



# ACT HUMAN RIGHTS COMMISSION

Australian Capital Territory

**INCORPORATING THE:**

**CHILDREN & YOUNG PEOPLE COMMISSIONER**

**DISABILITY & COMMUNITY SERVICES COMMISSIONER**

**DISCRIMINATION COMMISSIONER**

**HEALTH SERVICES COMMISSIONER**

**HUMAN RIGHTS COMMISSIONER**

**ANNUAL REPORT**

**2014 – 2015**

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This report is available in print and electronically.

The image on the front of this report ('Together') is by Worimi artist Krystal Hurst, and the images on the back of the report were created by students from Jervis Bay School as part of the ACT Children & Young People Commissioner's *Right Here Right Now* art exhibition.

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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 2014 to 30 June 2015 has been included.

We also certify that fraud prevention has been managed in accordance with Public Sector Management Standards, 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

6 October 2015



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**ACT HUMAN RIGHTS COMMISSION**  
**2014-2015 Annual Report**

**PART B - ORGANISATION OVERVIEW & PERFORMANCE**

**B1: Organisational Overview**

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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).

Throughout the reporting period, the Discrimination Commissioner and the Human Rights Commissioner held dual appointments within both the Commission and the Public Advocate of the ACT, with both agencies sharing salary contribution.

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*.

### **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 truly 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 2015-2018*.

The 2015-2018 Strategic & Operations Plan articulates a 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 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.

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## **B2: Performance Analysis**

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

- The Human Rights & Discrimination Commissioner (page 5).
- The Children & Young People Commissioner (page 25).
- The Disability & Community Services Commissioner (page 39).
- The Health Services Commissioner (page 48).
- The Health Services Commissioner - services for older people (page 65).

## 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 systemic discrimination concerns, and provide community education and information about rights under discrimination law. The role of the ACT Discrimination Commissioner is very broad, covering most areas of public life (including employment, education, access to premises, accommodation, clubs, goods, services & facilities) with a wide range of protected attributes. These attributes including disability, race, sex, sexuality, gender identity, relationship status, pregnancy, breastfeeding, religious and political convictions, age, industrial activity, association, spent convictions and profession, The Commissioner also handles sexual harassment and vilification complaints and exemption applications. By way of comparison, at the Federal level there are four sets of discrimination legislation and Commissioners for each (disability, race, sex and age) as well as a Human Rights Commissioner - in the ACT all these functions are combined in the role of Human Rights & Discrimination Commissioner.

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 or consider complaints of human rights breaches, and these can only be raised through legal proceedings. However, contact from individual members of the community about matters that impact on their rights are relevant as they can inform systemic work. Other legislation contains powers affecting the Human Rights Commissioner's jurisdiction, such as inspecting the adult prison under the *Corrections Management Act 2007*. In handling discrimination complaints against public authorities, the Commissioner's process includes seeking specific information about how they have complied with their obligations to act consistently with relevant rights (such as the right to equality under s 8 of the Human Rights Act), and taken into account human rights in their decision making.

### Staffing

Dr Helen Watchirs was appointed as Commissioner in April 2004. During the reporting period, the human rights & discrimination team capacity fluctuated, and at the end of the period comprised 4.8 FTE, being: 1FTE Senior Officer Grade B; 1.4FTE Legal Officer Grade 1; 2.4 FTE Senior Officer Grade C. The Commissioner also took on the additional role of Public Advocate from January 2014 and this concluded at the end of the reporting period.

### Highlights

The strategic focus of the Commissioner's team during the year included raising awareness of the Human Rights Act amongst the legal profession and government employees, promoting law reform (particularly in relation to human rights and discrimination law) and to clarify the ability of lower courts and the ACT Civil and Administrative Tribunal (ACAT) to consider human rights arguments. Some of the major activities undertaken include:

- Developing a campaign to promote race diversity and anti-discrimination in the ACT (entitled 'Diversity Goes With Our Territory'), expected to be launched in November 2015.
- Holding the annual Race Relations Roundtable on 17 June 2015.
- Working with the ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body to progress an Aboriginal and Torres Strait Islander cultural right in the Human Rights Act (proposed s27(2)).

- In conjunction with the Aboriginal and Torres Strait Islander Women’s Program at the Women’s Legal Centre, developing an online portal with information on rights and interacting with the ACT Government.
- Participating in the detailed Review of the *Discrimination Act 1991* and also the *Guardianship & Management of Property Act 1994*, as a member of the Law Reform Advisory Council.
- Working with sporting and community stakeholders to develop draft Guidelines on encouraging participation of transgender and intersex participants in sport.
- Working with the office of the Victims of Crime Commissioner to create resources aimed to increase awareness of the application of the Human Rights Act to victims of crime, and jointly request the Attorney-General to fund interpreters in civil matters (specifically applications for protection orders and victims’ compensation matters) for survivors of domestic violence.
- Conducting an e-learning ‘challenge’ in April-June 2015 for ACT Government directorates to complete online training about the Human Rights Act prior to the legislation’s eleventh birthday (on 1 July 2015).
- Celebrating International Human Rights Day on 10 December 2014 with a forum to discuss adding the right to housing to the legislation, which included input from the UN Special Rapporteur via video link from Canada.
- Intervening to provide submissions on the application of human rights law to matters before the ACT Civil and Administrative Tribunal.
- Releasing a number of new educative materials on the impact of the Human Rights Act, including two major publications, *Look Who’s Talking*, and *Achieving the Rights Outcome*.
- A range of outreach activities to members of the law society, law firms, community legal centres, Legal Aid ACT and law students about the Human Rights Act.
- Co-hosting a conference at the Australian National University to celebrate the tenth anniversary of the ACT Human Rights Act.
- Attending two meetings of the Australian Council of Human Rights Authorities in Sydney in November 2014 and March 2015, to discuss areas of mutual interest with colleagues in other jurisdictions.
- Working with the Children & Young People Commissioner to develop the *Passing the Message Stick* report about the community’s experience of services for children.

During the whole twelve months of the reporting period the Commissioner also took on the additional role of Public Advocate of the ACT (PAACT), which ended on 30 June 2015 after a period of 18 months. There have been synergies in having a human rights focus in the PAACT’s role, such as being able to highlight public authorities’ legal obligations towards our most vulnerable and disadvantaged clients, and there has been greater collaboration between the Public Advocate and other Commissioners. In the reporting period the Commissioner was subpoenaed as Public Advocate to appear before the Royal Commission into Institutional Responses to Child Sex Abuse - at the time of this appearance on 3 July 2015 she appeared as Commissioner, since she no longer held the additional role of Public Advocate.

### **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, and to promote understanding of the provisions of the HR Act.

