this respect.

The Commissioner was also nominated to represent the Commission on the newly established Official Visitors Board. The Board oversees administrative arrangements for the Official Visitors. The Commissioner consults with the official visitors who undertake visits to places that come under the Commission's jurisdiction and provides the Board with feedback in relation to the effectiveness of arrangements. The Commissioner also provided comments on public material to promote the existence of official visitors and how to contact them.

National Disability Insurance Scheme

The Commissioner was appointed during the previous reporting period to be a member of the ACT Expert Panel for the development of the National Disability Insurance Scheme (NDIS) in the Territory. The Commissioner's main focus on the Expert Panel was the implementation of appropriate safeguards in the development of the NDIS. Many people do not have natural supports around them that are automatically available to others, such as family and neighbourhood support networks. Ensuring that there are adequate safeguards at the service provider and community levels will be imperative for this most vulnerable group of people. Work in this area was conducted by the Commissioner's Principal Adviser, who has been seconded to the NDIS Taskforce for a period of two years. This work focussed mainly on the development of amendments to the *Disability Services Act 1991*. The Principal Adviser developed and consulted on legislative amendments to ensure that safeguards in the current system were carried over to the new regime with the implementation of the NDIS. The introduction of individual funding for people with disabilities required a new safeguarding framework that was not dependent on contracts between government and service providers. The amendments were passed by the Legislative Assembly towards the end of the reporting period.

The Commissioner resigned from the Expert Panel at the end of the reporting period. As the NDIS in the ACT was being launched on 1 July 2014, the Commissioner was mindful that any involvement in a government committee might be seen by complainants as a source of potential bias. It is imperative that the community not only sees the Commissioner's office as impartial and independent in complaint handling, but that any perception of bias is avoided.

Negotiations were underway at the end of the reporting period to develop memoranda of understanding between the Commissioner's office and the NDIA, the Community Services Directorate, the Commonwealth Ombudsman, and the Office of Regulatory Services to ensure the streamlining of complaint handling during the transitional period and to enable the exchange of information about service providers that may be of concern.

Violence, sexual assault & disability

As noted in the last reporting period, the Commissioner had convened a series of discussions with the Domestic Violence Crisis Service, the Canberra Rape Crisis Centre, Women with Disabilities ACT and the Victims of Crime Commissioner, regarding options to assist women with disabilities to escape domestic violence or sexual assault. A project officer was recruited to develop a crisis service to respond to such situations, with funding from the Commissioner, the Domestic Violence Prevention Council, and the Victims of Crime Commissioner. The Women's Centre for Health Matters provided administrative support for the project.

A report on the resulting Crisis Support Scheme, which draws on the resources of a number of existing agencies, was sent to the Attorney General towards the end of the reporting year for tabling in the Legislative Assembly. The Scheme was in operation at the end of the reporting period and

now provides support services for women with disabilities seeking to escape domestic violence or sexual assault. Available supports include the payment of expenses at the crisis point to establish safety, as well as arranging accessible transport, personal care services, emergency accommodation, hiring of equipment, and other support needs.

The Commissioner welcomed the enthusiastic collaboration of all participants in this project, including a number of motels, disability service providers, and homelessness services, as well as the crisis services represented on the Steering Committee.

A number of discussions were held with the Community Services Directorate in the development of the scheme, with a view to ensuring that it is sustainable in the longer term. The Commissioner welcomed the support from the Directorate in providing funding to enable a training program to be developed to educate crisis services in issues associated with disability, and the disability services sector in violence and sexual assault. Work had commenced on developing the training modules at the end of the reporting period.

As a result of this work the Commissioner was invited by the Australian Human Rights Commission to attend a Symposium on Women with Disabilities and Violence in Sydney, to inform national initiatives in this area.

Bullying of students with a disability

The Commissioner, in conjunction with the Children & Young People Commissioner, released the report *Because it's a serious matter... talking with students about bullying and disability* in 2013. The report presented the results of a consultation project with over 150 children and young people about the bullying of students with disabilities in schools. Since the release of the report there has been significant interest from educational authorities and requests for additional copies of the report and the associated workbook for children. Commission staff presented a paper on the report at a School Law Symposium during this reporting period.

People with disabilities & the criminal justice system

As noted in previous Annual Reports, the Commissioner has been progressing discussions on issues associated with people with disabilities and the criminal justice system.

An ongoing dialogue with police has been maintained, with the Commissioner meeting with the Chief Police Officer and the Deputy Chief Police Officer during the reporting period to discuss ways in which police might be more responsive to situations where people with intellectual or psychosocial disabilities are either victims or perpetrators of crime. Further meetings were held with a new disability liaison officer established within the AFP to provide a point of contact for the Commissioner's office in relation to all matters involving police. This has ensured that there is senior oversight of matters referred by the Commissioner to police and has facilitated feedback to the Commissioner on investigations.

The Commissioner's Senior Advisor conducted training for police on interviewing vulnerable witnesses and further discussions were held with police regarding additional training opportunities in relation to disability awareness. The police are one of the target groups for the training being developed in relation to the Crisis Services Scheme for women with disabilities seeking to escape domestic violence and/or sexual assault.

The Commissioner conducted a site visit to the Watchhouse to discuss initiatives in place to ensure that people are assessed for disability support needs when they are taken to the Watchhouse, and that the Watchhouse is accessible for people with disabilities.

The Commission wrote, in conjunction with the Victims of Crime Commissioner, to the Attorney General during the reporting period, encouraging the development of a Disability Justice Strategy for the ACT in accordance with recommendations made by the Australian Human Rights Commission in its report on *Access to Justice for People with Disability in the Criminal Justice System*. The Commissioner also participated in a 2XX panel forum with Graeme Innes, the national Disability Discrimination Commissioner, on people with disabilities and the criminal justice system.

Referrals from the Public Advocate of the ACT

Section 11(2) of the *Public Advocate Act 2005* requires the Public Advocate to refer systemic matters relating to people with a disability to the Commissioner for consideration. The Commission entered into a Memorandum of Understanding with the Public Advocate in the previous reporting period with a view to reaching common understanding about the respective roles and responsibilities of their offices. While the Public Advocate referred one individual complaint matter to the Commissioner during the reporting period, no systemic matters were referred. The Public Advocate has not referred any systemic matters to the Commissioner since the creation of the Commission in 2006.

Community services

Despite the title of Disability & Community Services Commissioner, the Commissioner has no functions in relation to community services. The Commissioner received a small number of inquiries during the reporting period relating to the potential referral of community services matters to the Commission. As there is no power to investigate complaints about community services, the Commissioner advised that she was unable to accept any such matters. The Commissioner has noted this issue in Annual Reports since 2007-08 and, while some discussions were held with departmental officers about the issue in previous reporting periods following correspondence to the Attorney-General, no progress has been made in relation to addressing it.

Consultation on the review, commissioned by the Attorney General during the reporting period into the roles and functions of ACT statutory officers, failed to address this issue. In the same way that disability service complaints have been referred by the disability official visitors, the establishment of a new official visitor for homeless services might also potentially result in increased referrals to the Commissioner. Under current arrangements, the homelessness official visitor has no independent statutory office to which she can refer matters in relation to the non-government sector, which are unable to be resolved through informal channels.

Health Services Commissioner

As noted in the previous reporting period, the Health Services Commissioner sought to significantly scale back operations in 2012-13 to deal with increased complaint numbers. A workload mitigation strategy was developed and implementation continued throughout the current reporting period. In essence, the strategy was aimed at reducing complaints that were not related to significant issues of public health and safety or where it seemed likely that the matter might result in disciplinary action, policy changes or compensation. The Commissioner continued to handle complaints from particularly vulnerable people. Combined with this strategy was the commencement of a project aimed at assisting health service providers to improve their internal complaints handling, reported on in more detail below.

The strategy ensured that staff focussed primarily on the more serious complaints but it has not resulted in reduced complaint numbers. Complaints received by the Health Services Commissioner reached a record high in the reporting period, with an increase of 16% from the previous year

(representing an increase of 81% since the Commission was established). The Commissioner's office will continue to review the effectiveness of the strategy.

Another aim of the strategy to reduce complaints was to increase the Commissioner's capacity to undertake more significant inquiries into systemic issues, again with a view to reducing complaints in the longer term. Limited work was undertaken in this area because of the continued high volume of complaint numbers.

Impact of workload mitigation strategy

Forty five percent of complaints made to the Commissioner were turned away or dealt with in a less direct manner than they would have been prior to the development of the workload mitigation strategy outlined above.

Complaints about registered health professionals are being referred to the Australian Health Practitioner Regulation Agency (AHPRA), and 84 matters were accordingly referred to AHPRA that would previously have been handled by the Commissioner's office. While this ensures that the most serious matters are addressed, this approach generally does not provide consumers with a resolution of their concerns as AHPRA's legislative remit is limited to the standards of practice of health professionals and significant concerns of public health and safety. The Commissioner will take some matters on following the completion of AHPRA processes, if they are serious and the Commissioner considers that conciliation may be appropriate. This aspect of the strategy has been the most contentious with a number of complainants and providers expressing dissatisfaction with the Commission for not dealing with these complaints itself.

Twenty seven of the complaints made to the Commissioner were referred back to providers for resolution, representing 7% of these complaints. In matters that were potentially more serious and which may have warranted further investigation, the Commissioner requested that a copy of the response to the complainant also be sent to the Commission. Sixteen matters (6%) were dealt with in this way, while 11 low-level matters (4%) were referred back to the provider and closed with no further advice sought by the Commission.

Thirty four complaints were flagged as raising issues that appeared relevant to the Commissioner's *Health Records (Privacy and Access) Act 1997* complaints jurisdiction, primarily complaints about access to records or privacy breaches. Many of these were accepted for investigation as the health information issues were often secondary to other more serious complaint issues, or the complaints raised issues of systemic concern about how practices were managing personal health information. Nine matters were not dealt with by the Commission.

Complaints & enquiries

During the reporting period, the Commissioner received 413 complaints, a 16% increase on the 355 received in the previous reporting period. This figure reflects 273 complaints that were made directly to the Commissioner, 134 notifications that were sent to the Commissioner by the Australian Health Practitioner Regulation Agency on behalf of the various National Health Practitioner Boards, and six complaints sent to the Commissioner by the Veterinary Surgeons Board of the ACT. They include six complaints about services for older people.

In addition to formal written complaints and referrals, the intake team responded to 469 inquiries about health services. 341 of these enquiries did not result in a written complaint, while a further 128 enquiries led to a written complaint being lodged during the reporting period. Enquiry numbers are 18% above those received in the previous reporting period.

Complaint issues

As with previous reporting periods, the issue of treatment was the most prevalent issue raised in complaints that were finalised, which was noted in 165 cases. Communication was noted as an issue in 72 cases. Other issues related to professional conduct, medical records, fees and billing, and access to services.

Complaints lodged with the Commissioner

Of the 269 health complaints lodged directly with the Commissioner, 104 matters related to the Health Directorate, roughly equivalent to the 102 matters in the previous reporting period. Complaints about Justice Health, which had returned to historically normal levels in the previous reporting period, again increased to a level more consistent with 2011-12. Complaints about other areas were largely consistent with those received in 2012-13.

Table 1 - Complaints by area of the ACT Health Directorate

	Number	%
Justice Health (including AMC dental)	22	21%
The Canberra Hospital	42	40%
Mental Health ACT	15	15%
Calvary (Public) Hospital	17	16%
Dental Health	4	4%
Other	4	4%
Total	104	100%

The remaining 165 direct health complaints related to private sector organisations or individuals.

Of the 127 instances in which individual providers were named in complaints made direct to the Commissioner, 93 (73%) related to medical practitioners, 13% related to dental practitioners, and 9% related to registered nurses. The remainder related to low numbers from the Chinese Medicine, midwifery, optometry, psychology and veterinary surgeon professions.

Of the medical practitioners, 33% were general practitioners (a decrease from 40% during the last reporting period), 12% were psychiatrists (the same as the last reporting period), 9% were orthopaedic surgeons, and 3% were obstetrician/gynaecologists (down from 13%). The remaining matters were about other medical practitioners from a variety of fields.

Complaints received from/referred to health practitioner boards

The *Health Practitioner Regulation National Law (ACT)* requires the national boards for the registration and regulation of health practitioners to forward all notifications about health professionals in the ACT to the Commissioner. This is managed by the administrative body for the National Boards, the Australian Health Practitioner Regulation Agency (AHPRA). Similarly, the Commissioner notifies AHPRA about all complaints received about registered health practitioners.

Case study

A man went to a traditional Chinese Medicine practice for massage treatment. It was also later suggested that he undertake a treatment using heated suction cups on his back. The man incurred burns when the suction cups caused the hair on his back to catch alight. While the man received a formal letter of apology and flowers from the provider, and therefore decided to withdraw the complaint, the Commissioner decided to conduct a Commission Initiated Inquiry into the matter on public health and safety grounds. The Commissioner became concerned not just about the clinical issues, but also whether the treatment was provided without the man's informed consent as he had attended the practice for acupuncture. The Practice has improved its consent processes and provided additional instruction in relation to cupping treatments. The Commissioner referred the actions of the individual practitioners to the Chinese Medicine Board for further consideration. AHPRA is continuing its inquiries into the relevant practitioners, including into the appropriate use of interpreters.

During the reporting period, the Commissioner was forwarded 134 matters by AHPRA, an increase on the 107 received during the previous reporting period, plus an additional six from the ACT Veterinary Surgeons Board.

Joint consideration

Joint consideration between the national Boards and the Commissioner occurred on a regular basis. The legislative structure around joint consideration requires the relevant Board and the Commissioner to endeavour to agree on a course of action in relation to individual practitioners. In cases where there is disagreement, the strongest view prevails.

346 matters were jointly considered with the national Boards, compared to 315 matters during the previous reporting period.

Case study

The Commissioner decided to refer a specialist to a Performance and Professional Standards Panel following an investigation into a matter where his patient died, when the Board had recommended that the case be closed. A number of issues of concern were raised about the specialist, which were joined together with this complaint. As a result, a one day performance assessment was conducted into how he practised. The Commissioner agreed to close some of the matters following the performance assessment but did not consider that it had adequately addressed the issues in the particular matter. While the performance assessment focussed on a range of policies and practices that the specialist had in place, the Commissioner was concerned that it did not concentrate on the circumstances that arose in this case. The critical issue of risk management was only briefly addressed in the assessment report, and the assessor was not asked to assess the doctor's clinical performance in the specific context of the patient's death. The doctor's crisis management, his insistence that he was unaware of pertinent facts when the evidence appeared to indicate otherwise, and his actions which appeared to have been below the standard reasonably expected, coupled with the catastrophic outcome, led the Commissioner to recommend that he be referred to a Performance and Professional Standards Panel to properly assess his claims.

Outcomes of joint consideration, which in some instances included multiple outcomes for individual practitioners, included:

- Six referrals to ACAT for revocation of registration (five medical practitioners and one nurse).
- Sixteen suspension processes (six medical practitioners, eight nurses, one psychologist and one dentist).
- Six referrals to performance & professional standards panels (two medical practitioners, two nurses and two Chinese Medicine practitioners).
- Thirteen referrals for health assessments (two medical practitioners, nine nurses, a pharmacist, and a psychologist).
- Twelve processes in relation to the imposition of conditions (two medical practitioners, eight nurses and two dentists).
- Nineteen caution processes (nine medical practitioners, two nurses, three dentists, three pharmacists, a psychologists and a medical radiation practitioner).
- One referral of a nurse for a performance assessment.
- Three undertakings (two dentists and a psychologist).

'Strongest view' cases

In the ACT the National Law for the regulation of health practitioners has been amended to provide for the Commissioner to make decisions with the respective Boards following an investigation by either the Commission or by AHPRA (in other jurisdictions joint consideration only occurs at the initial stage of allocating complaints and Commissioners have no further decision making capacity once a matter has been referred to AHPRA for investigation). This provides an extra check in the system that processes and decision making are thorough, and removes the potential for perceptions of bias in relation to Boards' decision making.

During the reporting period the Commissioner took the stronger view on seven occasions, while Boards took the stronger view on five occasions. The Commissioner decided to impose two cautions, refer one matter to a Performance and Professional Standards Panel, require further investigation by AHPRA in relation to two matters, and to undertake a Commission investigation in two matters. The two cautions were not progressed as the respective Boards decided not to proceed with the cautions following 'show cause' processes. The five occasions when a Board decided to take the stronger view occurred when Boards decided to impose conditions in one case, to progress three investigations, and to issue one caution.

Veterinarian matters

The Commissioner also jointly considered seven matters with the ACT Veterinary Surgeons Board, resulting in the closure of six complaints, and the referral of one practitioner to a Professional Standards Panel under the *Health Professionals Act 2004*.

Conciliation

Eleven health services matters were referred to conciliation during the reporting period. Amongst those matters and the conciliation complaints open from the previous reporting period, ten were finalised.

Conciliation can be a cheap and efficient method of addressing adverse events and resolving claims of alleged negligence. This is not to say that most complainants make a complaint in order to obtain money. A desire to change the system to prevent adverse events occurring to others appears to drive most people in making a complaint. Even when financial compensation is being sought, this is rarely the most significant issue of concern to the complainant and when the response from the provider demonstrates empathy and a desire to learn from the experience, the issue of money often becomes a secondary matter.

Matters where people wish to make a financial claim can, however, experience significant delays, sometimes resulting in conciliation being unable to proceed at all. This is because complainants who indicate that they are seeking costs of more than \$10,000 are advised to obtain legal advice on a quantum figure. Conciliators are unable to provide legal advice regarding financial claims. Some complainants seek significant financial compensation without a clear legal basis for making that request. In the Commission's experience, a consultation with a solicitor with expertise in medical negligence enables the complainant to seek a realistic quantum figure based on appropriate legal considerations.

As noted however, one of the main frustrations in managing complaints where the complainant has been referred to a solicitor is that this tends to create significant delays in getting the matter to the table to resolve all the issues. The Commission is working to develop information for solicitors that may enable them to work more effectively within the constraints of the conciliation process and respond in a timely manner to requests from their clients for a quantum figure to be developed.

Despite contacting solicitors to inform them of the conciliation process and requirements, another challenge experienced this year has arisen from solicitors lodging a statement of claim and giving the quantum figure directly to the other party. Although a statement of claim is an understandable action to ensure the time limits imposed by legislation don't take away their client's right to litigate, the provision of the quantum figure directly to the other party clearly takes the matter out of conciliation and into the litigation arena. This makes it impossible for the conciliator to ensure proper processes are followed to facilitate a resolution of all the issues raised in a complaint, including financial issues. A number of complainants have expressed disappointment that the actions of their solicitor have prevented them from having the opportunity to have a discussion with clinicians to resolve all their issues of concern.

Case study

A woman complained that, despite the assurances of her doctor that a biopsy of a lesion on her nose would be small and not require stitches, a larger tissue sample was taken that did require stitches. The biopsy left a significant scar, which required restorative treatment. The histopathology results indicated that the lesion was a sebaceous glandular hyperplasia, with no evidence of malignancy. The woman claimed that the doctor did not offer any other treatment options than the treatment that was undertaken. The matter was referred to AHPRA in line with the Commission's strategy to address resourcing constraints. Following joint consideration with the Medical Board a caution was issued to the doctor regarding their failure to use less invasive treatment in accordance with standard practice with regard to treatment of possible, yet undiagnosed skin lesions. The complaint was referred back to the Commission for resolution via conciliation. The matter was resolved with the assistance of the solicitor representing the doctor and compensation being paid to the complainant to cover the costs of treatment to repair the damage she incurred as a result of the initial treatment.

One of the valuable features of conciliation is that it allows a conversation to occur between people with different expertise around the same matter: the patients and their families, and the clinicians who attend the conciliation. Quite often it is a series of apparently small adverse events that lead to prompting a complaint. Issues around communication with families about clinical decisions, including prescribing of particular medications or 'not for resuscitation' are often problematic. It is understandable that clinicians become inured to emotional complexities involved in decisions about treatment, and it may be easy for them to forget the enormity of this task for family members. Although there is an imperative in a clinical setting for decisions to be reached quickly, important decisions can take families some time to make and they need access to information and support in order to make them. The consequences of a decision made in haste can be significant, not only for the patient and their family, but also for the clinicians who may end up with a complaint or litigation to respond to later on.

The response of ACT Health to issues raised in conciliations continues to be commendable. The senior staff who attend conciliations arrive having researched the complaint including scrutinising clinical records, policies and procedures, and having undertaken discussions with relevant clinicians. The ability of these staff to listen to people's experiences in an empathetic manner is remarkable, particularly when it can include hearing often severe criticism of both services and individual staff. The beneficial impact of this approach on complainants cannot be overrated, particularly in terms of assisting complainants to then listen and properly hear explanations.