The Commissioner’s team provided 16 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 a number of forums, including:

### **Human rights related activities**

- Delivering Blackfriar’s Lecture on *AMC Human Rights Audit* at the University Of Canberra.

- Human Rights training of Official Visitors at Annual Training Day.
- Introducing Federal Human Rights Commissioner, Tim Wilson, in Rights & Freedoms ACT Consultation.
- Presentation to National Conference on delivery of health care in correctional environments.
- Speech at ACT Conference of Australian Lawyers Alliance.
- Lecturing on human rights to University of Canberra law students.
- Co-hosting with the Australian National University Tenth Anniversary of the ACT Human Rights Act Conference.
- Chairing ANU Freilich Foundation Alice Tay Lecture on 800<sup>th</sup> Anniversary of the Magna Carta, by Australian Human Rights Commission President Gillian Triggs.
- Human rights speech at the University of Canberra's lunchtime lecture event on Quality of Justice.

#### **Disability discrimination related activities**

- Speaking at Australasian Viral Hepatitis Conference.
- Presentation to the Ministerial Advisory Council on Sexual Health and Hepatitis & Related Diseases.
- Participating in launch of 'Ending Guide Dog Discrimination' Campaign.

#### **Race discrimination related activities**

- Hosting the fifth ACT Human Rights & Discrimination Commissioner's Race Relations Roundtable.
- Participating in 40<sup>th</sup> Anniversary of *Racial Discrimination Act 1975* ACT Consultation by Federal Race Discrimination Commissioner Tim Soutphommasane.
- Being interviewed by 'Canberra Radio Ramadan'.
- Attending meetings of the ACT Aboriginal and Torres Strait Islander Elected Body.

#### **Sex discrimination related activities**

- Speaking at the Fourth National Public Sector Women in Leadership Summit.
- Keynote address at National Women's Firefighting Conference Australia.
- Participating in Domestic Violence Prevention Council's Extraordinary Meeting.

#### **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's team organised and delivered 16 individual sessions of formal training, a significant increase on the 10 sessions held last year, reflecting the Commissioner's decision to raise awareness of the Human Rights Act amongst key stakeholders:

- The ACT Human Rights Act in Litigation & Advocacy.
- The ACT Human Rights Act & Responsibilities of Public Authorities.
- Workplace Discrimination, Sexual Harassment & Bullying.
- Disability Discrimination.
- Workplace Contact Officer Training.

Standard training is provided free to community sector with the support of pro bono solicitors from Clayton Utz. Tailored training was also available to all sectors, with a reduced fee for community sector organisations.

During the reporting period, feedback on Commission training was received from 162 participants. Of these, 75% (121) recorded an overall rating of either *very good* or *excellent* for the session, slightly less than the 81% recorded last year. However, 98% (159) recorded an overall rating of either *good*, *very good* or *excellent*, which is consistent with last year's 99%.

**Table 1 - Feedback received from training participants**

<p><b>The ACT Human Rights Act in Litigation &amp; Advocacy</b> Really good training and hoping to continue working together more closely in the future. I found the discussion of particular cases valuable in that it prompted discussion of conflicting rights and grey areas. [The presenter] was a very engaging presenter with much enthusiasm for the topic. The session was very interesting and great that it was relevant. All of the session was invaluable.</p>
<p><b>The ACT Human Rights Act &amp; Responsibilities of Public Authorities</b> Very Interesting. Loved the small group to large group discussions. Case study activities, very interesting and relevant (based on real life scenarios). Excellent presentation. Thank you! Very useful and interesting. The facilitator was brilliant, with a detailed knowledge.</p>
<p><b>Workplace Discrimination, Sexual Harassment &amp; Bullying</b> Lovely presentation. Went very quick. Well delivered. Enjoy the group style discussions. The discussions of the case studies were the most interesting and relevant. Group discussions were great.</p>
<p><b>Disability Discrimination</b> All good! Also able to ask questions and make comments. Every aspect was valuable and appreciated.</p>
<p><b>Workplace Contact Officer Training</b> Role plays helped a lot with knowing what to do and what not to do in certain situations I found it very interesting and informative</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. In addition to engaging with a range of stakeholders, particularly those representing disadvantaged and socially isolated Canberrans and those groups representing individuals with attributes protected under the Discrimination Act, the Commissioner targets particular areas during the year.

#### *Aboriginal & Torres Strait Islander people*

A key focus of the team's work during the year was working with the Aboriginal and Torres Strait Islander community. The Commissioner received an extension to its 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 fifth annual Race Relations Roundtable on 17 June 2015. Two events were held to celebrate: the Anniversary of the UN Declaration of Indigenous Peoples by screening the film Charlie's Country at the National Film and Sound Archive; and a National Reconciliation Week morning tea with short films from Black Screen Australia was held to raise funds in support of Indigenous Community Volunteers.

The Commissioner also commenced a joint project with the Aboriginal and Torres Strait Islander Access to Justice Program at the Women's Legal Centre, designed to produce relevant legal and human rights information for Aboriginal and Torres Strait Islander women living in the ACT and region. The final resource (in the form of a mobile friendly website) is expected to be launched by the end of 2015.

#### *Multicultural community*

During the reporting period, the Commissioner also liaised with ACT Policing on a joint initiative to promote the positive impacts of diversity in the ACT community. A communications plan has been developed in consultation with the multicultural and Aboriginal and Torres Strait Islander

communities. The Commissioner looks forward to working with ACT policing and the community on promoting diversity in the coming year.

The Commissioner also welcomed the ACT Government's formal commitment in the reporting period to the Federal campaign 'Racism. It Stops with Me'. The Commission annually organises a stall at the Multicultural Festival to speak to members of the public, and distribute promotional materials about the Commission's functions.

#### *Intersex & transgender communities*

The HRD Commissioner also commenced talks with intersex and transgender stakeholders, as well as local and national sporting bodies, about a resource for local clubs on encouraging intersex and transgender participants. A draft guideline was developed and the HRD Commissioner's staff will work with stakeholders, including the national Play by the Rules initiative, to further develop the resource. A key aim of the material is to promote the benefits of inclusion.

The HRD Commissioner continues to have concerns about the limited protection for transgender and intersex people from unfair discrimination in a range of areas, and will raise these issues with the ACT Government. The Commissioner is also concerned about a range of human rights issues affecting the intersex community.

#### *People with disability*

The Commissioner has 1.8 FTE officers working across all 15 protected attributes in the Discrimination Act, so collaborative work with the Disability Services Commissioner and her dedicated Senior Disability Services Adviser assists the Commissioner to engage and discuss issues of concern with people with a disability in the ACT. The teams have collaborated on projects such as the Commission's Disability Action Plan, and legislative reform in the areas of guardianship and supported decision making. Both Commissioners responded to a request for feedback on draft Disability Action Plan from a community organisation, and wrote to the ACT Commissioner for Public Administration about the need to include ACT legislation in the *Manager's Guide for Disability in the Workplace*. Human Rights and Discrimination team staff were actively involved in implementing the recommendations of the Commission's Disability Access Audit, such as reviewing and updating the Commission website to make it compliant with WCAG 2.0 AA standard.

The Commissioner had regular meetings with the Director-General of the Community Services Directorate and Disability ACT, as well as disability official visitors and several non-government organisations, ranging from advocacy to service providers. The Commissioner also continued to advocate for an ACT Disability Justice Strategy as recommended by the Australian Human Rights Commission, and implemented in other jurisdictions, such as SA. In her role as Public Advocate during the reporting period, the Commissioner was actively engaged in transitioning guardianship clients to the National Disability Insurance Scheme, and attended two meetings of the Australian Guardians and Managers Council. One meeting was held in Adelaide in October 2014, and the ACT Public Advocate co-hosted the Canberra meeting in March 2015 (with the ACT Public Trustee and President of the ACT Civil and Administrative Tribunal) where NDIS issues were fully discussed.

The Commissioner continues to serve as a member of the Organ & Tissue Authority Advisory Council, and 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. The Commissioner has served for six years as a member on the Federal Ministerial Advisory Committee on Blood Borne Viruses and STIs, which wound up when all appointments expired at the end of 2014.

## Legal profession

Based on the findings of the HRD Commissioner's analysis of the first ten years of the HR Act, the Commissioner sought to engage with the legal profession about how to improve jurisprudence. This included providing training to the legal profession on the application of the HR Act, as well as ongoing liaison with key bodies such as the Law Society, Bar Association, Legal Aid ACT, community legal centres and three universities, being ANU, UC and ACU. Staff contributed articles to two professional journals, *Ethos* and *Precedent*.

## International Human Rights Day

The HRD Commissioner celebrated International Human Rights Day 2014 with a forum examining the next decade of human rights protection in the ACT. The Commissioner chaired a forum of five prominent experts who discussed the future of human rights protection, including the possible inclusion of the right to housing. The speakers included Leilani Farha, the United Nations Special Rapporteur on Adequate Housing, who participated via video link from Canada. Her input provided an opportunity to consider what is possible in terms of human rights protection, particularly how other jurisdictions have enshrined the right to housing. Other speakers included:

- Beth Goldblatt, Associate Professor at the University of Technology, Sydney, an expert in economic, social and cultural rights like the rights to education, health and housing, with experience in South Africa.
- Travis Gilbert, Executive Officer, ACT Shelter.
- Peter Garrisson, Solicitor-General for the ACT
- Lucy Sargeson, Principal Legal Officer in Commonwealth Attorney-General's Office of International Law. The Federal Parliament began in 2012 to evaluate new legislation against seven International human rights treaties, including economic, social and cultural rights requirements.

## Ten years of human rights

The Human Rights Act commenced on 1 July 2004, and has now been in operation for a decade. The HRD Commissioner marked the anniversary with a range of activities and publications in this reporting period.

On 1 July 2014, the Commissioner joined with Professor Hilary Charlesworth from the Australian National University in holding a conference entitled '*Ten Years of the ACT Human Rights Act: Continuing the Dialogue*'. As well as commenting on the anniversary, speakers considered the impact of the historic legislation and looked at future challenges in the area of human rights law in Australia. Aside from the Commissioner and Professor Charlesworth, speakers at the conference included Jon Stanhope (former ACT Chief Minister), Attorney-General Simon Corbell, ACT Chief Justice Helen Murrell, Professor Andrew Byrnes (University of New South Wales), Heidi Yates (Women's Legal Centre), Professor Jeremy Gans (Melbourne University), Professor Simon Rice (Australian National University), and Noor Blumer (former President of the ACT Law Society). Violet Sheridan gave a Welcome to Country.

In December 2014, the Commissioner also released an Independent Report assessing the impact and potential changes to improve the Act entitled '*Looks Who's Talking*', which analysed quantitative and qualitative data about the impact of the legislation. Main findings included that the ACT Legislative Assembly was unique in its commitment to legislative amendments based on human rights considerations, but that while the Act was being raised in a number of court matters, more substantive jurisprudence was necessary for the aims of the legislation to be realised. The Report also recommended further legislative changes, including clarification about how accessible the legislation was to parties outside the Supreme Court. The Commissioner has consistently advocated that an alternative dispute resolution method should be considered, as the current requirement that actions against Government agencies commence in the Supreme Court is a too costly and intensive option for those who suffer human rights breaches.



From December 2014 to February 2015, the Canberra Museum and Gallery held a display on the ACT's decade of human rights. It featured some of the iconic images and items that were developed in the consultation, creation and enactment of the ACT Human Rights Act. These activities were also publicised through media activity, including opinion pieces on the impact of the nation's first human rights legislation.

Human rights legislation in the ACT has had a significant beneficial impact. Members of the Legislative Assembly regularly debate human rights arguments when considering new laws. The Commission is also frequently consulted in the early stages of policy and law development, and generally policy makers take human rights seriously. The role of the ACT Scrutiny of Bills Committee is to report on how proposed legislation will impact on rights to the ACT Legislative Assembly, and these reports are routinely referred to in debates. In 2014 alone, nearly 100 Government amendments to seven bills were moved in response to Committee comments. The Act places obligations on ACT public agencies to act and make decisions in accordance with protected human rights. It requires the ACT Government to think about and act consistently with the rights of individuals in its day to day operations. In handling complaints against public authorities, Commissioners usually seek specific information about whether they have complied with their obligations to act consistently with relevant rights (such as the right to equality under s 8 or rights of children under s 11(2) of the Human Rights Act), and taken into account human rights in their decision making.

In the ACT model, the courts are not the final arbiter of whether laws are human rights compatible. They must adopt a human rights-consistent interpretation of ACT laws where possible. If they cannot, the law is referred to the Legislative Assembly, who may amend it, or retain it unchanged. That has happened once in the ACT in the case of *Islam* in 2012, but the Legislative Assembly has retained the *Bail Act 1992* unchanged.