As the conciliator is not a therapist and the conciliation process is not designed to have therapeutic outcomes, it is difficult to assess the value of a sense of healing and resolution for complainants. However, comments such as: "I felt like they thought my concerns were important and they really seemed to empathise with my experiences" and "Now that I know they have heard me, I can move on with my life" indicate that there is indeed some therapeutic value that has significant positive effects on people's lives. Comments from clinicians also indicate that the experience of participating in conciliation gives them insights they may not have gained otherwise that will guide their future practice and how they train new clinicians.

Complaint outcomes

Throughout the reporting period the Commissioner's office finalised 254 health complaints lodged directly with the Commission.

Case study

A man complained on behalf of his wife about the monthly supply of products from an association funded to provide critical medical supplies. The man said the supplies were often late or orders were incomplete, that the process for ordering and paying for supplies was inflexible, and that the administration of the office needed to be reviewed. The man said he attempted to resolve his concerns directly with the agency but he found staff to be unhelpful. As a result of the Commission's intervention the association took appropriate action to review and improve the standard of service provided to clients. Among other things, an electronic

ordering process was introduced to make the service more accessible to clients and a review of office procedures was conducted.

In line with the strategy to reduce workloads, some complaint outcomes were achieved by providers responding directly to complainants and advising the Commission of outcomes, while others required intervention by the Commission to achieve a suitable result. Complaint outcomes included:

- A hospital's special care nursery amended its processes in relation to the storage and use of expressed breast milk, after a newborn was inadvertently given breast milk from another mother, who had a potentially transmissible disease.
- A woman received a partial refund to cover remedial work, after complications were experienced during a dental procedure.
- A woman eventually received a copy of her clinical records through Commission processes, after her own efforts were unsuccessful. The matter was taken on because a pattern of inappropriate practice was clear and less formal efforts by the Commission to educate the service provider were unsuccessful. Recommendations around policy and training were made and were implemented by the practice.
- A hospital was asked to review its standard operating procedures around the use of nebulisers, as their management of a man with emphysema appeared to be inconsistent with their documented processes.
- Informed financial consent provisions were improved at a dental surgery, after a woman with very limited finances received a charge that was not discussed with her prior to treatment.
- A hospital waived an account because of an administrative error, which caused a failure to disclose a very substantial fee.
- A hospital reviewed its policies and procedures concerning the management of ectopic pregnancies.
- A retail pharmacy undertook systemic and training improvements to prevent recurrence of a health records privacy breach after scripts were found at a recycling facility.
- The Commission facilitated information being provided to a woman who was concerned regarding delays in the provision of medical reports to the Coroner, who was considering the cause of her husband's death.
- A third party software vendor's medication data, used by GPs, was displaying out-of-date information about a discontinued medication, which contributed to the inappropriate prescribing of a particular medication for a child. Discussions were held with the publisher of the data and the vendor to ensure the issue was resolved.
- A mental health facility's implementation of its sexual safety and management of sexual assault policies were noted to have been deficient, and systemic improvements were progressed.
- A cosmetic clinic was found to have been advertising regulated services in an inappropriate manner. The clinic revised its process for the approval of advertisements.

Case study

A woman complained that she received inadequate care on the three occasions she attended the Emergency Department and Antenatal Clinic of a public hospital. She claimed that she was in the process of having a miscarriage but was forced to wait for extended periods for treatment that did not eventuate. She also claimed that she miscarried her baby in the Emergency Department toilet without the assistance of seemingly available staff. The provider responded to the complainant by acknowledging systems failures, and ensuring that improvements were being made regarding the triaging of antenatal patients, in an effort to avoid future delays and to improve the quality of clinical care. Although the Commissioner was satisfied that this matter had been adequately dealt with, she decided to undertake a broader systemic investigation regarding the delivery of antenatal services in the region. Productive discussions were being held at the end of the reporting period on additional services for women in early pregnancy and broader community education about miscarriages.

Evaluation of satisfaction

The Commission measures satisfaction with its services by requesting that the parties complete an evaluation form on the closure of complaints. High levels of satisfaction with the Commission's services are outlined elsewhere in this Report. Comments from respondents in relation to health services included:

- Excellent support and learning opportunity and identified areas for improvement.
- Interaction was positive and assuring.
- The Commission provides excellent support and guidance when required. The staff are very approachable and professional at all times.
- I am able to let my son know that I didn't just stay silent and thereby condone unacceptable behavior.
- Not just that I received the refund I was after but I felt vindicated and that I'd struck a blow for the little guy.
- You could advertise it better. I was not aware of a Health Services Commissioner prior to this.
- It gave me a less threatening environment in which to voice my concerns.
- Thank you to Louise for her considerate approach and for following up with the service provider to ensure action had been taken to prevent event from reoccurring.
- I should have gone to a solicitor and sued [service provider]. I would not recommend to anyone to make an official complaint. It's a waste of time.
- Very good. Certainly satisfied totally.
- I raised very serious concerns about incompetence at [service provider]... but due to "limited resources" the complaint was closed and no action was taken. Perhaps it is time for you to do your job properly.
- The service was great!

Health records: privacy & access issues

During the reporting period, 34 complaints (including some notifications referred by AHPRA) raised issues under the *Health Records (Privacy and Access) Act 1997*. These included people experiencing difficulties in accessing personal health information under the Act or raising issues that are relevant to the Privacy Principles in the legislation. Six of those matters were about the actions of individual registered practitioners, and were therefore referred to AHPRA. People making enquiries about health records access issues were provided with information about the legislation and referred back to providers to seek a resolution of their concerns regarding access to their health records.

Legislative amendments

The Commissioner wrote to the Health Directorate towards the end of the previous reporting period recommending a number of amendments to the *Health Records Privacy and Access Act 1997* to ensure that the spirit of the legislation is effectively reflected in the Act. The Commissioner met with Health Directorate officials to discuss the proposed changes during the reporting period.

One of the recommendations for change is to update the Act so that the rights of children and young people are better reflected in the provisions. The current drafting is complex and it is difficult for service providers to understand their obligations to children and young people under the Act. The Commissioner, with the Children & Young People Commissioner, met with officials and service providers to discuss the application of the Act to children and young people.

Health records & subpoenas

The Commissioner has noted concerns in previous reporting periods that inappropriate access to people's personal health information can be facilitated by the issuing of subpoenas. Respondents to subpoenas are required by law to provide all information requested in a subpoena. Information that individuals think has been provided to their doctor in private can suddenly be in the public domain in court judgments. Alternatively, it can fall into the hands of parties to a court case without them even knowing their personal health information has been released in response to a subpoena. The Commissioner, in conjunction with the Victims of Crime Commissioner has previously written to the Attorney-General seeking law reform to address this situation. During the reporting period, some further research on this issue was commissioned, with a view to identifying potential solutions to the problem. A law intern developed a paper on behalf of the Commissioners and consultations with a range of organisations were being progressed at the end of the reporting period.

The Commissioner was issued with a subpoena during the reporting period seeking access to many individuals' personal health information. The Commissioner declined to provide the information, citing provisions in the *Human Rights Commission Act 2005* that, in effect, state that the Commission's records are not compellable in court proceedings. The parties were directed by the Court to try and settle the matter. The case was settled so the Court did not decide on the application of the legislative provisions in relation to the subpoena issued to the Commissioner.

External liaison

Over the past year the Commissioner has engaged with a range of stakeholders, including meetings with the ACT Minister for Health, the Minister's Chief Advisor, and executives in the Health Directorate and Calvary Hospital. Meetings were also held with advocacy organisations and specific service providers.

A number of meetings were held with executives from the Justice and Community Safety Directorate, ACT Health, Corrective Services, the Public Advocate and the Minister for Corrections in relation to the report discussed below on the handcuffing of a mental health patient for five days in the Adult Mental Health Unit.

Targeted discussions on specific topics of interest were held with:

- The Auditor General's office on treatment regimes for Hepatitis C.
- The Deputy Director-General of ACT Health on a project designed to better manage 'nil-by-mouth' patients.
- ACT Health's litigation manager to discuss conciliations and compensation issues.
- The Australian Information Commissioner on privacy issues and access to health records.

As in previous years, the Commissioner attended meetings with national and New Zealand counterparts. Two meetings were held during the reporting period, hosted by the Tasmanian Health Complaints Commissioner and the Director of the Western Australian Health and Disability Services Complaints Office. These meetings are a valuable opportunity for the Commissioner to discuss issues with colleagues who undertake similar work to the Commissioner. They also enable the Commissioners to contribute to national debates in relation to the oversight and provision of health services.

Strategic work

The Commissioner contributed to policy debates through meetings and submissions. As well as the substantial work on a number of specific initiatives discussed below, comments were provided on a range of matters, including:

- An intervention in the ACT Civil and Administrative Tribunal in the *Matter of ER* regarding the capacity of a woman to make her own decisions.
- A draft ACT Information Privacy Bill regarding privacy of personal health information.
- A draft Freedom of Information Bill and the protection of personal health information.
- The Health Protection Service's review of Options for Controlled Medicines Prescribing.
- Comments to the Victorian Health Department on review of Health Services Commission legislation.
- Issues associated with the management of women experiencing miscarriages in public hospitals.
- A submission to AHPRA public consultations on International Criminal History Checks for health professionals.
- A submission to AHPRA on National Standards for conduct and mandatory notifications.

Regulation of health practitioners

The Commissioner is required under law to jointly consider with relevant health registration boards all decisions related to complaints about registered health professionals. As noted in last year's report, greater efficiencies in complaint handling could be immediately realised by direct discussions

with the larger boards, which account for the majority of complaints, rather than via AHPRA. The Commissioner welcomed invitations from the Chiropractors Board and the Podiatry Board to meet and discuss complaint handling and regulatory processes. The Commissioner continued to leave invitations open to meet with boards and discuss individual complaints, and thus reduce handling times.

As indicated in the previous reporting period, process efficiencies will be a primary consideration in the Commissioner's submission to the proposed three year review of the national registration scheme, which commenced during the current reporting period. The Commissioner is a member of a subcommittee established by national commissioners to develop a submission to the review.

The Commissioner also contributed to national debate through providing submissions to AHPRA's public consultations on International Criminal History Checks for health professionals, and National Standards for conduct and mandatory notifications.

Another category of health professional that comes under the Commissioner's jurisdiction is veterinary surgeons. The Commissioner discussed options for the reform of regulation of veterinarians with the Minister and with departmental officers from Transport and Municipal Services. The Commission and representatives of the Veterinary Surgeons Board also met with legal advisers regarding processes under the *Health Professionals Act 2004* to ensure that legislative provisions are followed and that natural justice is afforded to practitioners.

Unregistered health practitioners

In the last reporting period, the Commissioner noted that consultations had been conducted on a national proposal to increase the options for dealing with people who provide health services but do not come within the national scheme for the regulation of health professionals (and who cannot, therefore, be deregistered). The Commissioner noted that progress on this initiative since the consultations had been slow, and indicated support for the development of a national Code of Conduct based on the New South Wales model and providing Health Complaints Commissioners with increased powers to take action against rogue practitioners based on deviation from the Code.

During the current reporting period, the Commissioner attended a Public Forum on the elements of a Code of Conduct and joined with other national Commissioners to provide comments on the proposed Code. The Commissioner looks forward to further progress on this initiative.

Centenary Hospital for Women & Children

During the last reporting period the Commissioner commenced a Commission Initiated Inquiry into access by Aboriginal and Torres Strait Islander women to the Centenary Hospital for Women and Children. The aim of the project is to identify whether there are any barriers to women accessing the Hospital and whether there are any gaps in service provision for indigenous women and children.

During the reporting period, the Commission had contact with a wide range of representatives of government and non-government organisations that provide specific midwifery and postnatal services to Aboriginal and Torres Strait Islander women, as well general midwifery, birthing and family support services across all areas of Canberra. The Commission also made contact with relevant services provided in Queanbeyan. Site visits were conducted to a range of services where midwifery and birthing services are provided, including a wide range of inpatient and outpatient services provided at the Centenary Hospital for Women and Children, as well as maternity and obstetric services at the other public hospitals that provide maternity services, Calvary and Queanbeyan Hospitals. Meetings were held with Winnunga Nimmityjah Aboriginal Health Service midwives and with a range of other health care professionals and organisations, including regional Child and Family Centres and specialist Maternal and Child Health Nurses.

The Commission has reviewed issues around data integrity in relation to the representation of patients identifying as Aboriginal and Torres Strait Islander, culturally sensitive service delivery, continuity of care and governance issues, as well as the Cultural Awareness Training available to staff at the Centenary Hospital for Woman and Children.

The report includes a snapshot of current ante-natal and post-natal services provided for Aboriginal and Torres Strait Islander Women, as well as services available in the ACT to all women during their pre-natal and post-natal period. The Commissioner anticipates finalising this project during the first half of the next reporting period.

Internal complaint handling

The Commissioner initiated a consideration to review the complaints management policies and procedures being utilised by a range of primary health care providers. The Commissioner acknowledges that there are many different ways to manage complaints and that many providers are doing this well. However, there are instances where complaints are not well handled at the point of service, which can unfortunately escalate matters rather than resolve them. The purpose of this inquiry is to gather and consider complaints management information, including copies of policy and procedure documents from primary health care providers, and to provide practical advice about opportunities for improvement.

During the reporting period, the Commissioner wrote to 39 medical practices requesting copies of their internal complaint handling policies. The aim is to use this material to establish best practice models and potentially share models that can be put into practice more broadly. It is our experience that good complaints management facilitates local resolution, improves and sustains the partnership between consumer and provider, and prevents unnecessary escalation of complaints.

Alexander Maconochie Centre

Twenty four complaints were received from detainees in relation to health services provided at the AMC (compared to 14 in 2012-13), representing a return to the higher numbers experienced in the 2011-12 reporting period. Telephone enquiries, which had also reduced significantly since their previous peak of 63 calls in the 2010-11 reporting period, increased during the reporting period with 66 calls received. Most of those calls related to services provided on-site at the Hume Health Centre. The Commissioner's office generally accepts complaints made by detainees as they come within the exceptions to the Commissioner's strategy for reducing workloads, being complaints from a particularly vulnerable population in terms of access to services.

Common themes in complaints were access to medical review, adequacy of treatment, and availability of medication, including pain relief. Issues of access to dental treatment were notably absent in comparison to previous years.

Of note were a range of contacts about Suboxone treatment. Suboxone (buprenorphine and naloxone) is a maintenance treatment for opioid dependence. Substantial issues with the diversion of Suboxone, which is a highly desirable commodity in a correctional context, led to a second trial of a Suboxone maintenance program being suspended during the reporting period. The Commissioner notes that misuse of Suboxone in correctional facilities is a nationwide phenomenon, with a range of jurisdictions being forced to take a similar approach. The Commissioner accepts the current necessity for maintenance Suboxone not being available in the AMC, noting its availability in short-term exceptional circumstances.

Mechanical restraint of detainee

The Commissioner undertook a significant review during the reporting period, following reports that a detainee had been handcuffed to his bed for five days, following transfer from the AMC to the

Adult Mental Health Unit. The detainee was mechanically restrained throughout his mental health inpatient treatment, while remaining in the custody of ACT Corrective Services. The Commissioner concluded that, while the detainee may have been appropriately mechanically restrained during some periods of his interaction with the health system, serious questions arose about the length of time that he was handcuffed in the Adult Mental Health Unit. Among other concerns, the Commissioner concluded that:

- The decision to handcuff the patient for five days did not appear to be consistent with obligations to ensure that instruments of restraint are only to be used 'if other methods of control fail', and that 'such instruments must not be applied for any longer time than is strictly necessary'.
- The powers vested in Corrective Services, which provide for Corrective Services to maintain decision making about custody issues when a detainee is in a health facility, can lead to inconsistencies with the legal and ethical obligations that govern the delivery of services by health professionals.
- Decisions relating to the treatment of prison detainees in a mental health facility should be made by clinicians, informed by advice from Corrective Services, rather than Corrective Services making decisions, informed by advice from clinicians.

The Commissioner made a range of recommendations, including that the near-complete review of the Mental Health (Treatment and Care) Act make provisions for the transfer of custody, from Corrective Services to ACT Health, when a person is transferred for mental health treatment in hospital. A crucial aspect of that recommendation was that such a provision should be made in the short term, and not be tied to the future existence of a secure mental health facility. The Commissioner had hoped that full implementation of the recommendations would see the need for a person's mental health treatment, and the preservation of an appropriate therapeutic environment, as the key factor in the management of acutely mentally ill people who are serving a sentence of imprisonment or who are on remand. The Commissioner expressed the view that this recommendation could be enacted without compromising the important safety and security implications that relate to detainees. As detailed in the report, these considerations are part of Mental Health ACT's day-to-day service provision, and are regularly and appropriately exercised in relation to people in very similar circumstances, who for various reasons are not in the custody of Corrections at the time of their treatment.

The Attorney-General tabled the final report of the investigation in the Legislative Assembly in April 2014. The Government's response to the report was also presented. The Government did not accept the recommendations in full. Transfer of custody will not be implemented until the Secure Mental Health Unit is constructed in 2016. The Commissioner remains concerned that it appears highly likely similar decisions, which are fundamentally counter-therapeutic for people who are mentally ill, might continue to be made by Corrective Services. This could see detainees mechanically restrained for more than five days and potentially for periods of weeks or months.

Crisis Support Unit

In the last three reporting periods, the Commissioner noted that she was undertaking a Commission-initiated consideration into issues in the Crisis Support Unit (CSU) at the AMC and that her file remained open while recommendations made by Knowledge Consulting in its report *Independent Review of Operations of the Alexander Maconochie Centre* were being implemented. The Commissioner's file on this matter has remained open as not all of the Commissioner's concerns had been addressed. Towards the end of the reporting period a meeting was being arranged with Corrective Services to discuss initiatives to complete implementation of the recommendations.

Needle & syringe program

The Commissioner's ongoing interest in the development of a Needle and Syringe Program in the AMC saw further discussions occur with the Justice & Community Safety and Health directorates on this issue. The Commissioner welcomed the progress made on this initiative during the last

reporting period but notes that progress appears to have stalled. The Commissioner remains of the view that this initiative requires progression if equivalence with services in the community is to be attained and transmissions of blood borne viruses in the prison are to be reduced.

Other activities undertaken in relation to the Corrections environment included meetings with the Clinical Director of the Hume Health Centre and site visits to the AMC. The Commissioner also provided comment on the Health chapter of the Human Rights Commissioner's review of the treatment of women at the AMC.

Mental health issues

As in previous reporting periods, considerable work was undertaken during the current reporting period to contribute to the ongoing review of the *Mental Health (Care and Treatment) Act 1994*. Commission staff attended steering committee meetings and were represented on a number of working groups. The Commissioner was a member of a working group investigating models to enable consumers to provide advance consent in relation to their treatment and care during periods when they become unwell. Other issues pursued by the Commission included advocating for improvements to the status of carers in the new Act, and the need for ACAT oversight if a person who has lost capacity 'agrees' to treatment, to which they have previously objected while they were competent.

The Commissioner noted in the previous reporting period that her office had, in conjunction with the Human Rights & Discrimination Commissioner, made a number of submissions to the ACT Civil and Administrative Tribunal in relation to the *Matter of ER*, concerning issues of people with disabilities' rights to self-determination and how capacity is to be taken into account when the Tribunal is making decisions regarding psychiatric treatment orders. The decision on this matter had not been handed down at the end of the current reporting period.

The Commissioner commenced a joint consideration with the Children & Young People Commissioner during the reporting period on mental health issues for young people in the youth justice system. This project is covered in more detail in the Children & Young People Commissioner's Annual Report.

Secure mental health facility

Another area of significant interest is the development of a Secure Mental Health Unit for the ACT. The Commissioner attended briefings on the proposed Unit and provided a submission on the draft model of care. The commissioning of this Unit is welcomed, particularly as it will minimise future risks that detainees from the AMC will be handcuffed to their beds as a security measure when needing inpatient mental health treatment.

Official Visitors

The Commissioner was nominated during the reporting period to represent the Commission on the newly established Official Visitors Board. The Board oversees administrative arrangements for the Official Visitors. The Commissioner consulted with mental health official visitors during the reporting period to enable her to provide the Board with feedback in relation to the effectiveness of arrangements. The Commissioner also provided comments on public material to promote the existence of official visitors and how to contact them.

Community engagement on mental health matters

Further opportunities for contributing to public debate and increase knowledge of the Commissioner's functions about mental health were varied. The Commissioner provided comment on the Mental Health Framework and Suicide policy, participated in a panel discussion on mental health issues on Radio 2XX, spoke to the Mental Health Community Coalition's quarterly forum, and

presented to Mental Health and Justice Health executives on the Commission's complaint handling processes. Mental Health Week also provided an opportunity to promote the role of the Commissioner, with staff hosting a stall at the Mental Health Week Expo.

Psychologists & mandatory reporting of child abuse allegations

The Commissioner noted in her 2010-2011 Annual report that she had written to the Minister for Children & Young People, seeking that psychologists be included in the list of professions that are obliged to report allegations of child abuse under the *Children and Young People Act 2008*. The letter stemmed from a complaint in which a psychologist failed to report child abuse allegations. While the Commissioner received a response to her letter, no action had been taken to amend the legislation.

During the previous reporting period, another matter came to the Commissioner's attention in which a psychologist had allegedly failed to report child abuse allegations. The Commissioner and the Children & Young People Commissioner jointly wrote again to the Minister urging for an update to the legislation. The Minister responded in April 2013 advising that the Commissioners' recommendation would be progressed. The Commissioners understand that the recommendations are still being considered.

Information about complaints (section 95 notices)

Section 95 of the *Human Rights Commission Act 2005* requires that, when services are provided at a premises, the provider must have information available for consumers about how feedback may be given to the provider and about the right to complain to the Commission. The Commissioner's office has been targeting different categories of health service providers over the years to ensure that they are aware of their obligations. During this reporting period, the Commissioner provided veterinarians with section 95 notices that they could display at their premises and thus comply with their legislative responsibilities.

Community engagement

The Commissioner and staff participated in a small number of activities to explain the functions of the Commissioner's office during the reporting period, as resources were again targeted primarily on increased complaint numbers. Some of these are outlined under specific sections elsewhere in this report.

The Commissioner gave two lectures to ANU Medical School students on complaints involving health professionals and also awarded the Health Services Commissioner's Professionalism and Leadership Prize to an outstanding medical student completing their second year of study. While these regular activities are designed to provide medical students with important context about the role of independent oversight and review, they will hopefully also assist in encouraging them to be professional and compassionate in dealing with their patients.

Staff from the Commissioner's office attended a national Health Complaints Conference, and the Commissioner participated in a panel discussion at the Conference.

The Commissioner also provided comment to the media on the strategy to reduce complaint numbers and a number of other health related issues during the reporting period.

Health Services Commissioner - services for older people

The Health Services Commissioner has a separate jurisdiction in relation to services for older people, as well as health services, although this is not recognised in the title of the Commissioner. As noted in last year's Annual Report, the Commissioner cancelled an initiative to have a separate position of

senior adviser to focus on services for older people. This was necessary to deal with the pressures of increased complaint numbers in the health area, which warranted a return of this position to the health team. Consequently, inquiries and complaint numbers were maintained at previously low levels.

Complaints

The work undertaken in the previous reporting periods to promote the Commissioner's role in relation to services for older people had seen a steady, albeit small, increase in the number of complaints lodged with the Commissioner. During this reporting period, four of the complaints lodged with the Commissioner specifically related to services for older people. This maintained the low level of complaints experienced prior to the introduction of the dedicated advisor position.

Complaint numbers were too low to identify any trends in complaint issues.

Case study

A woman complained about difficulty in arranging for an Aged Care Assessment Team (ACAT) assessment of her father who had relocated from interstate to a high care placement in a residential aged care facility. The woman's mother also relocated to Canberra and was residing independently close to her daughter in an outer southern suburb of Canberra. The daughter was seeking to transfer her father from the north side to a residential aged care facility closer to where the family lived, to enable her mother to have with more contact with her father. Her mother was becoming more frail, and her father's dementia had progressed such that he was benefiting from more regular short visits, rather than less frequent longer visits. The woman was of the understanding that an ACAT assessment was required, so she contacted the ACAT team but was concerned about the length of time and difficulties she was experiencing in accessing the assessment. The Commission wrote to the Director-General of ACT Health requesting that a response to the complaint be forwarded directly to the complainant, with a copy also being provided to the Commission (in line with new procedures to minimise the Commission's involvement in complaint handling). ACT Health responded advising that there was no requirement for another ACAT as the father already had a current high care approval. ACT Health apologised to the woman for the misunderstanding and also for the difficulty she experienced trying to contact ACAT. In response to the complaint, ACT Health advised that they would review their intake processes, including improvement to the guidelines for referral processes to enable clearer direction to callers.

No matters were referred for conciliation during the reporting period and three complaints were closed.

Enquiries

In this reporting period, the Commissioner received six enquiries, a 40% decrease on the ten enquiries received in 2012-13, and an 83% decrease on the 36 inquiries received in 2011-12. This significant downward trend coincides with the cancellation of the dedicated position for services for older people.

Generally speaking the Commission does not take an active role in relation to concerns raised at the enquiry stage, but enters the information on a database, which allows the Commissioner to monitor and review any trends.

Aged Care Complaints Scheme

Matters that are amenable to more appropriate resolution by the Commonwealth Department of Health and Ageing's Aged Care Complaints Scheme (ACCS) are referred to that service. The ACCS deals with complaints about Australian Government-subsidised aged care in the ACT and has some jurisdictional overlap with the Commissioner. Callers to the Commission's intake team who identify concerns about aged care facilities are advised of the services provided by the ACCS.

The Commissioner's office referred two matters to the ACCS during the reporting period, one relating to concerns about the care of a resident in a dementia wing, and the other relating to a

scabies outbreak in the dementia wing of another facility (the Commissioner also contacted the Chief Health Officer in relation to the latter issue).

Case study

A man lodged a complaint that he was unwell and needed rest but that he was being kept awake by construction work at a nursing home. The Commission contacted the manager of the low-care residential aged care facility and was advised that the hostel was being renovated and jack-hammering is required in bathroom areas. The manager advised that they had taken steps to have minimal impact on residents with work done after 9.30 am and the drill was being used for short times on and off to minimise the noise. The Commission was advised the impact on the man would be minimal as the drilling job was nearly complete. No other residents had complained as they were happy the renovations were being completed. The Commission also contacted the man's guardian, who stated that she had been advised of the renovations and agreed that the noise was acceptable under the circumstances. The man expressed that he was happy with the outcome of actions taken by the Commission. This matter highlights circumstances where, while there was no unreasonable service provision, a vulnerable member of the community was able to seek assistance and reassurance, with minimal resourcing implications for the Commission.

The Commissioner will on occasion investigate complaints made in relation to Commonwealth-subsidised aged care facilities if they raise issues about the standards of practice of health professionals working in those facilities, or matters otherwise referred from ACCS. The Commissioner's formal role to investigate matters of health profession standards and to jointly consider complaints with health regulation boards, places the Commissioner in a strong position to directly facilitate appropriate outcomes in such matters. One of the matters referred to ACCS followed consideration by the Commissioner and the Australian Nursing and Midwifery Board of a complaint about the actions of an enrolled nurse in an aged care facility. The Commissioner also has the capacity to consider reports about unregistered staff working in aged care facilities.

Retirement villages

As noted in the previous reporting period, the Commissioner's office had been contacted by residents or their family members in relation to a lack of response when emergency call systems have been activated. As this issue had been raised in complaints in previous years, and in different retirement villages in the ACT, the Commissioner decided to initiate an audit of personal response systems, also known as emergency response systems, provided for residents in ACT Retirement Villages.

The audit was conducted by way of a survey of retirement villages where the management of the retirement village was requested to provide the Commission with a range of information relating to the service they provide to residents. The audit sought to identify whether managers of retirement villages were aware of the Australian Standard relating to emergency response systems and the level of compliance with the Standard. The audit also sought to identify the adequacy of staff training and awareness in relation to responding to alarms.

The audit was completed during the reporting period and was finalised by reporting back to all retirement villages on best practice initiatives so that they could compare their performance with activities being undertaken in other villages.

Community education & engagement

Community education and engagement activities were minimal during the reporting period. The Commissioner attended the Chief Minister's Seniors Week breakfast and had a stall at the Seniors Week Expo at EPIC. The Expo gave the Commissioner and staff an opportunity to engage with older people and distribute information about the assistance the Commission can provide.

Staff presented on consumer rights and the role of the Health Services Commissioner at a forum targetted towards seniors that was organised by A Gender Agenda. Staff also conducted a site visit, at the invitation of Calvary Retirement Village, to discuss the role of the Commissioner.

The Commissioner sought to maintain profile for the older persons' function by continuing to sponsor events that promote the role of the Commissioner. Sponsorships were:

- The Life's Reflections photo competition which celebrates the lives of older Canberrans through the eyes of different age groups - the Commissioner was on the Judging Panel and presented awards to winners in the Age-Friendly City category of the competition.
- The Silver Screen film festival, targeting an over-50 audience screened at the National Film and Sound Archive during July-August 2013 - the Commissioner attended the promotional launch of the Festival;
- The Age-Friendly Business Awards - the Commissioner was a member of the judging panel and sponsored one of the awards.

The Commissioner had accepted an invitation to be a member of the Age Friendly City Conference Steering Committee during the previous reporting period. The Conference was held in October and hosted a number of international and national speakers and delegates.

Role of Commissioner in relation to services for older people

The Commissioner has noted in previous reporting periods that the role in relation to services for older people is problematic as, while the Commissioner has the function, the Commissioner's title does not reflect this. The Ministerial Advisory Council on the Ageing has previously recommended that there be a designated role for older people and the Commissioner has endorsed the notion that a separate title would be appropriate.

At the Seniors Week Expo, the Commission conducted a brief survey in relation to the Commissioner's role, and yes/no responses were received from 46 people. As anticipated, the majority of respondents (71%) reported that they did not know the Health Services Commissioner has responsibilities in relation to services for older people. All respondents indicated that having a stand-alone ACT Commissioner for Older People would benefit older members of the community.

Strategic work

Strategic work undertaken during the reporting period included attending a range of meetings and providing input to submissions on matters relating to older people, including the Transport Plan, the Strategic Plan for Positive Ageing, and discussion on services for older people in the Human Rights Commissioner's review of women in the Alexander Machonochie Centre. The Commissioner also attended a Roundtable chaired by the Chief Minister and the Minister for Ageing on sustainable care for an ageing community.

Human Rights & Discrimination Commissioner

Role & functions of the Human Rights & Discrimination Commissioner

The Human Rights & Discrimination Commissioner (the Commissioner) has separate roles in relation to the jurisdictions of discrimination and human rights.

In the discrimination jurisdiction, the Commissioner's role is to handle discrimination complaints, promote equality, examine relevant issues, and provide community education and information about rights under discrimination law.

The highlights of the year for the Commissioner included:

- A special celebration of International Human Rights Day 2013 (10 December) as part of the program of events for Canberra's Centenary celebrations.
- The completion of a major Human Rights Audit into the treatment of women at the Alexander Maconochie Centre, Canberra's only jail, which has now been in operation for five years.
- Promoting the understanding and enhancement of rights amongst the Aboriginal and Torres Strait Islander community.
- Participation in the Law Reform Advisory Council's review of the ACT Discrimination Act, a task the Commissioner has been requesting for many years, so it can be updated to more consistently protect the right to equality.
- Hosting staff from anti-discrimination and human rights authorities around Australia as part of the biennial Australian Council of Human Rights Agencies Officers Conference in October 2013, which is the first time for over ten years.
- Holding the fourth Annual Race Roundtable with the Federal Race Discrimination Commissioner, as well as participating in two Community Roundtables to consider the Federal Government's proposed reform of Racial Vilification laws.
- Continuing to refine the discrimination complaints handling process, leading to more timely outcomes for parties, with a success rate of 70% for conciliations, which result in these agreements being registered with the Tribunal (ACAT).

In relation to human rights, the Commissioner's role includes providing community education and information about human rights law, reviewing the effect of ACT laws on human rights, and advising the Attorney-General on the operation of the *Human Rights Act 2004* (HR Act). There is no jurisdiction to handle breaches of human rights.

Dr Helen Watchirs was appointed as Commissioner ten years ago in April 2004. During the reporting period, the human rights & discrimination team capacity fluctuated, and at the end of the period comprised 5 FTE, being three legal adviser positions (one full-time Legal 1, one part-time SOG C and one full-time SOG B), two complaint handlers (one part-time) and a project officer (part-time ASO2).

The Commissioner also took on the additional role of Public Advocate from January 2014. There have been synergies in having a human rights focus in the Public Advocate role, such as being able to highlight public authorities' legal obligations towards our most vulnerable and disadvantaged clients. The Commissioner welcomes the opportunity of the ACT Government reviewing Protection of Rights Services, to clarify and consolidate regulatory oversight roles, which should improve the depth and breadth of service delivery, making it more meaningful to clients. For example interventions in ACAT matters can be performed by specialist in-house human rights lawyers that have more direct and immediate impact for parties, than Supreme Court matters that we are formally notified of and brief counsel to argue complex legal issues.

Community engagement

The Commissioner has a statutory responsibility to provide education on the right of people to be free from unlawful discrimination and sexual harassment under the *Discrimination Act 1991*, and to promote understanding of the provisions of the HR Act.

A feature of the reporting period was a special celebration of International Human Rights Day 2013, as part of the program of events for Canberra's Centenary celebrations.

The Commissioner's team provided 10 sessions of formal training to government, private sector and broader community. The Commissioner has also developed alternative community engagement techniques. These are discussed further below.

In addition to this work, the Commissioner and/or her staff attended, or spoke at about 25 forums, including:

Human rights & general activities

- Australian Institute of Public Law Conference.
- Institute of Arbitrators and Mediators Conference on Bullying.
- Justice Connections Conference at the University of Canberra.
- Address to delegation from Kenyan Government/Parliament.
- Address delegation of Chinese officials and journalists.
- Induction of new MLAs on Human Rights law.
- Speech for ACT Shelter Forum.
- Jessup Moot Award speech.
- ACT Human Rights Education Forum with Australian Council for Human Rights Education.
- Presentation to local branch of Australian and New Zealand Association of Psychiatry, Psychology and Law.
- Northside and Southside Community Services outreach events.
- Lecture to University of Canberra students on conciliation in discrimination complaints.
- Presentation to Law Society Legal Education session for Government lawyers on ACT discrimination law.
- Presentation at Charles Sturt University (CAPPE) Human Rights Parliamentary Scrutiny Conference.

Race discrimination related work

- Presentation at launch of DLA Piper Guide to the UN Declaration on Rights of Indigenous People.
- Two Community Roundtables on Federal Government's propose reform of Racial Vilification laws.
- HRC's Race Relations Roundtable.

Sex & gender diverse discrimination related work

- Ministerial Advisory Council on Women's Event 'Thinking Globally, Acting Locally'.
- Domestic Violence Roundtable focusing on ATSI and CALD populations.
- Speech to 2014 ACT International Women's Day Lunch.
- Presentation to MS Angels.
- Telstra ACT Business Woman of the Year Awards speech.
- Presentation to A Gender Agenda on discrimination law.

In October 2013 the Commissioner hosted fifty staff from anti-discrimination and human rights authorities around Australia as part of the biennial Australian Council of Human Rights Agencies Officers Conference, which is the first time it has been held in the ACT for over ten years. Participants rated the conference as 4.4 out of 5, and particularly enjoyed presentations from Dr Ken Henry (formerly Secretary of Treasury) and Professor Simon Rice (ANU), as well as songs performed by Wiradjuri entertainer Johnny Huckle.

Training

As part of her function to promote understanding of discrimination and human rights law, the Commissioner's team provides training on these laws. The Commissioner delivered 10 individual sessions of formal training, including:

- Human Rights in the Community Sector.
- The ACT Human Rights Act 2004 & Responsibilities of Public Authorities.
- Workplace Discrimination, Sexual Harassment & Bullying.
- UN Declaration on the Rights of Indigenous Peoples.
- Workplace Contact Officer Training.

Standard training is provided free to the community sector. Tailored training was also available to all sectors, with a reduced fee for community sector organisations.

During the reporting period, feedback on training was received from 232 participants. Of these, 81% (188) recorded an overall rating of either *very good* or *excellent* for the session, with 99% (230) recording an overall rating of either *good*, *very good* or *excellent*.

Table 2 - Feedback received from training participants

<p>Human Rights in the Community Sector Engaging presenter Great! I enjoyed the open discussion and group work.</p>
<p>The Human Rights Act & Responsibilities of Public Authorities Good mixture of practical and theoretical learning. Fantastic presenter with a lot of knowledge on the workshop. Great - thank you. It was a great workshop!</p>
<p>Workplace Contact Officer Training Allowed interaction and feedback all the way through. All components were informative and useful, especially the role playing. It was a great day of learning. I thoroughly enjoyed the course and feel confident in my new role, thank you.</p>
<p>Introduction to Discrimination, Sexual Harassment & Bullying The session was brilliant and very educational; lots of food for thought. Great - I learned a lot. I feel I can improve in way that I speak and treat people. Thank you - well presented.</p>

Developing working relationships with key stakeholders

During the reporting period, the Commissioner and her team undertook various outreach activities to engage with target client groups. The Commissioner and staff maintain networks throughout key community organisations in various sectors.

A key focus of the team’s work during the year was working with the Aboriginal and Torres Strait Islander community. The Commissioner received a grant of special funding from the Justice and Community Safety Directorate to progress this project. This was additional to the Commission’s actions under its Reconciliation Action Plan, and the Commissioner’s fourth annual Race Relations Roundtable on 12 June 2014.

The Commissioner continues to serve as a member of the Federal Ministerial Advisory Committee on Blood Borne Viruses and STIs, and the Organ & Tissue Authority Advisory Council. The Commissioner was also appointed in the reporting year to an Expert Advisory Group on Ethical Guidelines on Organ Transplantation Allocation Protocols of the National Health & Medical Research Council.

<p>International Human Rights Day The Commissioner traditionally celebrates International Human Rights day on 10 December each year with an event. The 2013 occasion was particularly large as it was held as part of the city’s centenary celebrations under the ‘Big Issues Big Talk’ project, and Robyn Archer performed at the opening of the event. The Forum celebrated 100 years of human rights in Australia and the unique role of Canberra, as the nation’s capital and first jurisdiction to have human rights legislation. Entitled ‘A Human Rights Century: Commitment or Continuing Resistance?’ the forum was held at the National Library of Australia and featured:</p> <ul style="list-style-type: none"> • The Hon. Michael Kirby AC CMG, Former High Court Judge. • Dr Tom Calma AO, Deputy Chancellor, University of Canberra and former Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner. • Professor Hilary Charlesworth AM, Professor of International Law and Human Rights and Director of the Centre for International Governance and Justice, at the Regulatory Institutions Network ANU. <p>The event was simulcast live via the Internet and broadcast later on Radio National’s Big Ideas program. Podcasts and videos of the event are still available on the Commission’s website. The Forum received widespread and favourable media coverage.</p>

E-learning

The Commissioner's team developed an introductory e-learning package the ACT Human Rights Act, aimed at promoting understanding amongst public authorities of their obligations. The software takes approximately twenty minutes to complete and provides an interactive introduction to the human rights protected under the HR Act, and how the Act's 'dialogue model' is intended to operate. It can be accessed via desktop computer or tablet. The user can print off their results to demonstrate to management they have completed the program. This training complements the Commissioner's existing E-Learning training on discrimination, sexual harassment and bullying.

Media

During the reporting period, newspaper, radio and television media covered a number of activities, including:

- International Human Rights Day (10 December 2013).
- Fifth anniversary of the opening of the Alexander Maconochie Centre (AMC).
- Human Rights Audit of the Women's Area of the AMC.
- Tenth Anniversary of the Human Rights Act.
- Mixing of remand and sentenced prisoners at the AMC.
- Discrimination complaint statistics and trends both locally and nationally.
- Positive impacts of the ACT Human Rights Act.
- Protection from sexuality discrimination in the ACT.

Printed materials

During the financial year the Commissioner expanded her range of guidance material. New brochures were released on the rights of Aboriginal and Torres Strait Islander People, and the application of discrimination law to tenancy matters through partnerships formed with the Real Estate Institute and the Tenant's Union. The Commissioner also printed a series of short 'Fact Sheets' on each human right protected under the HR Act.

These complement existing brochures on human rights, sexual harassment, discrimination law including race, disability, gender identity and other protected attributes, which are also made available electronically. The Commissioner also has posters available promoting anti-racism and anti-sexual harassment messages. These have been circulated free to a number of government and non-government organisations in Canberra, and can also be downloaded from the Commission's website.

Legal & policy work

During the reporting period, the Commissioner made submissions and comments (some joint with other Commissioners) on a range of issues, including:

Table 3 - Legal & policy work

<p>Discrimination law</p> <ul style="list-style-type: none">• Law Reform Advisory Council's Review of the ACT Discrimination Act 1991.• Commonwealth Attorney-General's Department on proposed changes to Federal racial vilification laws.• Federal Sex Discrimination Commissioner's report into Supporting Working Parents: Pregnancy and Return to Work National Review.
<p>Criminal law</p> <p>The following submissions were made to the ACT Justice and Community Safety Directorate and/or the Attorney-General:</p> <ul style="list-style-type: none">• Erasing historic convictions for those convicted of consensual homosexual sex offences.• Review of rights to jury trials.• Changes to the legislation governing roadside drug testing.