The missing piece of the puzzle is how the courts hold ACT Government agencies to account for breaches of human rights. While the HR Act may be relevant to the handling of individual complaints, including to the Human Rights Commission, a person who alleges that a Government agency has breached a human right must initiate proceedings in the Supreme Court, which may grant any relief, except for financial compensation. Since 2009 when the Supreme Court gained direct jurisdiction to hear such matters, only 14 individuals have brought such actions. A barrier preventing more actions to test such claims is the cost and time commitment in bringing a Supreme Court action, which usually requires legal representation. More people asserting their rights will not necessarily result in more successful actions, but at least we would have a fuller picture of how rights protection is actually progressing. Courts and tribunals below the Supreme Court offer applicants and the Government more cost-effective paths to dispute resolution. They are familiar with specific subject matter, and are thus able to weigh up the impact of an agency's human rights breach in light of all relevant factors in the proceeding. In creating the ACT Civil and Administrative Tribunal (ACAT), Attorney-General Simon Corbell noted that it would promote access to justice, and reduce costs for a range of legal issues including tenancy, discrimination, sexual harassment, small civil claims, guardianship and mental health. Allowing individuals to commence human rights complaints in ACAT would make the process simpler, cheaper and easier. This modest change could have a profound impact on how we measure rights protection.

### **E-learning challenge**

In the eleven weeks during April to June 2014 leading up to the 11<sup>th</sup> anniversary of the Human Rights Act (1 July 2015), the Commissioner held an E-learning challenge. Titled the '11 Years in 11 Minutes Challenge', Directorates were challenged to ensure as many of their staff completed the Commission's short introductory online course on the HR Act. The Commissioner is hopeful the initiative will also encourage Directorates to enrol staff in half-day face to face training with the

Commission, which is critical to ensure ACT government employees understand their obligations to act and make decisions consistently with human rights.

### **Media**

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

- Opinion piece in *Canberra Times* on 10 year anniversary of HR Act (1 July 2014).
- Tenth Anniversary of the Human Rights Act Conference (1 July 2014).
- Critical Time to Legislate Rights, *Ethos* (ACT Law Society) (September 2014).
- Opinion Piece on 10 years of the Human Rights Act in *ANU Reporter* (October 2014).
- International Human Rights Day Forum (10 December 2014);
- Article on discrimination obligations in newsletter of the Real Estate Institute of the ACT (December 2014).
- Human rights and new draft National Medical Research Council Ethical Guidelines on Organ Distribution (February 2015).
- Statement of support for Australian Human Rights Commission President, Gillian Triggs (February 2015).
- Women of Canberra Website interview and launch (March 2015).
- Promotion of discrimination law in ACT policing newsletter (April 2015).
- Launch of Guide Dogs NSW/ACT Research on discrimination (April 2015).
- Domestic violence and human rights (April 2015).
- End of periodic detention and human rights (May 2015).
- Editorial and article in *Precedent*, Australian Lawyers Alliance publication (May/June 2015).
- Immigration detention lacks mental health treatment for ACT man (May 2015).
- Interview with UNSW *Human Rights Defender* publication (June 2015).

### **Guides & brochures**

The HRD Commissioner developed a range of new printed educative materials during the financial year, and also made a range of these available in an electronic and accessible format online. As well as the 'Look Who's Talking' Report on 10 years of the Human Rights Act, these included 'Achieving the Rights Outcome', a guide for individuals and advocacy organisations to highlight human rights issues when advocating with Public Authorities.

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 jointly with other Commissioners) on a range of issues, including the following:

#### **Human rights, discrimination & other Commission legislation**

- Proposed amendments to the Human Rights Act based on analysis of 10 years of human rights legislation, to improve the efficiency and application of the Act.
- Range of input into assessment of Australia's International obligations including Universal Periodic Review, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Covenant of Economic, Social And Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- Federal Human Rights Commissioner's Rights and Responsibilities Consultation
- Standing Committee on Administration and Procedure on its Report on the Implementation on Latimer House Principles

- Ongoing discussions regarding the addition of Aboriginal and Torres Strait Islander cultural rights to the Human Rights Act.

### **Criminal law**

The following submissions were made to the ACT Justice and Community Safety Directorate and/or the Attorney-General:

- Proposed changes to double jeopardy laws.
- Repeal of periodic detention as a sentencing option in the ACT.
- In 2013/14, the HRD Commissioner suggested that the ACT Government explore erasing historic convictions for those convicted of consensual homosexual sex offences. The Commissioner welcomes the Government's commitment to advance this issue in the coming months.
- Proposed changes to road transport law.
- Draft Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Cth).
- Changes to court procedures to ensure interpreters are available in civil matters, particularly domestic violence and victims of crime matters.
- Agents Act review.
- New proposed anti-consorting and related laws.

Additionally, the Commissioner made a submission to the Legislative Assembly Legal Affairs Committee regarding proposed changes to Crimes Act voyeurism offences (in conjunction with the Children & Young People Commissioner).

### **Victims of crime & human rights**

- Work with Victims of Crime Commissioner on a project to raise the awareness of the manner in which the *Human Rights Act* applies to victims.

### **People with disability**

- Submission and ongoing discussions with ACT Government on how best to retain public authority human rights protections for people with a disability receiving services from providers under new NDIS arrangements.
- Submission on Disability Discrimination Act Access to Premises Standards.

### **Health & mental health**

- Ongoing consultation with ACT Health on new Secure Mental Health Unit (jointly with other Commissioners).

### **Whole of Government & administrative matters**

- Submission to the Community Service Directorate's Working with Vulnerable People Implementation Review.
- ACT Respect, Equity & Diversity Review.
- ACT Multicultural Framework.
- *ACT Public Sector Management Act* Amendment.

### **ACT Law Reform Advisory Council**

The Commissioner is a member of the ACT Law Reform Advisory Council (LRAC) which completed its four year review of the Discrimination Act and sent the Report to the Attorney-General in this reporting period. The Commissioner put forward a range of proposals to LRAC for reform in this area, including:

- 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).

- An explicit duty for employers, service providers, retailers and others to make reasonable adjustments for people with disability.
- Improved legal protections for discrimination on the ground of gender identity.
- Addition of specific 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.
- Additional 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 at least disability vilification.
- A reconsideration of the current specific exceptions to unlawful discrimination, with a general limitation provision instead.

LRAC's Final Report is not yet publicly available at the time of reporting. The Commissioner keenly anticipates long overdue reform to this legislation, so that it may better reflect human rights requirements as well as current community attitudes, expectations and experiences.

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

- Justice Reform.
- Justice Reinvestment.
- Changes to Sentencing legislation.
- Refugee and Asylum Seeker support services.
- Domestic and family violence.
- ACT Ministerial Roundtable on Mature Age Workers.
- Modern slavery and human trafficking.
- Australian Human Rights Commission, Supporting Working Parents project.
- Australian Human Rights Commission, Willing to Work project - Employment Discrimination against Older Australians and People with Disability.
- Australian Human Rights Commission, Rights and Freedoms project.
- Australian Human Rights Commission, 40<sup>th</sup> Anniversary of *Racial Discrimination Act 1975* project.
- Supported Decision-Making Pilot Advisory Committee Group.
- Restorative Justice.