- Repeal of Preventative Detention Orders under Anti-terrorism legislation.
- Obtaining consent from certain victims to take forensic samples under the *Crimes (Forensic Procedures) Act 2000*.
- Prescribing certain organisations as a Criminal Justice Entities, and therefore enabling the sharing of information about offences (and alleged offences).
- Victims of Crime Financial Assistance Scheme.
- Close in age exemption for sexual offences under the *Crimes Act 1900*, in conjunction with the Children & Young People Commissioner.
- Proposed changes to voyeurism offences (in conjunction with the Children & Young People Commissioner).

Additionally, the Commissioner made a submission to the Legislative Assembly Legal Affairs Committee's Review into Sentencing, jointly with the Children & Young People Commissioner.

People with disability

- Submission to the Attorney General and Disability Services Minister regarding disability policy proposals, including the development of Disability Action Plans within ACT Government and a Government Disability Justice Strategy.
- Submission to the Federal Disability Discrimination Commissioner's Report, Equal before the law: Towards Disability Justice Strategies.

Health & mental health

- ACT Health consultation regarding 'Towards Culturally Appropriate and Inclusive Services';
- Submission to ACT Health on Secure Mental Health Unit's Model of Care (jointly with both other Commissioners).

Changes to Commission legislation

- Submission to the Attorney General to amend the ACT Human Rights Act following the Supreme Court's decision in *LM* (see XXX regarding Commissioner's Intervention in this case);
- Submission to the Attorney-General regarding amendments to Human Rights Commission legislation, (jointly with both other Commissioners).

Whole of Government and administrative matters

- Proposal to ACT Government to investigate issues of forced labor and trafficking in the ACT;
- Contribution to the ACT Government Review of the ACT Public Service Respect, Equity and Diversity Framework (jointly with both other Commissioners);
- Private Member's Bill amendments to the Freedom of Information Act (jointly with both other Commissioners);
- Input into the ACT Government's submission to Australia's Periodic Review on the Convention on the Elimination of Discrimination Against Women, in conjunction with Disability Services Commissioner;
- Submission to the ACT Government on proposed changes to the Public Sector Management Act (jointly with both other Commissioners)
- Opinion to Shane Rattenbury MLA on the provisions of the Officers of the Assembly Legislation Amendment Bill 2013.

Additionally, the Commissioner and/or staff participated in Government working and reference groups in relation to:

- Mental Health Act reform.
- The ACT Government's 'Fair Go Sport' project.
- Refugee and Asylum Seeker support service.
- Sex Worker Law Reform.
- Police Powers reforms.

Human Rights Audit of the conditions of detention of women at AMC

In February 2013 the Commissioner commenced a Human Rights Audit of the effect and implementation of Territory laws governing the conditions of detention of women at the Alexander Maconochie Centre (AMC), pursuant to s 41 of the *Human Rights Act 2004*, and a Review using her systemic functions under the *Discrimination Act 1991* and the *Human Rights Commission Act 2005*.

The Report was given to the Attorney-General in April, and tabled in the Legislative Assembly on 15 May 2014.

The Audit assessed the law, policy and practices of the AMC, which has been operational for five years, in relation to the treatment of women detainees against the benchmark of international human rights norms enshrined in the HR Act. It considered the rights of both detainees and staff.

The Report found many areas of positive practice, but also made 61 recommendations for improvement. Positive practice included new throughcare support to prevent reoffending, and the tangible efforts made to improve the conditions of detention of women at AMC. It found that women detainees at AMC are treated humanely in custody, and that correctional staff and management are respectful of the particular needs and vulnerabilities of women. There were large improvements in terms of the humane treatment of women at the AMC, compared to the 2007 Human Rights Audit of the Belconnen Remand Centre - in particular there was less strip searching, use of force and segregation.

Nonetheless, the Report found rehabilitation services available to women detainees were more limited than those available to men. Women detainees also have significantly less access to structured employment opportunities within the prison. Women are also not able to access some facilities male detainees have, such as the Transitional Release Cottage, and the Solaris Therapeutic Community (a residential program to address drug and alcohol issues).

Another area of particular concern was the operation of the Women and Children's program that is supposed to provide a framework for children staying with their mother at AMC, but no detainee had ever made a successful application to participate in the program. The Commissioner also raised concerns regarding women detainees with ongoing mental health needs residing in the Crisis Support Unit at the AMC for extended periods. In the past there were some women there for over 100 days. However, she noted that there have been some recent improvements at the Crisis Support Unit, with a new multi-disciplinary approach in services delivered in the women's precinct.

The Report recommended the development of prison industry to provide more structured employment opportunities for all detainees. The Report also highlighted areas for consideration over the longer term, such as women's facilities for transitional release, and therapeutic residential program to address drug use.

The Commissioner noted in the Report that there are genuine challenges posed by the small number of women detainees in the ACT, with an average of 14 women detained at any one time. The Government must also accommodate women of different classifications and needs within a precinct of cottages for up to 30 women in one prison. Since the Audit the numbers of women detained have increased to the mid-20s at some times.

While a number of stakeholders raised concerns regarding the co-location of women detainees in a precinct within a predominantly male prison, the Commissioner noted that the issues of scale would not be resolved by the establishment of a separate women's prison in the ACT. The Report noted that these advantages include access to health and dental services, education programs, library, and generous visiting program.

The ACT Human Rights Act protects specific rights recognised in International Law, largely covering 'Civil and Political Rights' such as equality humane treatment in detention, and privacy, especially for vulnerable groups such as Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, and women with disabilities.

As part of the Audit, current and former detainees, staff, and stakeholders were interviewed, and key policies, procedures and records were examined. The Commissioner has powers inspection under the *Corrections Management Act 2007*. Public submissions were received from nine organisations, including the ACT Women and Prisons Group.

During the review, the Human Rights & Discrimination Commissioner received specialist advice from the Health Services Commissioner, the Disability Services Commissioner, and the Children & Young People Commissioner. A Government response is expected early in the next reporting period.

Working with the Aboriginal and Torres Strait Islander community on rights & capacity

The Commissioner received a grant of special funding from the Justice and Community Safety Directorate to progress capacity building and rights awareness with the Aboriginal and Torres Strait Islander community. A report on the outcomes of the consultation will be released in the next reporting year.

Review of the ACT Discrimination Act by the Law Reform Advisory Council

The Commissioner continued her work as a member of the ACT Attorney-General's Law Reform Advisory Council (LRAC). Council Members are appointed by the Attorney for their expertise in matters relating to law and legal policy. The Attorney-General has asked the LRAC to broadly inquire into the scope and operation of the *Discrimination Act 1991*. The Act was enacted over two decades ago and changes have been made in many areas. However, equivalent legislation in other jurisdictions indicates that significant parts of the Act could now be updated in light of current best-practice in Australia and overseas, such as the United Kingdom.

LRAC released a discussion paper in April 2014, and the Commissioner's submission recommended several reforms including:

- An explicit duty for employers, service providers, retailers and others to make reasonable adjustments for people with disability.
- A positive duty on ACT Governments agencies to promote equality and relevant discrimination before it occurs, with consideration of extending this to the private sector in the longer term.
- Further consultation with the intersex and gender diverse communities, along with sporting clubs and associations, about better legal protections for gender identity and intersex discrimination in sport.
- Addition of protections for intersex people.
- Change from 'spent criminal conviction' as an attribute protected to one based on 'irrelevant criminal record, with consideration also given to how best to apply Working With Vulnerable People checks in this context.
- Addition of protection for people subjected to domestic or family violence.
- Explicit protection for people discriminated against unfairly because of their immigration status.
- Consideration of a new attribute of 'socio-economic status' (or 'homelessness');
- Broader vilification protections, including for disability vilification; and
- A reconsideration of the current exceptions to unlawful discrimination.

Declaration of Incapability

During the reporting period, the Commissioner again questioned the ACT Government's response to the Declaration of Incompatibility declared by the Supreme Court *In the Matter of an Application for Bail by Isa Islam* [2010] ACTSC 147. The Commissioner believes further reform to bail laws are needed as a result of the decision.

Mental Health Act reform

The Commissioner continued to participate in the ACT Government's lengthy consultation process for a new Mental Health Act. The Commissioner was pleased to see the introduction of the Bill in the Legislative Assembly in May 2014.

Human Rights Act interventions

The Commissioner received thirteen new formal notifications about human rights issues being raised in litigation before the Courts and ACT Civil and Administrative Tribunal. The Commissioner intervened in two of these matters.

LM v Children's Court

The Commissioner intervened in a Supreme Court matter, *LM v Children's Court* [2014] ACTSC 26. The case concerned the ability of the Children's Court (and other courts and tribunals other than the Supreme Court) to assess whether a Public Authority has breached its human rights obligations. The Master also considered the nature of any remedy such bodies could provide for a breach. This is a matter of some concern, as the Supreme Court's jurisdiction is an expensive and lengthy process for plaintiffs, who will often be vulnerable members of the community. In *LM* the court was asked to consider how the Children's Court could consider the actions and decisions of the Direction of Public Prosecutions, in deciding to charge a young offender with a more serious offence after she had plead guilty to a lesser one. The Master agreed in principle that such courts and tribunals could consider such questions, however also raised questions how the court should balance potentially 'unlawful' actions of the DPP against alleged criminal conduct, particularly when the remedy sought was a permanent stay of proceedings. Master Mossop confirmed in *LM* that an express power to grant relief under the *HRA* is given only to the Supreme Court via s 40C(4). However, His Honour also suggested that inferior courts and tribunals (and the Supreme Court) retain their inherent, statutory or common law jurisdictions to grant remedies otherwise available to them other than under the *HRA*. Therefore a person may rely on their rights under the *HRA* in lower courts and ACAT, but lower courts and ACAT cannot grant a remedy under the *HRA* for that breach, unless it falls within the existing rules of that remedy. This creates a risk that HR Act arguments before a lower court or ACAT may be pointless, if any remedy for a breach is subject to the requirements of the non-*HRA* matters before the court anyway. Master Mossop in *LM* did suggest that the consideration of a remedy by a lower court and ACAT for a HR Act breach may include factors beyond the traditional scope of that remedy, however this remains unclear. His Honour ultimately determined that a permanent stay should not be granted.

The Commissioner wrote to the Attorney General suggesting legislative reform may be needed to clarify these questions. It is well acknowledged that the Supreme Court suffers from a backlog of cases. Any statutory regime which limits the practical utility of initiating proceedings in the Supreme Court is therefore beneficial. If s 40C(4) precludes inferior courts and tribunals from issuing a direct remedy (as the Master of the Supreme Court found in *LM*), then applicants are likely to respond by starting a proceeding directly in the Supreme Court under s 40C(2)(a), rather than initiating or continuing proceedings in tribunals or inferior courts. This will have significant resource impacts, taking up valuable Supreme Court time on issues that could be dealt with more effectively and efficiently in lower courts and tribunals. This could include respondents seeking to adjourn matters in lower courts or the ACAT, so they can raise human rights arguments in the Supreme Court. Inferior courts and tribunals offer applicants a more cost-effective path to remedying wrongs. Precluding lower courts and tribunals from providing a direct remedy limits individuals from obtaining justice in practice. Tribunals and lower courts offer significant benefits with specific jurisdictional expertise, such as the tenancy matters in the ACT Civil and Administrative Tribunal, and the Children's Court. They are familiar with the subject matter and particular legal framework, thus able to weigh up the impact of a Public Authority's breach of the individual's rights in light of all relevant factors in the proceeding. They are well placed to issue an effective remedy under the *HRA*.

Limiting Terms

The second intervention was in an ACAT proceeding, sitting as a Mental Health Tribunal, concerning the duration of a Limiting Term for an alleged offender. The Limiting Term is set by a Court when it finds an alleged offender unfit to plead, and refers that person to ACAT to make an assessment for

treatment. The duration of any involuntary treatment in a therapeutic environment cannot be longer than the Limiting Term, calculated according to what sentence the offender would have received had they been found guilty. The Commissioner was invited to make submissions on how the ordinary rules of sentence calculation should apply to the Limiting Term, and in particular whether sentences for offences should be served concurrently or cumulatively. The Commissioner's submitted that ordinary rules of statutory interpretation applied, as well as a HR Act interpretation, which dictated that the sentence should be the shortest duration possible under ordinary sentencing provisions.

In addition, the Commissioner continued to participate during the reporting period as an 'interested party' in a matter before the ACT Civil and Administrative Tribunal involving the interaction between guardianship and mental health law. The case involves legal questions about how to assess an individual's ability to consent to mental health treatment. Community organisations ADACAS and Advocacy for Inclusion are also involved in the case. A staff member attended hearings in early 2013, and the Commissioner provided several written submissions.

Alexander Maconochie Centre

In addition to the formal Human Rights Audit of the treatment of women at the AMC, the Commissioner continued her ongoing oversight function at the facility. During the reporting period, the Commissioner received 44 inquiries from detainees, staff and visitors at the Alexander Maconochie Centre (AMC) regarding discrimination or human rights matters. This is a similar outcome to the 46 inquiries received last year. In addition, two formal discrimination complaints were made by staff or detainees regarding alleged discrimination at the Alexander Machonchie Centre the same figure as in the last reporting year.

The Commissioner does not have the jurisdiction to handle individual complaints concerning human rights concerns, from any member of the community, including detainees. Nonetheless, these inquiries are an important way for the Commissioner to be aware of issues at AMC and to inform her systematic oversight work, and may be referred to either the ACT Ombudsman, AMC Official Visitor or both. Without an individual complaint handling power, the Commissioner is reliant on other agencies like the Ombudsman and Official Visitor to be informed of complaint trends, in addition to her own observations made via visits and calls from detainees and their representatives.

The Commissioner continued to meet regularly with the AMC Official Visitors during the reporting period to discuss issues of concern. The Commissioner has arranged that at the request of detainees, she will formally notify the Official Visitors of their concerns, to be discussed further at the Official Visitors' next regular visit to the AMC. The Commissioner will from time to time, with consent, also refer inquiries to the Ombudsman.

Since its opening, the Commissioner has raised concerns with the Minister for Corrections and the Department about a range of systemic human rights issues affecting detainees at the prison. As noted in the last Annual Report, the Commissioner continues to note many positive improvements concerning issues raised in previous years. During the report period, the Commissioner discussed the following issues formally with ACT Corrective Services beyond those raised in the Human Rights Audit of the Treatment of Women Detainees:

- Monitoring of protected emails between detainees and legal representatives.
- Withdrawal of the ACT Corrective Services' policy in relation to detainee conjugal and private family visits.
- Changes to the AMC Women's and Children's Policy, which seeks to allow young children to be cared for by their mother (or female primary care giver), where this is in the best interests of the child (jointly with the Children & Young People Commissioner).
- Monitoring the reduction in visiting days from six to five, although this is still generous.

- Follow up issues arising from the Human Rights Audit of the Women’s Area of the AMC, including information on related statistics and performance indicators.

In the 2007 Human Rights Audit of ACT Correctional Facilities, the Commissioner recommended that a needle and syringe exchange programme be piloted at the new Alexander Maconochie Centre. This recommendation was repeated in the 2014 Human Rights Audit on the Conditions of Detention of Women at the AMC. The Commissioner welcomes the ACT Government’s efforts during the reporting period to develop a model to implement this policy.

Racism. It Stops with Me

During the Reporting period the Commissioner worked with ClubsACT to circulate 5000 coasters branded with the ‘Racism. It Stops with Me’ logo to local clubs. The coasters have contact details for both the ACT Human Rights Commission and the Australian Human Rights Commission (based in Sydney), which developed the campaign. The Commissioner also welcomed the ACT Government’s announcement that it would formally commit in mid 2014 to the Commonwealth ‘Racism. It Stops with me Campaign.’

Own Motion Matter: Right to Education

The Commissioner continued her own motion consideration regarding the policy and practice of charging certain international students (eg: asylum seekers) to attend ACT Government schools and colleges. Her consideration includes an application of both the ACT Discrimination Act and the new right to education under the HR Act. She expects to conclude this consideration early in the next reporting period.

ACT Race Roundtable

The Human Rights & Discrimination Commissioner hosted the fourth annual Race Relations Roundtable on 12 June 2014 involving 35 community members. The event was chaired by the Commissioner, and explored two key developments with accompanying key note speakers. Dr Tim Soutphommasane, Federal Race Discrimination Commissioner, discussed the Future of National Racial Vilification Laws, and Professor Simon Rice, Chair of the Law Reform Advisory Council, discussed the Review of the ACT Discrimination Act, including race discrimination protection and how organisations could participate in the Review (eg: by commenting on racial vilification provisions). The Commissioner continued to hold informal lunches during the year with members of the Aboriginal and Torres Strait Islander and multicultural communities.

Case study: Race/disability discrimination in employment

A man alleged he was subjected to racial and disability (discrimination in the workplace claiming that he was given an insulting nickname and removed from some of his duties because he was not Australian. The complainant also alleged he was subjected to unilateral and non-consensual changes to his work arrangements, which resulted in difficulties managing his carer responsibilities. He claimed that the changes did not apply to his colleagues and that when he raised his caring commitments with his managers, he was informed that they did not care about his family obligations. At conciliation the employer agreed to send out a bulletin to staff reiterating that racism and bullying is not accepted in the workplace. It was also agreed to ensure that the complainant would be provided with a shift pattern that conformed to his childcare obligations. He was provided with a written apology and \$5,500 financial compensation.

Exemption applications

The Commissioner did not receive any new formal applications for exemptions under the *Discrimination Act* in this period. The Commissioner continues to monitor reports from BAE Systems Australia and Raytheon Australia on compliance with the conditional exemptions on the grounds of race granted to these defence industry companies.

Case study: Pregnancy & disability discrimination in employment

A woman alleged pregnancy discrimination when her employment was terminated. The woman disclosed her pregnancy during the probation period, and alleged that she was told that she was a safety hazard to herself and others by a manager. The woman also made a claim of disability discrimination due to concerns being raised during the probation period about the number of days she had taken off, despite having medical certificates for these days. Although she was given a short-term contract after her permanent employment was terminated, she did not feel that this resolved her concerns. At conciliation, the employer agreed to pay financial compensation of \$5000 for hurt, humiliation or distress, provide a reference, and develop an organisational policy to ensure that Indigenous employees have access to appropriate cultural support during employment with the organisation.

Play by the Rules

The Commissioner has been a long-term participant in the Play By the Rules project. This project provides information and online learning about how to respond to and prevent discrimination, harassment and child abuse in the sport and recreation industry. The project was established in 2001 as a partnership between the Australian Sports Commission and all State/Territory sport and recreation and anti-discrimination/child protection agencies. Related to this work, during the reporting period the Commissioner discussed with ACT Sport and Recreation, and other community stakeholders, about adopting the Victorian Fair Go Support project model in the ACT. The project seeks to promote positive messages about sexuality and gender identity through sport.

Case study: Disability discrimination in provision of service

A complaint was made about the effects of the club dress code, which did not allow visitors to wear hats, or other headwear. A club patron had recently undergone chemotherapy, and as a result was wearing a hat. Despite explaining the situation to the club manager, it was alleged that no flexibility was shown to the man's situation. At conciliation, the club agreed to: make a personal apology to the man; remove references to the man's friends as 'offenders' in the club's records; review the club's policies, procedures and by-laws in order to raise awareness of its responsibilities under anti-discrimination law (including in relation to the wearing of any headwear inside the club by making reasonable adjustment for disability, or other attributes protected by law); ensure that all staff receive training on this issue; and arrange a fundraising event for the benefit of a nominated support group.

Discrimination Act: complaints handling

There were 357 discrimination and human rights enquiries during the reporting period, which is a slight decrease on the 429 enquiries recorded last year. Of the 357 inquiries, 49 were human rights enquiries from the community, an increase from the 37 last year, and is likely due to a number of factors including a greater emphasis on community engagement by the Commissioner during the year, and the enhanced enquiry data capture provided by the Commissioner's database. While the Commissioner does not have the jurisdiction to handle human rights complaints, such enquiries are often relevant to systemic, policy or litigation work.

The Commissioner received 308 discrimination enquiries, a reduction from the 392 received in the last reporting period. Sixteen complaints were received on complaint forms without any prior enquiry being made by the complainant. Of the 308 discrimination enquiries, 173 were discrimination complaint related, and another 97 were relevant to the Commissioner's functions. The remaining 38 enquiries were outside the Commissioner's jurisdiction.

There were 84 new formal discrimination complaints lodged with the Commissioner during the reporting period. This is a small increase from the 82 complaints last year, but still a significant decrease from the 125 new complaints received in 2011-12. The Commissioner traditionally received approximately 100 discrimination complaints per year with a specialist intake team undertaking informal outreach also. In this reporting period, complaints decreased significantly at the end of the year. As at March 2014, the Commissioner had received 68 complaints, at an average

of 7.5 per month. However, only 16 new complaints were received in the last three months of the reporting period (making an average of just over 5 per month).

In response to this reduced complaint number, the Commissioner has taken a number of proactive measures. A greater emphasis has been placed on own-motion and systemic discrimination work, with a view to maximising limited resources. The Commissioner undertook own motion enquiries during the year into the treatment of women detainees the AMC (as part of her Human Rights Audit), the strip searching of women at AMC arising from that Audit, the charging of international school students, and a reduction in access to accessible parking in an area of Civic.

Case study: Sex and potential pregnancy discrimination in employment

A woman alleged discrimination on the basis of her sex, and potential pregnancy. After informing her employer that she would require time off at short notice to undergo IVF treatment, she alleged that she was subjected to insults and had to compromise her treatment because of the pressure put on her by her employer, finally resulting in her resigning due to stress. At conciliation the employer provided the complainant with a written apology and \$1500 financial compensation.

The Commission measures satisfaction with its services by requesting that the parties complete an evaluation form on the closure of complaints. High levels of satisfaction with the Commission's services are outlined elsewhere in this Report. Comments from respondents in relation to discrimination complaints included:

- The process was handled efficiently, with relevant additional respondents involved. I was kept informed properly of progress.
- I was pleased with the process, and felt comfortable at all stages. Everything was explained carefully and thoroughly.
- I enjoyed all of the help that you gave me.
- The complaint gave me an opportunity to notify workplace of serious issues in the workplace which are not taken seriously by my employer.
- Services provided were very professional.
- I would like to thank HRC for all their assistance in my matter.
- Well structured process for arriving at an outcome that worked for the complainant and respondent.
- You have done a wonderful job in supporting us for the discrimination case. I'm extremely thankful for your support.

ACAT referrals

In the discrimination jurisdiction, the Commissioner's role is to consider and if appropriate, conciliate complaints. If the complainant is unhappy with the outcome of this process, he or she may elect to request the Commissioner to refer the matter to the ACT Civil and Administrative Tribunal (ACAT) for a binding decision in relation to the matter. Twelve cases were referred during the reporting period to the ACAT, which were less than the 16 cases referred in the last reporting period.

Five decisions were reported by the Tribunal in the reporting period. In *Hedley v CSD* [2013] ACAT 65, the Tribunal considered a claim of sex discrimination involving the claim of four tenants that the ACT Government's scheme to promote the sale of Public Housing stock to tenants was discriminatory. The Tribunal found the application of the schemes to the applications was reasonable, and there was no direct or indirect discrimination in the text or application of the schemes.

Two reported decisions involved the previously reported decision of *Bell & De Castella and Rob De Castella's Smartstart for Kids Limited* (Discrimination) [2013] ACAT 27. In *Bell & De Castella and Rob De Castella's Smartstart for Kids Limited* (Discrimination) [2013] ACAT 66 the Tribunal awarded costs against the applicant. The Tribunal was satisfied that there were circumstances of sufficient weight

to justify a departure from the presumptive rule that each party should bear their own costs. It found it reasonable that the applicant should pay those costs of the respondents which arose from an unreasonable delay caused by the applicant. The facts of this particular matter aside, it is disappointing that this outcome occurred, as one of the benefits to date of the ACT discrimination regime (compared to the Commonwealth) has been its low costs. While the ACAT remains a far less costly option for complainants than the Federal Court, the possibility that costs may be awarded against complainants may act as a disincentive for future complaints to be brought to the Tribunal. Already the ACT has little recent discrimination jurisprudence, and it is unfortunate if this were another barrier to further developing of discrimination case law. In *Bell & De Castella and Rob De Castella's Smartstart for Kids Limited (Discrimination)* [2014] ACAT 9, the Tribunal referred an appeal from the applicant to these earlier decisions to the Supreme Court.

Two reported decisions involving claims of race discrimination in the provision of education by the Canberra Institute of Technology. In *Shammas v Canberra Institute of Technology* [2014] ACAT 2 the Tribunal found the claim frivolous and vexatious and dismissed the Application. In *Shammas v Canberra Institute of Technology* [2014] ACAT 5 the Tribunal refused the applicant's application to re-open an application she withdrew in 2012. During the reporting period the same applicant, Ms Shammas, was refused leave to appeal to the Court of Appeal resulting from a decision of the ACAT in February 2012.

Case study: Disability discrimination in employment

A woman complained that following her recovery from a life-threatening illness, her employer would not give her sufficient shifts, despite her having expressed an interest and being well enough to do so. The woman resigned her employment when a maternity leave vacancy in a role equivalent to hers was offered as a promotion to another person, instead of being given to her. At conciliation the employer agreed to: pay the woman \$7000 in financial compensation for claimed hurt, humiliation and distress; amend its processes so that at any meeting called to discuss workplace concerns an employee would be given the option of having a support person present, deferring the meeting and if the employee is in a distressed state, giving the employee the option of a meeting with another business owner. The employer also agreed to: obtain information and resources which would assist them in dealing with potential employees diagnosed with similar conditions; develop a written policy to cover return to work following non-compensable injury or illness; and revise its recruitment policy to ensure all current employees are given the opportunity to apply for any staff vacancies.

Complaint allegations by ground of discrimination

There were 133 allegations on 17 grounds in those new accepted discrimination complaints, which is similar to the 140 allegations in 2012-13. There are more grounds than complaint numbers, as a single complaint may include multiple grounds.

Of the 84 complaints lodged, the most common ground of discrimination was disability (46 at 35%), which is the usual trend for complaints historically, although disability (18%) was overtaken by race (22%) in the last reporting period. Race continued to be a common ground of complaint (15%), as well as race vilification (7%) and may reflect the Commission's focus on engaging with the Aboriginal, Torres Strait Islander and multicultural communities.

Table 4 - Complaint allegations by ground of discrimination

	2013-14	2013-14	2012-2013	2012-2013	2011-2012	2011-2012
Disability	46	35%	29	18%	65	33%
Race	20	15%	33	22%	28	14%
Age	9	7%	6	4%	9	5%
Vilified on ground of race	9	7%	8	6%	13	7%
Profession, trade, occupation or calling	8	6%	0	0%	5	3%
Sex	8	6%	13	9%	16	8%
Sexual harassment	7	5%	8	6%	7	4%
Victimised	6	5%	14	10%	12	6%

Industrial activity	4	3%	1	1%	4	2%
Sexuality	4	3%	3	2%	3	2%
Pregnancy including potential pregnancy	3	2%	3	2%	3	2%
Status as a parent or carer	3	2%	5	3%	4	2%
Religious conviction	2	2%	6	4%	7	4%
Association with a person who has an attribute listed above	1	1%	1	1%	6	3%
Gender identity	1	1%	2	1%	2	1%
Political conviction	1	1%	2	1%	5	3%
Relationship status	1	1%	3	2%	1	1%
Vilified on grounds of gender identity	0	0%	0	0%	3	2%
Vilified on grounds of sexuality	0	0%	2	1%	1	1%
Vilified on grounds of HIV/AIDS	0	0%	1	1%	0	0%
Assistance Animal	0	0%	0	0%	2	1%
Spent Criminal Conviction	0	0%	0	0%	0	0%
Total	133	100%	140	100%	196	100%

Case study: Disability discrimination in provision of goods & services

A man alleged disability discrimination when he was informed that he would receive limited service at a coffee shop because his use of a mobility scooter was a health and safety risk, as it blocked the entry/exit to the shop. He was told that he would not be able to sit at the counter to have his coffee and instead the cafe offered to provide him with takeaway coffee for him to consume outside the shop. At conciliation the coffee shop agreed to rearrange the furniture near the entrance to the shop to enable the complainant to have his coffee inside the shop.

Complaint allegations by area of discrimination

The areas of provision of goods and services continued the trend of being the highest areas of complaints, with employment being the second highest area, although for many years before the establishment of the Fair Work Ombudsman it was consistently the highest area of complaint in all jurisdictions. Access to premises continues to be a fluctuating area of complaint, and in this reporting year rising again to 16% of complaints, compared to 4% last year. As with discrimination grounds of complaint, a single case can include multiple areas of public life.

Table 5 - Complaint allegations by area of discrimination

	2013-2014	2013-2014	2012-2013	2012-2013	2011-2012	2011-2012
Provision of goods, services or facilities	38	32%	38	36%	57	36%
Employment	32	27%	31	29%	34	22%
Access to premises	19	16%	4	4%	25	15%
Accommodation	10	9%	12	11%	15	9%
Education	8	7%	6	6%	8	5%
Contract worker	2	2%	2	2%	5	3%
Request for information	2	2%	1	1%	0	0%
Professional trade or Organisation	2	2%	0	0%	2	1%
Qualifying body	2	2%	2	3%	0	0%
Clubs	1	1%	3	4%	4	3%
Employment agency	0	0	1	1%	5	3%
Vilification through public act (not relating otherwise to another area of public life)	0	0	2	2%	3	2%
Other	0	0	2	2%	0	0%
Unlawful advertising	0	0	1	1%	0	0%
Partnership	0	0	1	1%	0	0%
Total	116	100%	106	100%	158	100%

Case study: Sexual harassment, victimisation, racial vilification, & race & disability discrimination in employment

A man of Pakistani background alleged that he was discriminated against due to adverse comments about his race that were made in the workplace, and his manager’s lack of action in response. The man also complained that he was forced to work, despite advising his manager that he was sick with stress and fever. The man further alleged that he was subject to unwanted sexual advances by staff employed in a business he visited as part of his duties and that despite reporting this to his employer, nothing was done about it, and things only got worse. At conciliation, the employer agreed to: pay the man financial compensation of \$4,000 for any hurt, humiliation or distress; acknowledged that the complainant was distressed by matters arising in his workplace (and that he felt unsupported by both the company and his supervisor); provide a statement of service outlining the duties he performed and the duration of his service, a copy of the company’s ‘Employee Handbook’; and complete a review of their Discrimination, Harassment, and Bullying Policies within 12 months.

Complaints lodged by category of aggrieved person

The tables below provide a breakdown by complainants who lodged complaints in this period. In this reporting period equal numbers of men and women lodged complaints. The Commissioner invites complainants to choose a number of different gender identities, including intersex, transgender, other or not provide a gender identification at all.

Table 6 - Complaint allegations by category of aggrieved person

	2013-2014	2013-2014	2012-2013	2012-2013	2011-2012	2011-2012
Individual male	38	45%	39	48%	65	52%
Individual female	38	45%	38	46%	60	48%
Other/unknown/not disclosed	6	7%	0	0%	0	0%
Group	0	0%	0	0%	0	0%
Commissioner	2	2%	4	5%	0	0%
Representative	0	0%	1	1%	0	0%
Total	84	100%	82	100%	125	100%

Case study: Disability discrimination in accessing premises

A woman with a disability alleged she was discriminated against when a disability employment agency did not provide dedicated parking for people with disabilities. Also she said that they were not accommodating when she explained the difficulty this caused her in accessing their services. At conciliation the agency agreed to ensure that staff received appropriate training on disability awareness, and also undertook to ensure that all clients are made aware of accessible car parking in its vicinity. The complainant was also paid \$200 in financial compensation.

Complaints lodged by category of respondent

The two highest respondents to have complaints alleged against them were ACT Government agencies and the private sector (36% each).

Table 7 - Complaint allegations by category of respondent

	2013-14	2013-14	2012-2013	2012-2013	2011-2012	2011-2012
ACT Government department, agency or statutory authority	30	36%	24	29%	41	33%
Private enterprise	30	36%	21	26%	48	38%
Education institution	6	7%	7	9%	7	6%
Community organisation	6	7%	8	10%	10	8%
Individual male	6	7%	11	13%	5	4%
Accommodation	3	4%	2	2%	n/a	n/a
Other	2	2%	3	4%	n/a	n/a
Recruitment agency	1	1%	2	2%	4	3%
Individual female	0	0	1	1%	5	5%
Club	0	0	2	2%	4	4%
Union	0	0	0	0%	1	1%
Professional association	0	0	1	1%	0	0%
Total	84	100%	82	100%	125	100%

Conciliations

During the reporting period, the Commissioner continued to focus on its role in providing a fair, impartial and accessible individual complaint handling process, primarily resolving disputes through conciliation. The Commission's conciliation process brings parties together as quickly as possible to discuss the issues raised before the Commissioner formally considers (or investigates) the matter. All parties must consent to the early conciliation.

This approach continues to be efficient, with 33 (70%) of the 47 attempted conciliations resulting in conciliated agreements. This figure is lower than 2012-2013 period, where success rate was 71%. Of the fourteen complaints in which the parties did not formally enter into a conciliated agreement, two were 'otherwise resolved'. While it is ultimately up to the parties to settle matters, this suggests that conciliation is proving a useful way to resolve complaints; of the 88 complaints closed, 33 resulted in conciliated outcomes (38% of closed complaints).

Table 8 - Conciliation outcomes

	2013-2014	2013-2014	2012-2013	2012-2013	2011-2012	2011-2012
Agreement reached	33	70%	39	71%	29	78%
Agreement not reached	14	30%	16	29%	8	22%
Total	47	100%	55	100%	37	100%

Case study: Disability discrimination in the provision of goods, services or facilities

A man complained that following a short ban imposed on him by a shopping centre (which he accepted was reasonable) he was followed and questioned by a security officer. The man alleged that the relevant security officer made a derogatory comment to him in front of others, which he felt was directed towards his disability, and made him afraid of going near the shopping centre again. The shopping centre advised that the complainant was initially banned for a period of 24 hours, but due to further concerns the ban was extended to six months. At conciliation (undertaken by telephone), the shopping centre agreed that the man would have full access to the shopping centre, that they would facilitate a meeting between the complainant and the security guard (if requested to do this by the complainant), and ensure that the security guard be provided with additional training.

Closed complaints

During this reporting period, 88 complaints were closed, a 28% decrease from the 122 complaints closed from last reporting period. This reflects a reduction in the number of complaints received in the last two reporting periods, discussed above. Eight cases were withdrawn by the complainant, and 36 cases were closed without resolution (including because the Commissioner believed conciliation was unlikely to succeed), the decision-maker being a court or tribunal, was not a valid complaint or over two years old). The remaining 44 cases were in the Commissioner's opinion resolved, including through conciliation with the Commission. As stated above, of those not resolved at the Commission, 12 cases were referred to ACAT.

Duration of complaints from receipt to closure

The Commissioner's continuing focus on resolving complaints quickly is reflected in the duration of time of complaints from allocation to closure. Eighty-two percent of complaints were resolved in 6 months or less. The Commissioner had a particular focus on ensuring complaints did not remain open for more than one year, and as a result, all complaints were closed in less than a year.

Table 9 - Duration of complaints from receipt to closure

	2013-2014	2013-2014	2012-2013	2012-2013	2011-2012	2011-2012
Within 0-3 months	29	33%	50	41%	36	32%
Within 3-6 months	43	49%	40	33%	30	27%
Within 6-12 months	16	18%	29	24%	36	32%
After 12 months	0	0	3	2%	9	8%
Total	88	100%	122	100%	111	100%

Children & Young People Commissioner

Role & functions of the Children & Young People Commissioner

The roles and functions of the Children & Young People Commissioner (CYPC) are established under Sections 6, 14 and 19B of the HRC Act, and include:

- Investigate complaints about the provision of services for children and young people.
- Consult with and listen to children and young people, and encourage government and non-government agencies to do the same.
- Promote the rights of children and young people.
- Make recommendations to government and non-government organisations on legislation, policies, practices and services that affect children and young people.
- Encourage and assist providers of services for children and young people to contribute to review and improve service delivery.
- Promote community discussion about the CYPC and services for children and young people.
- Conduct inquiries and reviews.

Administrative structure of the CYPC

The current Children & Young People Commissioner is Alasdair Roy, who, at 30 June 2014, was assisted by a permanent 0.6FTE SOGC (Brianna McGill), and a temporary 1.0FTE Legal 1 Officer (Gabrielle McKinnon).

Within the Commission, the Children & Young People Commissioner is also responsible for the management and oversight of all of the Commission's corporate and administrative functions. These functions account for approximately 30% of the CYPC's total workload.

Systemic & policy work

During the reporting period, the CYPC continued to focus on systemic and policy work, including:

- Undertaking reviews, inquiries and audits.
- Providing policy advice to government, community, and private agencies.
- Commenting on Cabinet Submissions, draft Discussion Papers, and draft policies and procedures.
- Membership of a range of groups and forums.
- Meetings with executive staff from government, community, and private agencies.
- Meetings with Members of the ACT Legislative Assembly.
- General policy and project work.

This decision was made for a number of reasons, including:

- The CYPC's view that it can be more effective to address concerns from a systemic perspective, rather than continuing to address individual and repetitive complaints.
- The ongoing increase in the number of complaints received by the CYPC, resulting in unsustainable workloads and a commensurate decrease in complaints handling performance.

To guide this work, the CYPC continued to develop constructive relationships with staff at all levels of government, community and private organisations, and to listen to their views, their achievements, and their concerns about service delivery for children and young people.

Additionally, the CYPC continued to identify evidence-based best practice in service delivery for children and young people, including through reviews of contemporary literature, and equivalent law, policy and programs in other Australian states and territories.

Systemic Issues Register

The CYPC is aware of government, community and private service provision within the ACT which is failing to meet existing legislative or policy standards, or which could be strengthened to better meet best practice standards.

Accordingly, during the reporting period, the CYPC maintained a Systemic Issues Register, which lists potential areas for systemic review. The CYPC has begun review of some of these issues, and will continue to review others according to resources and priorities.

Systemic and policy work progressed by the CYPC during the reporting period included:

Table 10 - Systemic & policy work progressed by the CYPC in 2013-2014

<p>Seeking the views and wishes of children and young people under s352 of the <i>Children & Young People Act 2008</i></p> <p>The CYPC wrote to the Director-General, Community Services, seeking an opportunity to review the extent to which the views and wishes of children and young people are sought and considered by Care and Protection Services (CPS) when case management decisions about a child or young person are being made. The CYPC suggested that certain decisions, including placement, contact, and choice of school, should not be made without CPS seeking and considering the views and wishes of the affected child or young person. The CYPC remains concerned about this issue.</p>
<p>Administrative review of decisions made by Care and Protection Services under the <i>Children & Young People Act 2008</i></p> <p>The CYPC wrote to Director-General, Community Services Directorate, raising concerns about the lack of avenues for independent reviews of decisions made by Care and Protection Services in relation to children and young people in the care of the Director-General. The CYPC suggested that the current scope of decisions reviewable by the ACT Civil & Administrative Tribunal (ACAT) be extended to include decisions such as where a child or young person will live, and who the child has or young person has contact with. The CYPC remains concerned about this issue.</p>
<p>Limitations to the <i>Working with Vulnerable People (Background Checking) Act 2011</i></p> <p>The Commission wrote to the Minister for Disability, Children & Young People, Ms Joy Burch MLA, and the Attorney-General, Mr Simon Corbell MLA, raising concerns about limitations to the <i>Working with Vulnerable People (Background Checking) Act 2011</i> that may affect the protection afforded to children and young people, people with disabilities, and other vulnerable people under the Act. In particular, the Commission is concerned about the capacity of the Commission to share with the Commissioner for Fair Trading information which may suggest that an individual could pose a risk to a child or young person, a person with a disability, or another vulnerable person. The CYPC remains concerned about this issue.</p>
<p>Amendment to the <i>ACT Human Rights Act 2004</i></p> <p>The CYPC wrote to the Attorney-General, Mr Simon Corbell MLA, suggesting an amendment to s11 of the <i>Human Rights Act 2004</i>. Specifically, the CYPC suggested the s11 should be separated into two distinct parts (one recognising the rights of the family, and the other the rights of children), and that the term 'children' be replaced with the term 'children and young people'. Additionally, the CYPC noted that the current wording of s11 may inadvertently give the impression that the rights of children and young people are limited solely to the 'right to protection'.</p>
<p>Royal Commission into Institutional Responses to Child Sexual Abuse</p> <p>The CYPC met and spoke with members and staff of the Royal Commission to discuss issues of mutual concern and interest. Additionally, during the reporting period the CYPC provided written submissions on the following Royal Commission Issues Papers:</p> <ul style="list-style-type: none">• Issues Paper 1: Working with Children Checks.• Issues Paper 3: Child Safe Institutions.• Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home Care.• Issues Paper 5: Civil Litigation. <p>In September 2013, the Royal Commission asked the CYPC to undertake a consultation with children and young people to determine their views about Child Safe/Child Friendly Organisations. In December 2013, the CYPC undertook a two-day consultation with 32 students aged between 9 and 13 years from Kingsford Smith School. A report on the outcomes of the consultation was released in February 2014, and received positive national</p>

and international attention. The CYPC has also presented the results of the consultation at local and national forums.