### **Working with the Aboriginal and Torres Strait Islander community**

In addition to the Commissioner's role as 'Reconciliation Action Plan champion', and the Commission's obligations under its Reconciliation Action Plan, the Commissioner continued to work on capacity building and rights awareness with the Aboriginal and Torres Strait Islander community with assistance from a further grant of special funding from the Justice and Community Safety Directorate. Feedback from members of the Aboriginal and Torres Strait Islander community in Canberra suggested an online portal with information on rights and responsibilities across a broad range of areas would be useful. The Commission is developing such a portal in consultation with the community, which will include information on interaction with in four main areas: police; care and protection; financial matters; and discrimination.

On 15 September 2014, the Commissioner also partnered with the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) to celebrate the anniversary of the UN Declaration on the Rights of Indigenous People. The Commissioner, Mr Rod Little, Chair of the ATSIEB and Mr Shane Rattenbury MLA spoke prior to a screening of the film, *Charlie's Country* at the National Film & Sound Archive.

The Commissioner also worked with the ATSIEB and ACT Government to progress amendments to the ACT HR Act to include a specific Aboriginal and Torres Strait Islander cultural rights in proposed s27(2). These amendments were still before the Assembly at the end of the reporting period.

The Commission also held a screening of several short Aboriginal and Torres Strait Islander films to mark Reconciliation Week and raise funds for Indigenous Community Volunteers.

The Commissioner also partnered with the Children & Young People Commissioner on the *Passing the Message Stick* report (see below).

### **Passing the Message Stick**

The HRD Commissioner joined with the Children & Young People Commissioner in developing the '*Passing the Message Stick*' Report. This project arose from special funding obtained from the Justice and Community Safety Directorate to work with the Aboriginal and Torres Strait Islander community on ways to increase awareness of rights. The report details the outcomes of conversations the Commission had with the ACT Aboriginal and Torres Strait Islander communities about which services for children and young people 'work well', and which services 'don't work so well'.

The Report was co-launched with the Chair of the ACT Aboriginal and Torres Strait Islander Elected Body, Mr Rod Little, at Gugan Gulwan Youth Aboriginal Corporation.

Commission staff spoke with 90 community members, as well as representatives from 30 agencies, who had first-hand experience about service delivery in Canberra. The report contains over 50 suggestions for improvement, across a range of service delivery areas, including education and childcare; care and protection; housing; mental health; and transport, as well as cultural awareness and training, and employing and training Indigenous staff.

### **Human Rights Act Interventions**

The Commissioner received twelve new formal notifications about human rights issues being raised in litigation before the Courts and ACT Civil and Administrative Tribunal, being at a similar level to the thirteen cases last year. The Commissioner was, however, aware of many human rights matters being raised in the ACT Civil and Administrative Tribunal and Magistrates Court without formal notifications being provided, indicating greater awareness of the legislation amongst the profession. The HR Act only requires formal notification to the Commissioner and Attorney-General if a human rights matter is raised in the Supreme Court.

The Commissioner provided submissions in two matters before the ACAT in the financial year. The first, *Wang v ACT Health*, involved the application of discrimination law to an ACT Health policy of prioritising all other medical students above those trained overseas. Having found that the policy constituted *direct* discrimination, the Tribunal proceeded to seek submissions on whether it was also *indirect* discrimination on the basis of race. Indirect discrimination is only unlawful if it is unreasonable. The Commissioner submitted that the Human Rights Act was relevant in determining when a Public Authority (in this case ACT Health) was acting reasonably, particularly as to whether they had complied with their obligation to act and make decisions consistently with human rights in developing and implementing the policy.

The other matter involved the eviction of tenants from a non-government 'affordable housing' provider. A question for the Tribunal was whether the entity was a Public Authority under the HR Act. A non-government entity may be a Public Authority because of its functions, and therefore have obligations to act and make decisions consistently with human rights in exercising those functions.

The Commissioner intervened to submit that a non-government organisation will be a Public Authority if it is:

- Performing functions of a public nature, and in the matter the Commissioner argued the provision of affordable housing was a function of a public nature, amongst the suite of options available for a Government to implement under the broad category of 'Public Housing'.
- And, undertaking those functions on behalf of the Territory would usually be in the form of a funding agreement, but could be satisfied by other requirements.

The Tribunal agreed with the Commissioner's suggestion that the provision of affordable housing was a function of a public nature. While not completely ruling out the possibility that an entity could be performing functions on behalf of the Territory without a funding agreement, in the absence of a direct funding relationship, the Tribunal found that the entity in question was not performing the functions on behalf of the Territory.

The Commission also previously participated in a matter examining the interaction between guardianship and mental health law, and is awaiting the Tribunal's decision.

### **Corrections**

The Commissioner continued to engage with ACT Corrective Services in following up her 2014 Audit of the Women's Area of the Alexander Maconochie Centre (AMC). The Government indicated support for 35 of the Report's recommendations, while supporting in principle 12 recommendations. The Government also noted 11 recommendations, some of which were subject to the completion of an ongoing review.

In addition, the Commissioner continued her ongoing oversight function at the facility. During the reporting period, the Commissioner received 18 enquiries or complaints from detainees, staff and visitors at the Alexander Maconochie Centre (AMC) regarding discrimination or human rights matters. This is a reduction from the 44 enquiries received last year.

The Commissioner does not have the jurisdiction to handle individual complaints, including human rights concerns from detainees. Nonetheless, these enquiries are an important way for the Commissioner to be aware of issues at AMC and to inform her systematic oversight work, and are generally referred to the ACT Ombudsman or the AMC Official Visitor, or the ACT Health Services Commissioner, the ACT Disability & Community Services Commissioner, or the ACT Children & Young People Commissioner.

Without an individual complaint handling power, the Commissioner is reliant on other agencies to be informed of complaint trends, in addition to her own observations made via visits and calls from detainees and their representatives.

The Commissioner liaised with the AMC Official Visitors and Ombudsman 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 Justice and the Directorate 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 and is grateful for the cooperation of the agency in discussing these matters:

- The strip searching of female detainees.
- Statistical and other data regarding the impacts of increased population pressures, particularly in light of a serious assault reported in the media.
- Response to ACTCS' Review of the implementation of the Royal Commission into Aboriginal Deaths in Custody Report.
- 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.

The Commissioner also visited the Symonston Corrections Facility, which was opened following accommodation pressures at the AMC. The Commission also discussed with the Justice and Community Safety Directorate consideration of an Inspector of Corrective Services role, as recommended in the 2007 *Human Rights Audit of ACT Correctional Facilities*.