In June 2014, the CYPC accepted an invitation from the Royal Commission to participate in a National Roundtable discussion on Working with Children Checks.

During the reporting period, the CYPC remained an active member of the Royal Commission into Institutional Responses to Child Sexual Abuse ACT Working Party.

Service delivery for children & young people in the Jervis Bay Territory

The CYPC regularly visited the Jervis Bay Territory (JBT) to meet with children and young people from the JBT, as well as the Wreck Bay Aboriginal Community Council, service providers, and the broader Wreck Bay and Jervis Bay communities, to discuss service delivery for children and young people in JBT. The CYPC also wrote to and spoke with a range of State, Territory and Commonwealth officials, and the media, about service delivery in the JBT, including concerns the CYPC has regarding the proposed transferral of the administration of the JBT from the ACT to NSW, and the potential closure of the Jervis Bay School.

In June 2014, the CYPC released a short film about the outcomes of a consultation with students from the Jervis Bay School about their futures, and the future of the JBT. The film, which was shot on-site at the Jervis Bay School during a full-day consultation in late May 2014, highlights some of the hopes and dreams the students have for themselves, their families and their communities.

Physical punishment of children and young people

The CYPC wrote to the Chief Minister, Ms Katy Gallagher MLA, suggesting that the ACT Government should actively lead a community discussion on whether the defence of reasonable chastisement should be codified, or indeed, removed. The CYPC also wrote to the Chief Minister noting that if the Government does decide to commence a conversation with the community about physical punishment, that the CYPC would welcome the opportunity to work with the Government to provide assistance with the consultation, including seeking the views of children and young people.

Children and young people with mental health issues who are in contact with the youth justice system

The CYPC and the ACT Health Services Commissioner commenced a joint Commission Initiated Consideration into the services and facilities provided by the ACT Government for children and young people with mental health issues who are involved in the youth justice system. It is anticipated that the report will be released in September 2014, and that it will be used as discussion point in a Roundtable to be held by the CYPC in late 2014.

Guidelines for portraying children and young people in the media

The CYPC developed draft guidelines about how to respectfully and accurately portray children and young people in the media. It is anticipated that the Guidelines will be released in late 2014, and that they will be distributed widely across the ACT media sector.

Services for Aboriginal and Torres Strait Islander children and young people, and their families

In conjunction with ACT Human Rights & Discrimination Commissioner, the CYPC commenced a community engagement activity seeking the views of ACT Aboriginal and Torres Strait Islander communities about which services for their children and young people are effective, and which may require improvement. It is anticipated that a report on the engagement activity will be released in late 2014.

Contact between parents in custody and their children

The CYPC wrote to the Director-General, Community Services Directorate (CSD), recommending that CSD develop policies and procedures regarding communication with parents at the Alexander Maconochie Centre and facilitation of contact between children and parents in custody. The Directorate noted that issue would be addressed as part of their on-going review of policy and procedures, however the CYPC is unaware if this has happened.

Response to allegations of harm in schools

The CYPC wrote to the Director, Information, Communications & Governance, Education and Training Directorate (ETD), recommending that ETD review the current policy and procedures relating to oversight of trainees in schools, to ensure that they are consistent with the National Guidelines for Building the Capacity of Child Safe Organisations. The Directorate agreed with the recommendation.

Implementation of the Bimberi Review

The CYPC wrote to the Director-General, Community Services Directorate, seeking information to verify the implementation of 20 of the 224 recommendations from the CYPC's Bimberi Review. The CYPC is satisfied that there have been significant improvements to the ACT youth justice system, and the Bimberi Youth Justice Centre, as a result of the Bimberi Review.

Compliance with s40(B) of the Human Rights Act 2004

<p>The CYPC wrote to the Director-General, Community Services Directorate, noting the Directorate's obligations under s40(B) of the <i>Human Rights Act 2004</i> (HR Act) and seeking to improve the Directorate's understanding of, and compliance with, their obligations under s40(B). The CYPC will be providing tailored Human Rights Training to the Directorate early next reporting period.</p>
<p>Voluntary Care Agreements under the <i>Children & Young People Act 2008</i></p> <p>The CYPC conducted a Commission Initiated Consideration into the use of Voluntary Care Agreements (VCAs) by Care and Protection Services (CSD), and provided CSD with a report outlining some concerns. The Directorate revised their policies and procedures relating to VCAs, and took into account the CYPC's concerns.</p>
<p>National Summit on Alcohol Related Violence</p> <p>The CYPC wrote to the President, Australian Medical Association, supporting a National Summit on Alcohol Related Violence, and encouraging the inclusion of children and young people in the Summit.</p>
<p>Children of parents who are in contact with the justice system</p> <p>The CYPC met with the Chief Executive Officer, SHINE for Kids, and the Deputy Chief Police Officer, ACT Policing, to discuss a pilot program to provide support to children of parents involved with the justice system. The intended aim of the program is to provide early referral by ACT Policing of children and young people, and their families, to SHINE for Kids at the point of, or soon after, arrest.</p>
<p>Promotional poster for Early Childhood Education and Care Centres</p> <p>The CYPC launched a poster promoting the role of the CYPC in resolving complaints about services provided to children and their families at Early Childhood Education and Care Centres. The poster was distributed to all Early Childhood Education and Care Centres in the ACT.</p>
<p>Oversight of the Bimberi Youth Justice Centre</p> <p>The CYPC hosted a monthly meeting of the Bimberi Oversight Agencies Group (OAG) to discuss issues of mutual interest regarding the Bimberi Youth Justice Centre (Bimberi) and the broader youth justice system, and to work together on issues of systemic concern. The OAG consists of:</p> <ul style="list-style-type: none"> • The ACT Children & Young People Commissioner. • The Official Visitor for Children & Young People. • The Public Advocate of the ACT. <p>In May 2014, the OAG provided their Second Joint Annual Report to the Standing Committee on Education, Training and Youth Affairs. The Joint Report noted many positive developments in the youth justice system over this period, and welcomed the final report of the ACT Government on implementation of the CYPC's 2011 Report to the Legislative Assembly on the ACT Youth Justice System.</p>
<p>ACT Children & Young People Death Review Committee</p> <p>The CYPC is a standing member of the ACT Children & Young People Death Review Committee (CYPDRC), which was established in 2011. The Committee met three times during the reporting period.</p>
<p>Children and young people in Out-of-Home Care</p> <p>The CYPC provided written comment on the <i>ACT Out-of-Home-Care Strategy 2015-2020 Discussion Paper</i>. The CYPC noted the need for significant financial investment in the early intervention aspects of the Strategy, as well as concerns about the shift towards seeing Out-of-Home Care from an economic perspective rather than a best interests of the child perspective.</p>
<p>Model Charter of Rights for Children & Young People in Youth Justice Facilities</p> <p>In conjunction with the Australian Children Commissioners and Guardians (ACCG) group, the CYPC released a <i>Model Charter of Rights for Children & Young People in Youth Justice Facilities</i>. The CYPC will be talking with residents of the Bimberi Youth Justice Centre, as well as ACT Youth Justice Services, about how to best implement the Charter within Bimberi.</p>
<p>Young people with a disability who come into contact with the youth justice system</p> <p>The CYPC provided written comment on the <i>Draft Agreement on Collaborative Practice between Disability ACT, Therapy ACT and the Office for Children, Youth & Family Support</i>, which guide practice with respect to young people with a disability who come into contact with the youth justice system.</p>
<p>Use of 'time out' as a behaviour support strategy in the Bimberi Youth Justice Centre</p> <p>The CYPC provided written comment on Bimberi's <i>Interim Timeout Guidelines</i>, and suggested that the Community Services Directorate consult with the Youth Justice Advisory Panel during their review of behaviour management in Bimberi.</p>
<p>Additionally, during the reporting period, the CYPC reviewed, or had the opportunity to review, many Draft Cabinet Submissions which, for reasons of confidentiality, cannot be detailed here.</p>

Consultation & engagement with children & young people

The CYPC is committed to the right of children and young people to participate in decisions and actions that affect them.

The participation of children and young people is also supported by a number of ACT Government policy commitments, including:

- The ACT Children Young People Plan 2009-2014.
- The ACT Young People Plan 2004-2014.
- The Canberra Social Plan.
- The ACT Government Community Engagement Manual.

Additionally, the right of children and young people to be involved in decision-making is also supported by ACT and International law, including:

- *The ACT Human Rights Act 2004.*
- The United Nations Convention on the Rights of the Child.

More importantly, however, the CYPC consults and engages with children and young people because of the strong belief that children and young people know the most about what is important to them, and that it is children and young people who frequently have the best ideas, the newest ideas, about how to change things and make things better for children and young people.

Additionally, the CYPC is of the view that talking with children and young people will:

- Contribute the views of children and young people to a discussion.
- Model to children and young people that their views are important, and that adults listen to these views.
- Model to government, community, and private agencies that talking with children is worthwhile and can lead to better outcomes

CYPC consultation & engagement activities with children & young people

During the reporting period, the CYPC undertook a number of consultations with children and young people, including:

Table 11 - CYPC consultation & engagement activities with children & young people

<p>Making the Jervis Bay Territory a better place for children and young people</p> <p>In May 2014, the CYPC undertook a one-day consultation with 41 students aged between 5 and 12 years from the Jervis Bay School. All of the students at the school took part in the consultation, which involved a range of activities including comic drawing, individual discussion with facilitators, and group work. Activities were designed to encourage students to think and talk and about what would make their futures better and more fun, and make Jervis Bay a better place to live and grow up. In June 2014, the CYPC released a short film, which was shot on-site at the Jervis Bay School, about the outcomes of the consultation. The film can be viewed at Commissioner's YouTube Channel (http://www.youtube.com/watch?v=zbuVZsDId0g).</p>
<p>UN Convention on the Rights of the Child</p> <p>In May 2014, the CYPC undertook a two-day consultation with 22 students aged between 9 and 12 years from Namadgi School. The consultation explored the student's understanding of child rights, including what rules there need to be in the world to ensure that all children and young people are safe and happy, and have what they need. The consultation was the first in a series of consultations with children and young people on the same topic, and results of the full consultation will inform future community education sessions within schools and Early Learning Centres about child rights.</p>
<p>Participation of children and young people in Family Court proceedings</p> <p>In September 2012, the Honourable Chief Justice Bryant of the Family Court of Australia asked the CYPC to undertake a consultation with children and young people to determine their views about the participation of children and young people in Family Court proceedings. In June 2013, the CYPC undertook a two-day</p>

consultation with 15 students aged between 11 and 13 years from Kingsford Smith School. A report on the outcomes of the consultation was released in August 2013. The report received positive national and international attention, and the CYPC has presented the results of the consultation at local and national forums.

Improving services at Galilee School

In February 2014, the Director of Youth Services, Communities@Work, asked the CYPC to undertake a consultation with students of the Galilee School to determine their views about the school, and any ideas they may have to improve the school environment. In March 2013, the CYPC undertook the consultation with four students aged between 14 and 17 years from the Galilee School. A report on the outcomes of the consultation was released in August 2014, with a number of the student's ideas and comments forming the basis for a review of policy and practice within the school.

The World's Biggest Playgroup 2014

In March 2014, the CYPC attended the *World's Biggest Playgroup*. The event was organised through the ACT Government's Child & Family Centres, which provide a 'one-stop-shop' for parents and carers of children and young people. The Playgroup provided a wide variety of activities for children under 5 years of age, including the opportunity for children to paint, do puzzles, meet other children and play games. As well as talking with children and their families, the CYPC also set up a paint station at the event, and provided children with a range of designs and images to paint and decorate. Approximately 150 children and their families visited the CYPC's paint station to have some fun and to chat with the CYPC. Many children took their creations home, but others donated their artworks to the CYPC for use in a range of future CYPC promotional material.

Improving the Out-of-Home-Care System

In November 2013, the Create Foundation hosted *Strength to Strength*, an international conference in Canberra aimed at 'improving the care system for children and young people through participation'. During the conference, the CYPC distributed a postcard survey which asked: how could we make things better for children and young people in care?. The postcard was designed by the CYPC on behalf of the Australian Children's Commissioners & Guardians (ACCG) group - the network of children and young people Commissioners and Guardians from each Australian State and Territory. The CYPC received 116 responses to the survey: 87 from children and young people with a care experience; 18 from carers; and 11 from service providers. Participants in the survey raised a range of ideas and views, with results of the survey being provided to individuals and agencies across Australia, including the ACT Minister for Disability, Children & Young People, Ms Joy Burch MLA, and the Chief Executive Officer, Create Foundation, Ms Jacqui Reed. The CYPC will continue to talk with children and young people, and others, about how to improve the Out-of-Home Care system in the ACT, and across Australia.

Child Safe/Child Friendly Organisations

In September 2013, the Royal Commission asked the CYPC to undertake a consultation with children and young people to determine their views about Child Safe/Child Friendly Organisations. In December 2013, the CYPC undertook a two-day consultation with 32 students aged between 9 and 13 years from Kingsford Smith School. A report on the outcomes of the consultation was released in February 2014, and received positive national and international attention. The CYPC has also presented the results of the consultation at local and national forums.

On-going consultation & engagement with children & young people

Throughout the year, the CYPC also met with children and young people in a range of settings, and, when appropriate, discussed the role of the CYPC, issues of interest to children and young people, and other topics as they arose.

Additionally, in May 2014, the CYPC wrote to the Director-General, Community Services Directorate, proposing a joint consultation between the CYPC and the Children's Policy Centre, Australian National University about 'Language in Out-of-Home Care'. It is anticipated that the consultation will be completed by late 2014.

Complaints handling

During the reporting period, the CYPC continued its 2012-2013 policy decision to shift resources from the investigation of individual complaints to a focus on systemic and policy work. This decision was made for a number of reasons, including the CYPC's view that it can be more effective to

address concerns from a systemic perspective, rather than continuing to address individual and repetitive complaints.

Accordingly, the CYPC more assertively triaged complaint related enquiries, and gave priority to those complaints where:

- A child or young person may have been harmed, or was at significant risk.
- The complainant was raising allegations about a significant breach of established policy, procedure or legislation.
- The complainant was particularly vulnerable or powerless, and/or unable to effectively resolve their complaint on their own behalf.

Table 12 - Number of complaints, complaint related enquiries, & other requests for information or assistance

	2012-2013	2013-2014	Difference
Complaints	44	30	-14 (-32%)
Complaint related enquiries	52	57	+5 (+10%)
Other requests for information or assistance	43	67	+24 (+56%)
Total number of contacts	139	154	+37 (+11%)

During the reporting period, the CYPC received and assisted to resolve 30 *complaints* about a service provided to a child or young person, or their carer.

During the reporting period, the CYPC also received and assisted to resolve 57 *complaint related enquiries*. A *complaint related enquiry* is an approach by a person which raises issues or concerns which *could* be the subject of a complaint, yet the person contacting the CYPC had not yet decided if they wanted to make a formal complaint, or they didn't want to make a complaint but wanted advice and/or assistance about how to resolve their concerns.

During the reporting period, the CYPC also received 67 *other requests for information or assistance* about issues relevant to children and young people. The nature of these contacts varied, and included requests for:

- Information about services for children and young people.
- Information about issues affecting children and young people.
- Information about 'working with children' employment checks.
- Information about Child Safe/Child Friendly practice.
- Information about how to respond to concerns about the safety or well-being of a child or young person.
- Requests for the CYPC to attend an event.
- Information about the role of the CYPC.
- Information about work experience or volunteering opportunities within the CYPC.

Complaints from children & young people

During the reporting period, the CYPC received five complaints (17% of the total number of complaints directly from young people, with four of these being from young people in the Bimberi Youth Justice Centre, and one being from a young person in Out-of-Home Care.

Commission initiated considerations

In addition to considering complaints raised by children and young people, and their parents or carers, the CYPC may also initiate considerations if satisfied that it is in the public interest to do so. These considerations allow the CYPC to review systemic issues, and allegations of significant concern. During the reporting period the CYPC began five Commission initiated considerations

- Standards of practice within a residential care setting.
- Allegations of assault of a school student by a staff member.
- Education model employed by a school.
- Kinship care and parental responsibility.
- Services and facilities provided by the ACT Government for children and young people with mental health issues who are involved in the youth justice system (this is a joint consideration with the ACT Health Services Commissioner).

Service providers subject of complaints

Approximately 57% of all complaints received and investigated involved allegations about services provided by Care and Protection Services (CPS), and approximately 13% involved concerns about the Bimberi Youth Justice Centre.

Approximately 16% of complaints received and investigated were about education providers, with the Education & Training Directorate (ETD) accounting for all of these complaints.

Table 13 - Number of complaints by service provider

	2012-2013	2013-2014	Difference
Office for Children, Youth & Family Support	27 (62%)	21 (70%)	-6 (-22%)
- Care & Protection Services	21 (48%)	17 (57%)	-5 (-24%)
- Bimberi	6 (14%)	4 (13%)	-2 (-33%)
Education providers	8 (18%)	5 (16%)	-3 (-37%)
- Government	7 (16%)	5 (16%)	-2 (-29%)
- Private or independent	1 (2%)	0 (0%)	-1 (-100%)
Other government agencies	4 (9%)	2 (7%)	-2 (+50%)
Community sector agencies	4 (9%)	2 (7%)	-2 (+50%)
Private sector agencies	1 (2%)	0 (0%)	-1 (-100%)
Total	44 (100%)	30 (100%)	-14 (-32%)

Issues raised in complaints & complaint related enquiries

While specific details varied significantly, most complaints and complaint related enquiries received by the CYPC involved allegations about:

- Inappropriate service provision (including breaches of policy, procedure or legislation).
- Services not being available when needed or requested.
- Lack of consultation.
- Unclear decision making.
- Lack of documentation.
- Lack of administrative review mechanisms.
- Not adhering to undertakings or agreements.
- Adversarial or bullying relationships.
- Not returning phone calls.
- Time delays.

While some of these concerns were minor, or reflected a one-off problem or oversight, others reflected more significant service delivery issues, including:

- Lack of understanding of legislative obligations.
- Lack of appropriate policies or procedure.
- Lack of appropriate range or level of services.
- Lack of appropriate resources (including staffing).

Human rights issues raised in complaints

During the reporting period, when considering service delivery to children and young people by public authorities, the CYPC examined whether these agencies had acted consistently with their

obligations under the *Human Rights Act 2004* (HR Act), and whether they had taken relevant human rights into account in their decision making.

In doing so, the CYPC reminded public authorities to take into account not only the right of children and young people to protection, but all of their relevant human rights, including their rights to equality, to privacy, to liberty and security of person, to freedom of expression, and to participate in public life.

Additionally, during the reporting period, the CYPC worked closely with the Community Services Directorate to improve the Directorate’s understanding of, and compliance with, their obligations under the HR Act, and will be providing tailored Human Rights Training to the Directorate early next reporting period.

Complaint outcomes

During the reporting period, the CYPC made a number of comments and recommendations to service providers regarding service improvement. On the most part, service providers were open and receptive to these comments and recommendations, with most taking appropriate steps to not only resolve individual complaints, but to also address any systemic issues which may have led to a complaint.

The CYPC does, however, remain concerned about the organisational attitude that is sometimes present within agencies whereby that agency’s first response to a complaint, or recommendations following a complaint, is to deny and defend, rather than engage with the process and take the opportunity to reflect on policy and practice. The CYPC will be working to address this issue next reporting period.

CYPC publications

During the reporting period, the CYPC released a number of publications, including:

Table 14 - CYPC publications

<p>Child Safe/Child Friendly Organisations</p> <p>In September 2013, the Royal Commission asked the CYPC to undertake a consultation with children and young people to determine their views about Child Safe/Child Friendly Organisations. In December 2013, the CYPC undertook a two-day consultation with 32 students aged between 9 and 13 years from Kingsford Smith School. A report on the outcomes of the consultation was released in February 2014, and received positive national and international attention. The CYPC has also presented the results of the consultation at local and national forums.</p>
<p>Participation of children and young people in Family Court proceedings</p> <p>In September 2012, the Honourable Chief Justice Bryant of the Family Court of Australia asked the CYPC to undertake a consultation with children and young people to determine their views about the participation of children and young people in Family Court proceedings. In June 2013, the CYPC undertook a two-day consultation with 15 students aged between 11 and 13 years from Kingsford Smith School. A report on the outcomes of the consultation was released in August 2013. The report received positive national and international attention, and the CYPC has presented the results of the consultation at local and national forums.</p>
<p>CYPC Info Sheets</p> <p>Throughout the reporting period, the CYPC continued to release Info Sheets about some of its consultation and engagement activities with children and young people. As at 30 June 2014, the CYPC had released 38 Info Sheets, copies of which can be downloaded from the CYPC’s website (www.ACTkids.act.gov.au).</p>
<p>Stuff Kids Said...</p> <p>The CYPC is currently developing a book of all comments made by children and young people during consultation and engagement activities undertaken by the CYPC over the past five years. It was hoped that the book would be finished last reporting period, yet resource constraints delayed the project. It is now hoped that the book will be finished by early 2015.</p>

CYPC Survey Postcards

During the reporting period, the CYPC continued to distribute its set of three CYPC Survey Postcards. The front of each card contains images created by children and young people during previous CYPC consultation and engagement activities, and on the back there is a question that asks *'what would make Canberra a better place for children and young people?'* As well as being used in face-to-face consultation and engagement activities with children and young people, the card can be returned to the CYPC by mail free of charge.

As at 30 June 2014, approximately 450 children and young people had completed the survey.

During the reporting period, the CYPC also distributed a range of other promotional material, including:

- Colour pencil sets.
- Colouring-in books
- Canvas bags
- Magnets
- Wallet cards
- Beanies
- Yo-yos
- Temporary tattoos.
- Stickers.

Consultation with children & young people: by government agencies

A significant proportion of government initiatives impact in some way on children and young people. Despite this, and despite consultation with children and young people being a central component of a number of key ACT Government policy commitments, children and young people are frequently excluded from discussions about issues that affect them, and many government agencies routinely fail to talk with children and young people in any meaningful way.

There are, of course, many government agencies in the ACT doing commendable work with respect to consulting with children and young people, and there are also many individuals within agencies who are committed to effective and respectful consultation with children and young people, but the meaningful involvement of children and young people in decisions which involve them remains absent from the majority of government policy and program development.

Consultation with children & young people: requests for CYPC assistance

During the reporting period, the CYPC was approached by a number of government agencies seeking advice or assistance regarding consulting with children and young people.

The CYPC welcomes these approaches, yet encourages agencies to consider that effective and respectful consultation with children and young people requires time, and frequently a resource commitment. The CYPC is more than happy to help where possible, yet with some agencies expecting a consultation activity to be arranged, undertaken and evaluated in a few weeks, the CYPC is often unable to assist.

The CYPC encourages agencies that wish to consult with children and young people to contact the CYPC as early in the process as possible.

Child safe/child friendly organisations

During the reporting period, the CYPC continued to advocate for the development of child safe/child friendly organisations. In broad terms, a 'child safe/child friendly organisation' is one which consciously and systematically:

- Creates conditions that reduce the likelihood of harm occurring to children and young people.
- Creates conditions that increase the likelihood of any harm being discovered.
- Responds appropriately to any disclosures, allegations or suspicions of harm.

As the name suggests, the principles that underpin child safe/child friendly organisations focus on the organisation as a whole, and reinforce the need to have evidence based policies, procedures and practice in place across the organisation. They also require children and young people to be actively involved in the development and review of those policies and procedures.

In contrast to this approach, most Australian jurisdictions instead rely on the more limited concept of 'working with children checks', which are based on the notion of the 'safe individual', and the belief that a person who has passed a background check is a suitable person to work with children and young people.

While checking the history of people working with children and young people is a necessary safeguard, it is, in itself, insufficient. One-off checks cannot detect all potential abusers, and may cause organisations to develop a false sense of security or complacency. Rather than simply relying on these checks, it is important that organisations also take responsibility for becoming 'child safe and child friendly', as the combination of these two measures is more effective in preventing and detecting child abuse and neglect within an organisation than relying on only one or the other.

Importantly, the concept of child safe/child friendly organisations is relevant to the prevention and detection of all forms of harm to children and young people (including physical, sexual, and emotional abuse), and within all types of organisations.

Oversight of the Bimberi Youth Justice Centre

During the reporting period, the CYPC hosted a monthly meeting of the Bimberi Oversight Agencies Group (OAG) to discuss issues of mutual interest regarding the Bimberi Youth Justice Centre (Bimberi) and the broader youth justice system, and to work together on issues of systemic concern.

The Oversight Group consists of:

- The ACT Children & Young People Commissioner.
- The Official Visitor for Children & Young People.
- The Public Advocate of the ACT.

During the reporting period, Legal Aid ACT accepted an invitation to join the OAG. While not formally an oversight agency, Legal Aid ACT plays an important role in providing legal advice and assistance to young people in Bimberi, and in representing young people in the youth justice system more broadly.

During the reporting period, the Oversight Group identified young people in the youth justice system with mental health issues as an issue of particular concern. Following, in January 2014, the CYPC and the ACT Health Services Commissioner commenced a joint Commission Initiated Consideration into the services and facilities provided by the ACT Government for children and young people with mental health issues who are involved in the youth justice system. It is anticipated that the report will be released in September 2014, and that it will be used as discussion point in a Roundtable to be held by the CYPC in late 2014.

In May 2014, the OAG provided their Second Joint Annual Report to the Standing Committee on Education, Training and Youth Affairs. The Joint Report noted many positive developments in the youth justice system over this period, and welcomed the final report of the ACT Government on

implementation of the CYPC's 2011 Report to the Legislative Assembly on the ACT Youth Justice System.

More specifically, the Joint Report noted that the ACT youth justice system is now guided by a clear and consistent vision and objectives, reflected in the Blueprint for Youth Justice and in the Integrated Management System for Bimberi. Additionally, there have been real improvements in the culture and management of Bimberi, and a greater focus on ensuring that Bimberi is a positive and engaging environment for both young people and staff. Importantly, it is clear that management are committed to implementing evidence-based policy and practice in relation to the rehabilitation of young people within the youth justice system, and to the ongoing evaluation and improvement of policy and practice.

The Joint Report noted, however, some ongoing concerns regarding: transition planning for young people at Bimberi; facilitating young people's access to video link to the Children's Court for proceedings such as bail applications; and the lack of access to ACT Year 11 and 12 education for young people at Bimberi. The Joint Report also noted that the Youth Justice Advisory Panel has been established to provide specialist advice to the Government and the Directorate on the national and international evidence base in relation to youth justice and implications for the ACT, however the input of the Panel appears not to have been sought on a range of key policy and program initiatives, such as the regulation of 'time out' and behaviour management at Bimberi.

Developing working relationships with community service providers

There are hundreds of agencies providing services for children and young people in Canberra, and it is important that the CYPC develops and maintains constructive relationships with as many of these agencies as possible.

Doing so not only provides the CYPC with a greater understanding of what is happening in the sector, and what is and isn't working in the sector, but also allows for more efficient and timely resolution of complaints and enquiries as they arise. Additionally, familiarity by the sector with the CYPC, and staff of the CYPC, assists to de-mystify the agency, and encourages service providers to contact the CYPC to talk over issues of concern.

During the reporting period, the CYPC visited and spoke with a range of service providers. The nature of contact with agencies varied significantly, and included:

- Formal community education or presentations at agency meetings or network forums;
- Being a guest speaker at a launch, or a workshop;
- Presentations at staff meetings, or within classes or smaller groups;
- Spending time just 'hanging out' with workers and children and young people at the service; and
- Helping out at agency functions or presentations.

Speeches & presentations

During the reporting period, the CYPC spoke at a number of events, including:

- In April 2014, the CYPC spoke at the *International Re-Imagining Youth Justice Conference* in London, United Kingdom.
- In March 2014, the CYPC spoke at the *2014 National Child Aware Approaches Conference* in Melbourne.
- In March 2014, the CYPC spoke at the *ACT Education & Care Sector Forum*.
- In December 2013, the CYPC spoke at the launch of the *Messenger's Art-On Exhibition*.
- In November 2013, the CYPC spoke at the *Strength to Strength International Conference*.
- In October 2013, the CYPC spoke at the launch of *Children of Prisoners: Exploring the needs of children and young people who have a parent incarcerated in the Australian Capital Territory*.

- In October 2013, the CYPC spoke at the ACT launch of *Shine for Kids*.
- In October 2013, spoke at the launch of *Chapman Primary School's Centenary Mosaic Project*.
- In October 2013, the CYPC spoke at the *2013 ACT Children's Week Awards*.
- In October 2013, the CYPC spoke at the *AIDS Action Council 2013 Annual General Meeting*.
- In September 2013, the CYPC spoke at the *2013 ACT Roundtable for the Prevention of Violence Against Women & Children*.
- In September 2013, the CYPC spoke at the *ACT Foster Care Expo*.
- In September 2013, the CYPC spoke at the launch of the *ACT Health Child Protection Policies & Procedures 2013*.
- In September 2013, the CYPC spoke at the *National Child Protection Week Play Your Part Awards*.
- In July 2013, the CYPC spoke at the *Jervis Bay School NAIDOC Week Celebration of Learning Assembly*.

Media

During the reporting period, the media covered a number of CYPC activities, including:

- In May 2014, the South Coast Register printed an article about the CYPC's *Beyond 100 Cartoon Workshop* at Jervis Bay School.
- March 2014, the CYPC spoke on ABC Radio about statutory oversight of care and protection systems.
- In February 2014, the CYPC spoke on ABC Radio about shops refusing service to school students.
- In October 2013, the Canberra Times printed an article about the CYPC being a Finalist in the Australian of the Year Awards.
- In November 2013, the CYPC spoke on ABC Radio about the *Strength to Strength International Conference*.
- In July 2013, the Canberra Times printed an article about the physical discipline of children and young people.
- In July 2013, the CYPC spoke on ABC Radio about service provision to children and young people in Wreck Bay.

Liaison with the ACT Ministerial Youth Advisory Council

During the reporting period, the CYPC and members of the ACT Ministerial Youth Advisory Council (YAC) continued to work together in an open and supportive manner. In doing so, the CYPC and the YAC met and spoke formally and informally to discuss issues of mutual concern and interest, and to exchange updates on current activities and priorities.

Liaison with the Public Advocate of the ACT

During the reporting period, the CYPC and the Public Advocate of the ACT (PAACT) continued to work together in an open and supportive manner. In doing so, the CYPC met and spoke formally and informally with the PAACT to discuss issues of mutual concern and interest.

Additionally, during the reporting period, the CYPC continued to refer individual advocacy matters to the PACCT under the Memorandum of Understanding which exists between the CYPC and the PAACT, and in compliance with s51(A) of the *Human Rights Commission Act 2005*.

ACT Children & Young People Death Review Committee

The CYPC is a standing member of the ACT Children & Young People Death Review Committee (CYPDRC), which was established in 2011. The Committee met three times during the reporting period.

The CYPC is also a member of the Australian & New Zealand Child Death Review & Prevention Group.

Liaison with other Australian Children Commissioners and Guardians (ACCG)

During the reporting period, the CYPC worked closely with the Australian Children Commissioners and Guardians (ACCG) group - the network of children and young people Commissioners and

Guardians from each Australian State and Territory - to progress a range of national initiatives, including:

- Joint submission to the Royal Commission into Institutional Responses to Child Sexual Abuse *Issues Paper 3: Child Safe Institutions*.
- Joint release of a *Model Charter of Rights for Children & Young People in Youth Justice Facilities*.
- Development of a liaison mechanism with the Commonwealth Government to ensure ACCG contribution to the implementation of the *National Framework for Protecting Australia's Children 2009-2020*.

During the reporting period, the CYPC met formally with the ACCG on two occasions, and also had regular informal and formal discussions and teleconferences with other members of ACCG on a range of local and national issues.

Liaison with the National Children's Commissioner

During the reporting period, the CYPC met and spoke with National Children's Commissioner to discuss issues of mutual concern and interest.

Additionally, during the reporting period, the CYPC and the National Commissioner undertook a number of joint activities, including:

- Attending the *Recognition Festival* in the Jervis Bay Territory (JBT) as guests of the NSW Reconciliation Council's to meet with the Wreck Bay Aboriginal Community Council and the Wreck Bay and Jervis Bay communities to discuss service delivery for children and young people in the JBT.

Liaison with the Royal Commission into Institutional Responses to Child Sexual Abuse

During the reporting period, the CYPC met and spoke with members and staff of the Royal Commission to discuss issues of mutual concern and interest.

Additionally, during the reporting period the CYPC provided written submissions on the following Royal Commission Issues Papers:

- Issues Paper 1: Working with Children Checks.
- Issues Paper 3: Child Safe Institutions.
- Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home Care.
- Issues Paper 5: Civil Litigation.

In September 2013, the Royal Commission asked the CYPC to undertake a consultation with children and young people to determine their views about Child Safe/Child Friendly Organisations. In December 2013, the CYPC undertook a two-day consultation with 32 students aged between 9 and 13 years from Kingsford Smith School. A report on the outcomes of the consultation was released in February 2014, and received positive national and international attention. The CYPC has also presented the results of the consultation at local and national forums.

In June 2014, the CYPC accepted an invitation from the Royal Commission to participate in a National Roundtable discussion on Working with Children Checks.

During the reporting period, the CYPC remained an active member of the Royal Commission into Institutional Responses to Child Sexual Abuse ACT Working Party.

B3: Community Engagement & Support

This section describes community engagement activities undertaken by the ACT Human Rights Commission as a whole. Community engagement activities for individual Commissioners are detailed at **B2: Performance Analysis**.

The Commission has a statutory obligation to:

- Promote the provision of community education, information and advice in relation to human rights.
- Promote the rights of users of services for children and young people, disability services, health services, and services for older people.
- Consult with children and young people in ways that promote their participation in decision-making.
- Listen to and seriously consider the views of children and young people.
- Promote an understanding and acceptance of, and compliance with, the *Human Rights Commission Act 2005* and the *Discrimination Act 1991*.

Community education & engagement activities

During the reporting period, the Commission undertook a range of community education and engagement activities, including:

- Speeches and presentations.
- Consultation and engagement activities with children and young people.
- Training and outreach.

The Commission also hosted information and engagement stalls, including at:

- National Multicultural Festival
- ACT Seniors Week.
- National Youth Week.
- NAIDOC on the Peninsula.
- Post School Options Expo.
- Control and Choice Expo.

During the reporting period, the Commission continued to increase awareness of its role and functions by distributing printed information and promotional material at events and activities, on its website, and in response to requests from organisations. The Commission also continued the publication of its primary promotional brochure in Arabic, Croatian, Vietnamese, Cantonese, Italian, Mandarin and Greek.

Additionally, the Commission continued to tweet and send out occasional 'alerts' to email subscribers to keep them informed about specific events.

Reconciliation Action Plan

During the reporting period, the Commission, with oversight from its internal Reconciliation Action Plan Working Committee, and assistance from Aboriginal and Torres Strait Islander community stakeholders, continued to advance actions under its 2012-2015 Reconciliation Action Plan.

Disability Action Plan

During the reporting period, the Commission developed its inaugural Disability Action Plan. The Plan was developed in consultation with the Disability Advisory Council, and is overseen by a working group within the Commission. During the reporting period, a number of actions under the Plan were

completed. Further information about the Plan is detailed in the Disability & Community Services Commissioner's Report at **B2: Performance Analysis**.

Commission website

During the reporting period, the Commission's website registered 24,561 sessions, compared to 23,599 in 2012-2013.

Information relevant to the Commission's activities, including publications; speeches; media activity; consultations with children and young people; upcoming events; and community education and engagement activities, is posted regularly on the Commission's website, however other priorities and resource constraints occasionally prevented the Commission from doing so, or doing so in a timely manner.

e-Publications

During the reporting period, the Commission released 14 'breaking news alerts', advising subscribers about workshop registration notifications; event invitations; and notification of the release of Commission reports and other publications.

Twitter (@ACTHumanRights)

As at 30 June 2014, the Commission had tweeted 377 times, had 420 followers, and was following 237 accounts.

The Commission uses Twitter to increase community awareness of events held or attended by the Commission, and to announce or promote resources, reports, and media activity.

B4: Ecologically Sustainable Development

During the reporting period, the Commission undertook a number of activities aimed at minimising the impact of the Commission on the environment.

In particular, the Commission:

- Used recycled paper for all internal printing.
- Recycled, where possible, paper and other internal waste.
- Encouraged staff to only print paper copies when necessary.
- Encouraged staff to switch off lights, computers and other electricity using devices when not needed.
- Complied, as far as it is aware, with all relevant environmental laws and standards.

The Commission is unable to report against: consumption of energy, transport fuels and water; and the generation of waste and greenhouse emissions as a result of resource use in agency operations.

SECTION C - GOVERNANCE & ACCOUNTABILITY REPORTING

C1: Internal Accountability

During the reporting period, the members of the Commission were:

- Mary Durkin: Disability & Community Services Commissioner, and Health Services Commissioner.
- Alasdair Roy: Children & Young People Commissioner.
- Helen Watchirs: Discrimination Commissioner, and Human Rights Commissioner.

The Human Rights & Discrimination Commissioner is currently a part time position (0.5FTE).

Each Commissioner is remunerated as a full time office holder pursuant to determinations of the ACT Remuneration Tribunal, and each Commissioner's statutory responsibilities and functions are detailed at **B1: Organisational Overview**.

As at 30 June 2014, the Commission had the following, non-executive, staffing structure.

Table 15 - Commission staffing structure (at 30 June 2014)

Children & Young People Team (1.6 FTE)	
Senior Policy Adviser	0.6 x Senior Officer Grade C
Senior Legal Policy Adviser	1 x Legal Officer Grade 1
Disability & Community Services Team (1 FTE)	
Senior Review Officer	1 x Senior Officer Grade C
Health Services Team (including Services for Older People) (3.6 FTE)	
Principal Review Officer	1 x Senior Officer Grade B
Senior Review Officer	1.8 x Senior Officer Grade C
Senior Conciliator	0.8 x Senior Officer Grade C
Human Rights & Discrimination Team (5 FTE)	
Principal Legal Policy Adviser	1 x Senior Officer Grade B
Senior Legal Policy Adviser	1 x Legal Officer Grade 1
Senior Conciliator & Review Officer	1.8 x Senior Officer Grade C
Senior Policy Adviser	0.6 Senior Officer Grade C
Administrative Assistant	0.6 Administrative Officer Class 2
Intake & Enquiries Team (2.8 FTE)	
Intake Team Leader	0.8 x Administrative Officer Class 6
Intake & Review Officer	2 x Administrative Officer Class 5
Corporate Support Team (3 FTE)	
Office Manager	1 x Senior Officer Grade C
Administrative Officer	1 x Administrative Officer Class 3
Administrative Assistant	1 x Administrative Officer Class 2
TOTAL	16 FTE

C2: Risk Management & Internal Audit

The Justice & Community Safety Directorate's risk management and internal audit policies and practices apply to the Commission, and are detailed in the Directorate's 2013-2014 Annual Report.

C3: Fraud Prevention

During the reporting period, there were no reports or allegations of fraud directed at the Commission.

The Justice & Community Safety Directorate's fraud control policies and procedures apply to the Commission, and are detailed in the Directorate's 2013-2014 Annual Report.

C4: Legislative Assembly Inquiries & Reports

During the reporting period, there were no inquiries or reports by Legislative Assembly Committees that related to the operation of the Commission.

C5: Auditor-General & Ombudsman Reports

During the reporting period, there were no inquiries or reports by the ACT Auditor-General or the ACT Ombudsman that related to the operation of the Commission.

SECTION D - LEGISLATION BASED REPORTING

D1: Public Interest Disclosure

During the reporting period, no public interest disclosures were received by the Commission.

The Justice & Community Safety Directorate's public interest disclosure policies and procedures apply to the Commission, and are detailed in the Directorate's 2013-2014 Annual Report.

D2: Freedom of Information

Section 7 Statement

Section 7 of the *Freedom of Information Act 1989* (the Act) requires the Commission to prepare and publish a statement outlining the Commission's organisation, functions and decision-making powers, the categories of documents available, and facilities available to the public for accessing documents.

Organisation, functions & decision-making powers

The ACT Human Rights Commission (the Commission) is an independent statutory agency established by the *Human Rights Commission Act 2005* (the HRC Act).

Structure of the Commission

The HRC Act establishes five members of the Commission:

- The Children & Young People Commissioner.
- The Disability & Community Services Commissioner.
- The Discrimination Commissioner.
- The Health Services Commissioner.
- The Human Rights Commissioner.

Three people are currently appointed to cover the work of the five positions:

- Mary Durkin: Disability & Community Services Commissioner (appointed 2009), and Health Services Commissioner (appointed 2007).
- Alasdair Roy: Children & Young People Commissioner (appointed 2008).
- Helen Watchirs: Discrimination Commissioner (appointed 2004), and Human Rights Commissioner (appointed 2004).