In the 2007 Audit, the Commissioner recommended that a needle and syringe exchange programme be piloted at the then new Alexander Maconochie Centre (AMC). This recommendation was repeated in the 2014 *Human Rights Audit on the Conditions of Detention of Women at the AMC*. The ACT Government signed a Deed of Agreement with the Community and Public Sector Union in April 2015 that sets out a process for engaging Corrective Services staff in the development of a model for the needle and syringe programme, which includes establishing a joint working group, conducting a staff ballot process and a commitment not to implement a model that is unable to gain majority support from voting staff. The Commissioner welcomes the ACT Government's efforts during the reporting period to develop a model to implement its policy of introducing a needle and syringe programme at the AMC.

#### **Own motion matter: right to education**

The Commissioner is shortly to complete 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. The Commissioner welcomes the collaborative nature of this work the Education and Training Directorate, and is hopeful the work will conclude with a change to the Directorate's policies to make them more consistent with human rights and discrimination law.

#### **Case study: Disability discrimination**

A 5 year old child with cerebral palsy had been going to a day care for four years when his mother alleged that she was told that the disability worker that used to look after the child had left the centre, and he would not be able to attend until they could find another disability worker. She alleged that this exclusion was unnecessary and discriminatory, and that it has a detrimental impact on both mother and son. The centre management did not agree that they had behaved in a discriminatory manner, but agreed to participate in a conciliation conference. The matters were resolved with the organisation agreeing to provide adequate training for its entire staff in 'manual handling' to assist children with a disability in their care; and agreed to ensure it has appropriate insurance policies in place to cover children with a disability.

#### **ACT Race Roundtable**

In June, the HRD Commissioner held her fifth annual Race Relations Roundtable. This event brings together a cross section of organisations and individuals from the multicultural and Aboriginal and Torres Strait Islander communities.

This year's Roundtable provided an opportunity for updates on key issues raised by previous meetings, including:

- **Oval Assist:** In response to concerns about vilification at major events, passed on by the Commissioner to the ACT Government, representatives from the Territory Venues and Events section of the Chief Minister, Treasury and Economic Development Directorate spoke about 'Oval Assist'. Based on similar models used interstate it allows spectators to anonymously report anti-social behaviour via SMS to a mobile phone number advertised at major sporting events. The HRD Commissioner worked with CMTEED to ensure that vilification and discrimination were discussed in information provided to spectators;
- **Aboriginal and Torres Strait Islander Cultural Rights:** Rod Little, Chair of the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB), spoke about proposed amendments to the ACT Human Rights Act to expand the existing cultural minorities right to specifically include Aboriginal and Torres Strait Islander cultures. The HRD Commissioner has been working with the ATSIEB on the amendments, which are currently before the Legislative Assembly; and
- **Diversity Goes with Our Territory:** Staff from ACT Policing and the HRD Commissioner's team spoke a new joint initiative the organisations are developing. 'Diversity Goes with Our Territory' will build on Canberra's existing reputation as an inclusive and welcoming community.

The meeting also provided an opportunity for participants to report back on issues of race discrimination and vilification in the ACT community.

#### **Play by the Rules & transgender & intersex participation in sport**

The Commissioner has been a long-term participant and supporter of 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. The Play by the Rules national manager is based at the Australian Sports Commission.

Related to this work, in recent years the Commissioner participated in a reference group on the ACT Government's Fair Go Sport project, which aimed to encourage inclusion in local sport and recreational activities. A survey conducted as part of that project demonstrates that there were barriers to transgender and intersex participation in sport. In response, the Commissioner began during this reporting period working with Play by the Rules and local members of the transgender community to investigate concerns about inclusion of transgender and intersex people. A draft guide was prepared, based on similar work in Victoria, to demonstrate the benefits to inclusion for sporting organisations, and address some of the erroneous assumptions made about transgender and intersex participations. The HRD Commissioner looks forward to consulting with intersex and transgender communities, and local sporting organisations and clubs, on the draft guide in the coming year.

#### **Case Study: Pregnancy discrimination**

A woman complained about her former employer, a local store, where she worked as a casual for 4 years before she resigned due to the way her manager treated her. She alleged that when she informed her employer that she was pregnant and needed some time off to see an endocrinologist and attend maternity classes, her employer told her that she can't miss work. She alleged her employer advised her that if she keeps missing work it would be easy for him to find somebody else to replace her. Although the employer did not agree with the woman's allegations, they agreed to participate in a conciliation conference. The matter resolved in confidence with the employer providing a written apology and agreeing to provide the woman with a positive written reference, offering to be a positive referee for prospective employers, and payment of \$7,000 financial compensation.



### **Discrimination Act: complaints handling**

There were 371 discrimination and human rights related inquiries during the reporting period, which is a slight increase on the 357 enquiries recorded last year. Of the 371 inquiries, 53 were human rights enquiries from the community, an increase from the 49 last year, and is likely due to a number of factors including a greater emphasis on engaging with the legal profession, publicity around the HR Act's ten year anniversary, and the enhanced inquiry data capture provided by the Commission's inquiries database. While the Commissioner does not have the jurisdiction to handle human rights complaints, such inquiries are often relevant to systemic, policy or litigation work.

There were also 3 discrimination complaints regarding alleged discrimination in the area of corrections, which indicates that there may be greater understanding by detainees of the direct complaint handling role of the Commission. As the HRD Commissioner cannot take complaints under the HR Act, there is limited ability for her to directly address human rights grievances at the AMC.

The Commissioner received 191 discrimination inquiries, a reduction in the 308 received in the last reporting period. However, a further 44 complaints were received on complaint forms without any prior enquiry being made by the complainant, which is an increase from the 16 received in this manner last year. Therefore, a total of 235 complaints and enquiries were received, which is a decrease from 324 last year.

Of the 191 discrimination enquiries, 147 were discrimination complaint related (not including the 44 complaints without prior enquiry), and another 37 were relevant to the Commissioner's functions, but not complaint related. The remaining 7 enquiries were outside the Commissioner's jurisdiction.

There were 75 new formal discrimination complaints lodged with the Commissioner during the reporting period. This is a decrease from the 84 complaints last year, which might reflect the continuing decrease in community outreach and education activities undertaken by the Commissioner as a result of resource constraints.

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

A woman with a physical disability complained about a power provider requiring her to undertake testing of equipment associated with the provision of essential services at her property. The woman advised that she was unable to do this test due to her serious medical condition, and physical disability. The woman also complained that her contact with staff about her concerns was unpleasant, and that her privacy had been breached by a service person who attended her property. The complaint was resolved at conciliation by payment of financial compensation of approximately \$2000 as an act of grace, as well as granting her a credit of \$1,800 on her account. The provider of the service also agreed to develop a Disability Action Plan, and provide regular meter readings for the woman for a period of 2 years.

### **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. Six cases were referred during the reporting period to the ACAT, which is half the number of the 12 cases referred in the last reporting period.