The Human Rights & Discrimination Commissioner is currently a part time position (0.5FTE).

The Commission does not have an administrative head, and operates from a model of collegiality. Each of the three Commissioners has equal standing within the Commission, and equal decision-making authority.

Each of the three Commissioners has statutory responsibilities in accordance with the titles of their position, and the Health Services Commissioner also has responsibilities in relation to services for older people. At this time, the HRC Act does not prescribe any functions for the Community Services Commissioner.

Additionally, within the Commission, the Children & Young People Commissioner is also responsible for the management and oversight of all of the Commission's corporate and administrative functions. These functions account for approximately 30% of the Children & Young People Commissioner's total workload.

Objects of the Human Rights Commission Act

Section 6 of the HRC Act notes that the main object of the Act is to promote the human rights and welfare of people living in the ACT, and that this is to be achieved by establishing a Commission that will:

- Promote the provision of community education, information and advice in relation to human rights;
- Identify and examine issues that affect the human rights and welfare of vulnerable groups in the community.
- Make recommendations to government and non-government organisations on legislation, policies, practices and services that affect vulnerable groups in the community.
- Promote an understanding and acceptance of, and compliance with, the HRC Act, the *Discrimination Act 1991* (the Discrimination Act), and the *Human Rights Act 2004* (the HR Act).
- Promote improvements in the provision of services for children and young people, disability services, health services, and services for older people.
- Promote the rights of users of services for children and young people, disability services, health services, and services for older people.
- Promote an awareness of the rights and responsibilities of users and providers of services.
- Provide an independent, fair and accessible process for the resolution of complaints about services for children and young people, disability services, discrimination, health services, and services for older people.
- Provide a process to encourage and assist users and providers of services for children and young people, disability services, health services, and services for older people, to make improvements in the provision of services.
- Foster community discussion, and the provision of community education and information, about the operation of the Commission.

Roles & functions of the Commission

The roles and functions of the Commission are established under s14 of the HRC Act, and include:

- Encouraging the resolution of complaints made under the HRC Act, and assisting in their resolution by providing an independent, fair and accessible process for resolving the complaints.
- Encouraging and assisting users and providers of services for children and young people, disability services, health services, and services for older people, to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality.
- Encouraging and assisting people providing services for children and young people, disability services, health services, and services for older people, and people engaging in conduct that may be complained about under this Act, to develop and improve procedures for dealing with complaints.
- Promoting community discussion, and providing community education and information, about:
 - the HRC Act and related Acts.
 - the operation of the Commission.
 - the procedures for making complaints.
- Identifying, inquiring into and reviewing issues relating to matters that may be complained about under this Act, and reporting to the Minister, and other appropriate entities, about each inquiry and review, or advising the Minister and other appropriate entities about the inquiry and review.
- Referring to the Public Advocate of the ACT (PAACT) advocacy matters about individual children or young people for whom the chief executive under the *Children and Young People Act 2008* has parental responsibility.
- Advising the Minister about any matter in relation to the HRC Act or a related Act.
- Collecting information about the operation of the HRC Act and related Acts, and publishing the information.
- Exercising any other function given to the commission under this Act or another Territory law.

Additionally, the Children & Young People Commissioner, the Discrimination Commissioner, the Health Services Commissioner, and the Human Rights Commissioner each have a number of specific functions.

The Children & Young People Commissioner must endeavour to:

- Consult with children and young people in ways that promote their participation in decision making.
- Listen to and seriously consider the views of children and young people.
- Ensure that the Commission is accessible to children and young people.

The Discrimination Commissioner is required to:

- Promote the right of people to be free from unlawful discrimination and sexual harassment.
- Promote the recognition and acceptance within the community of the equality of men and women and of the principle of equality of opportunity for all people.

The Health Services Commissioner is required to:

- Jointly consider, with the relevant National Health Practitioner Boards, all complaints and notifications about health professionals' adherence to standards and suitability to practise requirements.

And, the Human Rights Commissioner is required to:

- Provide community education about human rights.
- Advise the Attorney-General on the *Human Rights Act*.

Other territory laws that give the Commission functions are the *Children & Young People Act 2008*; the *Health Practitioners Regulation National Law (ACT) Act 2010*; the *Health Professionals Act 2004*; the *Health Records (Privacy & Access) Act 1997*; and the *Human Rights Act 2004*.

Public participation in decision-making

Arrangements for public participation in decision-making and policy work of the Commission include:

- Invitations for public submissions to inquiries and audits conducted by the Commission.
- Discussion at public forums hosted by the Commission.
- Information stalls at community events.
- Written and electronic community surveys conducted by the Commission.

Additionally, the Children & Young People Commissioner regularly consults with children and young people in a number of ways, including:

- Face-to face discussions.
- Forums, focus groups, and public stalls and activities.
- Targeted surveys.

The Commission also has a Reconciliation Action Plan that informs specific community engagement activities with Aboriginal and Torres Strait Islander clients.

Categories of documents

The Commission holds two basic categories of documents:

- Those that are freely available on request and without charge.
- All other kinds of documents that may be made available under the Act.

Documents available on request & without charge

Documents within this category include publications produced by the Commission on various aspects of its activities, including policy submissions, inquiry and audit reports. These are available on request from the Commission and may also be available on the Commission's website www.hrc.act.gov.au or www.ACTkids.act.gov.au.

Documents of other kinds that may be available under the FOI Act:

- General files including internal and public documents, minutes of meetings of committees, agendas and background papers.
- Policy files.
- Training and education materials.
- Diaries, rosters, work sheets.
- Records held on computer or paper in connection with the Commission's functions.
- Photographs, videos, sound recordings and artwork.
- Financial and accounting records.
- Details of contracts and tenders.
- Complaint files, except health record complaints.
- Inquiry and audit files.
- Leases and deeds of agreement.

Facilities for access

Those seeking information are encouraged to seek access by contacting the Commission before resorting to the more formal FOI procedure. In many cases it may be possible to access information more quickly and efficiently through such an approach.

The Commission is located at Level 4, 12 Moore St in Canberra City. Information regarding bus routes and timetables can be obtained from ACTION (telephone 131710). Our contact details are:

Telephone: (02) 6205 2222

Fax: (02) 6207 1034

Email: human.rights@act.gov.au

FOI requests should be directed to:

ACT Human Rights Commission

GPO Box 158

Canberra ACT 2601

Section 8 Statement

A copy of the Commission's Section 8 Statement is available on the Commission's website (www.hrc.act.gov.au), or by contacting the Commission:

Telephone: (02) 6205 2222

Fax: (02) 6207 1034

Email: human.rights@act.gov.au

Section 79 Statement

During the reporting period, the Commission received one Freedom of Information request. The Commission partially released documents in response to the request within 46-60 days.

D3: Human Rights ACT 2004

Section 15 of the HRC Act requires the Commission to act consistently with human rights, and a commitment to human rights is fundamental to all aspects of the Commission's work.

Additionally, under s40B of the HR Act, all ACT Government agencies, including the Commission, have an obligation to act, and make decisions consistent with, human rights. Throughout the reporting period, the Commission continued to meet this obligation in a number of ways.

In particular, the Commission:

- Continued to follow a number of rights based principles when responding to enquiries and complaints, including, in particular: natural justice, impartiality, procedural fairness, confidentiality, principles of evidence, and transparency.
- Took into account relevant human rights in complaints handling.
- Provided formal training to public authorities on their obligations regarding human rights.
- Gave speeches and presentations on human rights to a range of groups and community forums.
- Discussed a range of human rights issues with agencies as part of the Commission's community education and engagement program.
- Highlighted human rights issues in proposed ACT Government policies and legislation through: Government consultation processes; Legislative Assembly Inquiries; and responding to draft Cabinet Submissions and Bills.
- Responded to requests from Ministers for human rights advice on specific topics.
- Provided all new staff with copies of relevant internal policies, procedures and publications, including those relevant to the HR Act.

D4: Territory Records Act

During the reporting period, the Commission complied with the *Territory Records Act 2002*.

The Commission has yet to develop its own internal Records Management Program, and at this stage still operates under the policies and procedures used by the former Human Rights Office and the former Community & Health Services Complaints Commission.

D5: Model Litigant Guidelines

During the reporting period, the Commission complied with all Model Litigant Guidelines.

D6: Notices of Noncompliance

During the reporting period, the Commission was not issued with any notices of noncompliance.

D7: Bushfire Risk Management

During the reporting period, the Commission did not own or manage Territory land.

D8: Commissioner for the Environment

During the reporting period, no investigations into Commission activities were undertaken by the Commissioner for Sustainability and the Environment, nor was the Commission requested to assist in the preparation of the State of the Environment Report.

SECTION E - HUMAN RESOURCES MANAGEMENT REPORTING

E1: Human Resources Management

ACT Shared Services, and the Justice & Community Safety Directorate's People and Workplace Strategy Branch, assist the Commission with recruitment of Commission staff, and the Commission internally manages the retention, support, and training of staff.

All Commission staff are recruited to meet specific agency requirements and objectives, and are provided with development opportunities to ensure that their performance and capabilities remain at a high standard.

E2: Learning & Development

In line with the Justice & Community Safety Directorate's Personal Achievement and Development Policy, the Commission is committed to a workplace culture that actively promotes and supports learning and development.

During the reporting period, Commission staff attended learning and development programs on 50 occasions, including training on: information technology; workplace bullying and harassment; cultural awareness; complaints management; fraud and ethics awareness; time management; effective leadership; government business; communication skills; and project management.

During the reporting period, one Commission staff member received study leave.

E3: Work Health & Safety

During the reporting period, the Commission operated in accordance with a range of internal policies and procedures relevant to workplace health and safety, and was not issued with an improvement, prohibition, or non-disturbance notice under Part 10 of the *Work Safety Act 2011*.

The Commission also operated under a number of Justice & Community Safety Directorate policies and procedures, and had fully qualified Fire Wardens, First Aid Officers, and a Health and Safety Representative on staff.

During the reporting period, the Commission undertook a number of activities to monitor and improve workplace health and safety, including:

- Listing Workplace Health & Safety as a standing agenda item at monthly meetings of the three Commissioners.
- Listing Workplace Health & Safety as a standing agenda item at monthly whole of Commission meetings.
- Maintaining a Business Unit Risk Register.
- Reviewing identified and potential hazards with individual work groups within the Commission.

During the reporting period, two Commission staff continued to use Dragon, a speech recognition software package.

E4: Workplace Relations

During the reporting period, all Commission staff were employed under the *Public Sector Management Act 1994*, and were covered by the ACT Public Service Administrative & Related Classifications Enterprise Agreement 2013-2017, or the Justice & Community Safety Directorate Certified Agreement 2011-2013.

During the reporting period, no Commission staff were employed under Special Employment Agreements.

E5: Staffing Profile

The following data was provided to the Commission by Shared Services Human Resources, and has not been verified by the Commission.

Table 16 - FTE & headcount by gender

	Female	Male	Total
FTE by gender	14.0	8.0	22.0
Headcount by gender	16	8	24
Percentage of workforce	66.7%	33.3%	100.0%

Table 17 - Headcount by classification & gender

Classification Group	Female	Male	Total
Administrative Officers	3	4	7
Legal Officers	1	1	2
Senior Officers	10	2	12
Statutory Office Holders	2	1	3
TOTAL	16	8	24

Table 18 - Headcount by employment category & gender

Employment Category	Female	Male	Total
Casual	0	0	0
Permanent full-time	5	4	9
Permanent part-time	7	0	7
Temporary full-time	4	4	8
Temporary part-time	0	0	0
TOTAL	16	8	24

Table 19 - FTE & headcount by agency

	FTE	Headcount
Human Rights Commission	22.0	24

Table 20 - Headcount by agency & employment type

	Permanent	Temporary	Casual
Human Rights Commission	16	8	0

Table 21 - Headcount by age group & gender

Age Group	Female	Male	Total
< 25 years	0	1	1
25 - 34 years	1	3	4
35 - 44 years	6	3	9
45 - 54 years	6	1	7
55+	3	0	3

Table 22 - Headcount by length of service, generation & gender

Length of Service	Pre-Baby Boomers		Baby Boomers		Generation X		Generation Y		Total	
	F	M	F	M	F	M	F	M	F	M
0-2 years	0	0	0	0	2	0	1	3	3	3
2-4 years	0	0	1	0	2	0	0	0	3	0
4-6 years	0	0	0	0	1	1	0	1	1	2
6-8 years	0	0	1	0	2	0	0	0	3	0
8-10 years	0	0	0	0	1	0	0	0	1	0
10-12 years	0	0	2	0	0	1	0	0	2	1
12-14 years	0	0	0	0	0	1	0	0	0	1
14+ years	0	0	3	1	0	0	0	0	3	1

Table 23 - Headcount by length of service & gender

Gender	Average length of service
Female	8.5
Male	7.3
Total	8.1

Table 24 - Headcount by diversity group

	Aboriginal and/or Torres Strait Islander Employment	Culturally & Linguistically Diverse (CALD) Employment	Employment of people with a disability
Headcount	1	3	0
Percentage of total staff	4.2%	12.5%	0.0%

SECTION F - FINANCIAL MANAGEMENT REPORTING

F1: Financial Management

See F2: Financial Statements

F2: Financial Statements

The Commission has a Memorandum of Understanding with the Justice & Community Safety Directorate (JACSD) that stipulates that JACSD 'has overarching responsibility for the whole of the Directorate's operating budget, which includes the operating budget of the Commission'.

In line with this agreement, the Commission's financial report is included in the Justice & Community Safety Directorate's 2013-2014 Annual Report.

In 2013-2014, the Commission's total operating budget was \$3.351 million, with the actual total cost being \$3.610 million. This compares to last reporting period, when the Commission's total operating budget was \$3.425 million, with the actual total cost being \$3.506 million.

The Commission's reporting in relation to this measure is in the consolidated financial statements of the Justice & Community Safety Directorate's 2013-2014 Annual Report.

F3: Capital Works

During the reporting period, the Commission did not commence or continue any capital works projects.

F4: Asset Management

The Justice & Community Safety Directorate's asset management strategies apply to the Commission, and are detailed in the Directorate's 2013-2014 Annual Report.

F5: Government Contracting

During the reporting period, the Commission engaged ten contractors or consultants. Total expenditure for these services was \$28,027.00.

Procurement selection and management processes for all contracts complied with the *Government Procurement Act 2001*, the *Government Procurement Regulation 2007*, and subordinate guidelines and circulars.

Additionally, during the reporting period, the Commission provided financial assistance totalling \$9,400 to the following organisations:

- ACT Office for Ageing, Community Services Directorate - \$4,400 contribution to the Life's Reflections Photographic Competition that promotes the importance of older people in the ACT community.
- ACT Office for Ageing, Community Services Directorate - \$2,200 contribution to the Silver Screen Film Festival targeted at older Canberrans.
- ACT Office for Ageing, Community Services Directorate - \$2,200 contribution to the Health Services Commissioner's Prize in the Age-Friendly Business Awards.
- University of Canberra - \$200 contribution to the Law School for the ACT Human Rights Commission Prize for International Law of Human Rights.
- Australian National University - \$200 contribution to the ANU College of Law for the ACT Human Rights Commission Prize for International Law of Human Rights.
- Australian National University - \$200 contribution to the ANU Medical School for the Health Services Commissioner's Prize for Professionalism & Leadership for Year 2 students.

F6: Statement of Performance

The Commission reports outputs against accountability indicators in Output 1.5 of the Justice & Community Safety Directorate's portfolio report. The report for the year under review is set out below.

Table 25 - Statement of performance

Output 1.5: Protection of Rights				
Provision of advocacy, complaints-handling, advice, community awareness raising and other services in connection with the promotion and protection of rights especially for vulnerable members of society, through services provided by the ACT Human Rights Commission, the Public Advocate of the ACT and Victim Support ACT. This output also includes services provided by the Privacy Commissioner.				
Accountability Indicator	Original Target	Amended Target	Actual Result	% Variance ¹
High level of client satisfaction with Human Rights Commission complaints processes:				
<ul style="list-style-type: none"> Percentage of clients who consider the process fair, accessible & understandable 	75%		86%	+14% ²
<ul style="list-style-type: none"> Percentage of complaints concluded within Commission standards and targets 	75%		64%	-15% ³
High level of community education, information and advice in relation to human rights and (i) services for children and young people, (ii) disability services, (iii) health services, and (iv) services for older people::				
<ul style="list-style-type: none"> Number of community engagement activities undertaken by the Commission 	30		35	+17% ⁴

¹ Variance explanations were developed by the Justice & Community Safety Directorate.

² The result exceeds the target and indicates 86% of survey respondents were satisfied with the complaints process.

³ The result was lower than the target due to increased workloads and evolving priorities, which continue to impact on the Commission's capacity to meet this indicator.

⁴ The result exceeds the target. During 2013-2014, the Commission undertook more community engagement activities than anticipated relating to the Commission's commitment to engage with the community.

COMPLIANCE INDEX

SECTION B – PERFORMANCE REPORTING	1
B1: ORGANISATIONAL OVERVIEW	1
B2: PERFORMANCE ANALYSIS	5
DISABILITY & COMMUNITY SERVICES COMMISSIONER	5
HEALTH SERVICES COMMISSIONER	13
HEALTH SERVICES COMMISSIONER - SERVICES FOR OLDER PEOPLE	26
HUMAN RIGHTS & DISCRIMINATION COMMISSIONER	29
CHILDREN & YOUNG PEOPLE COMMISSIONER	46
B3: COMMUNITY ENGAGEMENT & SUPPORT	60
B4: ECOLOGICALLY SUSTAINABLE DEVELOPMENT	61
SECTION C - GOVERNANCE & ACCOUNTABILITY REPORTING	62
C1: INTERNAL ACCOUNTABILITY	62
C2: RISK MANAGEMENT & INTERNAL AUDIT	62
C3: FRAUD PREVENTION	62
C4: LEGISLATIVE ASSEMBLY INQUIRIES & REPORTS	63
C5: AUDITOR-GENERAL & OMBUDSMAN REPORTS	63
SECTION D - LEGISLATION BASED REPORTING	64
D1: PUBLIC INTEREST DISCLOSURE	64
D2: FREEDOM OF INFORMATION	64
D3: HUMAN RIGHTS ACT 2004	67
D4: TERRITORY RECORDS ACT	68
D5: MODEL LITIGANT GUIDELINES	68
D6: NOTICES OF NONCOMPLIANCE	68
D7: BUSHFIRE RISK MANAGEMENT	68
D8: COMMISSIONER FOR THE ENVIRONMENT	68
SECTION E - HUMAN RESOURCES MANAGEMENT REPORTING	69
E1: HUMAN RESOURCES MANAGEMENT	69
E2: LEARNING & DEVELOPMENT	69
E3: WORK HEALTH & SAFETY	69
E4: WORKPLACE RELATIONS	69
E5: STAFFING PROFILE	70
SECTION F - FINANCIAL MANAGEMENT REPORTING	72
F1: FINANCIAL MANAGEMENT	72
F2: FINANCIAL STATEMENTS	72
F3: CAPITAL WORKS	72
F4: ASSET MANAGEMENT	72
F5: GOVERNMENT CONTRACTING	72
F6: STATEMENT OF PERFORMANCE	73
COMPLIANCE INDEX	75
ALPHABETICAL INDEX	76

ALPHABETICAL INDEX

A		L	
Asset Management	72	Learning & Development	69
Auditor General & Ombudsman Reports	63	Legislation Based Reporting	64
B		Legislative Assembly Inquiries & Reports	62
Bushfire Risk Management	68	M	
C		Model Litigant Guidelines	68
Capital Works	72	N	
Children & Young People Commissioner	46	Notices of Noncompliance	68
Commissioner for the Environment	68	O	
Community Engagement & Support	60	Organisational Overview	1
Compliance Index	75	P	
D		Performance Analysis	1
Disability & Community Services Commissioner	5	Performance Reportings	5
E		Public Interest Disclosure	64
Ecologically Sustainable Development	61	R	
F		Risk Management & Internal Audit	62
Financial Management Reporting	72	S	
Financial Statements	72	Staffing Profile	70
Fraud Prevention	62	Statement of Performance	73
Freedom of Information	64	T	
G		Territory Records Act	68
Governance & Accountability Reporting	62	W	
Government Contracting	72	Work Health & Safety	69
H		Workplace Relations	69
Health Services Commissioner	13		
Health Services Commissioner - older people	26		
Human Rights Act 2004	67		
Human Rights & Discrimination Commissioner	29		
Human Resources Management	69		
Human Resources Management Reporting	69		
I			
Internal & External Scrutiny	67		
Internal Accountability	62		