Four decisions were reported by the Tribunal in this financial year. In *H v Commissioner for Social Housing in the ACT* [2014] ACAT 46, the Tribunal dismissed a complaint of disability discrimination on the basis that the applicant had not provided sufficient evidence to support his claim that he has a disability within the meaning in the Discrimination Act, and therefore his complaint was lacking in substance.

In *Kovac v Australian Croatian Club Limited* [2014] ACAT 41, the Tribunal looked at whether a club had discriminated against a member because of his political conviction. The Tribunal found that the Australian Croatian Club had discriminated against Mr Kovac by depriving him of membership of the club on the basis of his political conviction.

In *Wang v Australian Capital Territory* [2015] ACAT 5 the Tribunal found that the applicant was subject to both direct and indirect race discrimination with respect to his automatic placement in a particular category of the priority listing that governs medical internships, but that he was not successful in establishing race discrimination with respect to obtaining a resident medical officer position. The decision was reported to be an 'interim decision', with the Tribunal leaving open the question of reasonableness of the indirect race discrimination until further submissions were received from the parties. In the subsequent proceedings to assess reasonableness, the Commissioner made a submission to the Tribunal on the relevant legal tests for determining reasonableness, particularly by reference to the *Human Rights Act 2004*. These proceedings remained on foot at the time of reporting, with the referral of a question of law to the Supreme Court.

In *Osborne & Ranse v Ethnic Broadcasters Council of the ACT and Surrounding Districts Inc* [2015] ACAT 30, the Tribunal looked at questions about whether a board member of a voluntary association is an 'employee' for the purposes of the Act, the scope of the exception covering voluntary organisations, and whether standing for office in a voluntary organisation can constitute a benefit offered by that organisation. The matter was unsuccessful.

#### **Case Study: Sexual harassment, victimisation & disability discrimination**

A health professional alleged sexual harassment, disability discrimination and victimisation in her workplace. She alleged she was subject to inappropriate conduct by her supervisor and was transferred to less favourable employment because she made a complaint of sexual harassment and lodged a worker's compensation claim. The supervisor's alleged inappropriate conduct consisted of comments and behaviour of a sexual nature, which made her feel violated and caused psychological trauma. She also alleged that despite being encouraged by her employer to raise the concerns she had about her supervisor's treatment of her, and doing so, the employer's management of her complaint caused her further detriment. She claims that as a result she was ultimately unable to continue to work in her chosen profession. The woman and her employer agreed to participate in a conciliation conference. The matters were resolved in confidence by the employer agreeing to consider the woman for future employment with them; providing financial assistance for the woman to undertake further study; a payment of \$15,000 financial compensation; and the employer agreeing to make improvements to its complaints handling policy.

#### **Complaint allegations by ground of discrimination**

There were 120 allegations on 19 grounds in the 75 new accepted discrimination complaints, which is a continuing decrease to the 133 allegations in 2013-14, 140 in 2012-13 and 196 in 2011-12.

Of the complaints lodged, the most common ground of discrimination was disability (36%), which is the usual trend for complaints historically. Race continued to be a common ground of complaint (10%), as well as race vilification (3%), but was a decrease from last year (15% for race and 7% for vilification), despite the Commissioner's focus on engaging with the Aboriginal, Torres Strait Islander and multicultural communities.

**Table 2 - Complaint allegations by ground of discrimination**

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
Disability	43	36%	46	35%	29	18%
Race	12	10%	20	15%	33	22%
Victimised	11	9%	6	5%	14	10%
Vilified on grounds of sexuality	7	6%	0	0%	2	1%
Age	6	5%	9	7%	6	4%
Sexual harassment	6	5%	7	5%	8	6%
Relationship status	6	5%	1	1%	3	2%
Vilified on grounds of HIV/AIDS	5	4%	0	0%	1	1%
Vilified on ground of race	4	3%	9	7%	8	6%
Gender identity	4	3%	1	1%	2	1%
Sex	3	3%	8	6%	13	9%
Status as a parent or carer	3	3%	3	2%	5	3%
Vilified on grounds of gender identity	2	2%	0	0%	0	0%
Assistance Animal	2	2%	0	0%	0	0%
Profession, trade, occupation or calling	1	1%	8	6%	0	0%
Industrial activity	1	1%	4	3%	1	1%
Sexuality	1	1%	4	3%	3	2%
Pregnancy including potential pregnancy	1	1%	3	2%	3	2%
Association with a person who has an attribute listed above	1	1%	1	1%	1	1%
Political conviction	1	1%	1	1%	2	1%
Religious conviction	0	0%	2	2%	6	4%
Spent Criminal Conviction	0	0%	0	0%	0	0%
<b>Total</b>	<b>120</b>	<b>0%</b>	<b>133</b>	<b>100%</b>	<b>140</b>	<b>100%</b>

**Case study: Race discrimination/vilification & sexual harassment, victimisation**

A man of Asian background complained that he was subject to vilification and also sexual harassment from one of the support workers of an accommodation service. The man believed that after he made a complaint he had been victimised by being given a letter alleging a breach of the occupancy agreement he had with the service. The matter was resolved at conciliation with the service agreeing to withdraw the letter regarding the alleged breach, and to provide extensive training for its staff on anti-discrimination and respectful communication, and maintaining appropriate boundaries with clients. The service also undertook to have annual anti-discrimination refresher training and review all relevant policies.

**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 12% of complaints, compared to 4% two reporting years ago. As with the grounds of a discrimination complaint, a single case can include multiple areas of public life.

**Table 3 - Complaint allegations by area of discrimination**

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
Provision of goods, services or facilities	37	39%	38	32%	38	36%
Employment	21	22%	32	27%	31	29%
Access to premises	11	12%	19	16%	4	4%
Accommodation	7	7%	10	9%	12	11%
Education	6	6%	8	7%	6	6%
Professional trade or Organisation	2	2%	2	2%	0	0%
Clubs	2	2%	1	1%	3	4%
Employment agency	2	2%	0	0	1	1%
Other (not relating otherwise)	2	2%	0	0	2	2%

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
to another area of public life)						
Unlawful advertising	2	2%	0	0	1	1%
Request for information	1	1%	2	2%	1	1%
Qualifying body	1	1%	2	2%	2	3%
Vilification through public act (not relating otherwise to another area of public life)	1	1%	0	0	2	2%
Contract worker	0	0%	2	2%	2	2%
Partnership	0	0%	0	0	1	1%
<b>Total</b>	<b>95</b>	<b>100%</b>	<b>116</b>	<b>100%</b>	<b>106</b>	<b>100%</b>

#### Case Study: Disability discrimination in education

A student complained to the Commission that she had been discriminated against by the higher education provider in failing to make reasonable adjustment for her learning disability. The woman felt that she could not return, and had no choice but to give up her study.

The complaint was resolved at conciliation with the education provider agreeing to a late withdrawal for the student without academic or financial penalty, to reimburse the woman for software which she had purchased to assist her in her studies, to purchase a laptop for the woman, and any additional assistive technology the woman may need. The education provider also agreed to organise training for the woman in using the assistive technology, as well as funding a specialised Participation Assistant for two hours per week for the duration of the student's attendance at the educational institution. The parties also agreed to weekly meetings of one hour with a Learning Support Advisor, in order to provide study skills advice and support for the duration of the student's enrolment.

#### Complaints lodged by category of aggrieved person

The table below provides a breakdown by complainants who lodged complaints in this period. Traditionally approximately even numbers of men and women have lodged complaints. In this reporting period, significantly more men than women lodged complaints, and a greater number of complaints were made by people who identified as transgender.

**Table 4 - Complaint allegations by category of aggrieved person**

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
Other/unknown/not disclosed	1	1%	2	7%	0	0%
Individual male	44	59%	38	45%	39	48%
Individual female	26	35%	38	45%	38	46%
Transgender	3	4%	0	0	0	0
Group	0	0%	0	0%	0	0%
Commissioner	1	1%	2	2%	4	5%
Representative	0	0%	0	0%	1	1%
<b>Total</b>	<b>75</b>	<b>100%</b>	<b>84</b>	<b>100%</b>	<b>82</b>	<b>100%</b>

#### 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 5 - Complaint allegations by category of respondent**

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
Private enterprise	31	41%	30	36%	21	26%
ACT Government department, agency or statutory authority	16	21%	30	36%	24	29%
Individual unknown gender	8	11%	n/a		n/a	
Education institution	6	8%	6	7%	7	9%
Community organisation	5	7%	6	7%	8	10%
Club	3	4%	0	0	2	2%
Accommodation	2	3%	3	4%	2	2%
Recruitment agency	2	3%	1	1%	2	2%
Individual male	1	1%	6	7%	11	13%
Individual female	1	1%	0	0	1	1%
Other	0	0%	2	2%	3	4%

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
Union	0	0%	0	0	0	0%
Professional association	0	0%	0	0	1	1%
<b>Total</b>	<b>75</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>82</b>	<b>100%</b>

### 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 59% of the 29 attempted conciliations resulting in conciliated agreements, ie 17 cases, although this is decrease from 70% in 2013-14. The success of a conciliation conference is generally about the willingness of the parties to negotiate in good faith.

Of those that did not result in a conciliated outcome, approximately half of these matters were discontinued at the pre-conciliation stage, where a Senior Conciliator formed the view that a formal conciliation was not likely to be successful. A further two cases were otherwise resolved after attempted conciliation.

Of the 19 cases that proceeded to a formal conciliation conference, 89% (17) resulted in an agreed outcome.

**Table 6 - Conciliation**

	2014-15	2014-15 %	2013-14	2013-14 %	2012-2013	2012-2013 %
Agreement reached	17	59%	33	70%	39	71%
Agreement not reached	12	41%	14	30%	16	29%
<b>Total</b>	<b>29</b>	<b>100%</b>	<b>47</b>	<b>100%</b>	<b>55</b>	<b>100%</b>

### Closed complaints

During this reporting period, 66 complaints were closed, a 25% decrease from the 88 complaints closed from last reporting period (and a further reduction on the 122 the year before). This reflects an overall reduction in the number of complaints received in the last two reporting periods, discussed above in relation to decreased numbers of team staff available to participate in activities that raise community awareness about the Commission's discrimination complaint handling role.

Fifteen cases were withdrawn by the complainant, and 30 cases were closed without resolution (including because the Commission 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 21 cases were in the Commissioner's opinion resolved, including through conciliation with the Commission.

### 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. Seventy-eight percent of complaints were resolved in 6 months or less, and all complaints received were closed in under twelve months.

**Table 7 - Duration of complaints from receipt to closure**

	2014-15	2014-15 %	2013-2014	2013-2014 %	2012-2013	2012-2013 %
Within 0-3 months	32	48%	29	33%	50	41%
Within 3-6 months	20	30%	43	49%	40	33%
Within 6-12 months	14	21%	16	18%	29	24%
After 12 months	0	0	0	0	3	2%
<b>Total</b>	<b>66</b>	<b>100%</b>	<b>88</b>	<b>100%</b>	<b>122</b>	<b>100%</b>

### **Exemption applications**

The Commissioner received new formal applications for exemptions under the *Discrimination Act* from BAE Systems Australia and Raytheon Australia, seeking to extend their previously approved conditional exemptions on the grounds of race granted to defence contracts with the United States of America. On 14 July 2014, the Commissioner granted an extension to BAE Systems' exemption, on broadly the same terms as previously. On 8 June 2015, she similarly approved an extension to Raytheon Australia's exemption. Both new exemptions will now expire on 14 July 2017. The Commissioner will continue to monitor reports from BAE Systems Australia and Raytheon Australia on compliance with the new exemptions.

#### **Case Study: Race discrimination**

Aboriginal and/or Torres Strait Islander parents allege their son was discriminated against by his school's sports policy which prevented him from playing a game against another of his school's sports team whilst he was playing for an Aboriginal and/or Torres Strait Islander sports team (that was not a school sports team). They also allege race discrimination in relation to how they have been treated by the school in the application of the sports policy. The school and the parents of the child participated in a conciliation conference and mutually resolved the matter/s by agreeing that the school's policy would be changed in order to enable Aboriginal and/or Torres Strait Islander children who were playing for a non-school Aboriginal and/or Torres Strait Islander sports team to play in that team when playing against a school team; under appropriate circumstances Aboriginal and/or Torres Strait Islander children will not be required to play for a school team if they were also playing for an Aboriginal and/or Torres Strait Islander team.

## 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 2015, was assisted by two Senior Advisers: Brianna McGill (0.6FTE); and Gabrielle McKinnon (1.0FTE).

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.

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 not detailed elsewhere in this report include:

**Table 8 - Systemic & policy work progressed by the CYPC in 2014-2015**

<p><b>Amendment to the ACT Human Rights 2004</b></p> <p>The CYPC remains of the view that s11 of the Human Rights Act 2004 should be amended. Specifically, the CYPC suggests that s11 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 remains concerned 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’ (rather than a range of other rights, including participation).</p>
<p><b>Service delivery for children &amp; young people in the Jervis Bay Territory</b></p> <p>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. Between November 2014 and February 2015, the CYPC facilitated four community forums to discuss the proposed changes to the administration of the JBT. In March 2015, the CYPC sent a report on the outcomes of these discussions to: the ACT Chief Minister, Mr Andrew Barr MLA; the NSW Premier, The Hon Michael Baird MP; the Assistant Minister for Infrastructure &amp; Regional Development, The Hon Jamie Briggs MP; and the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion.</p>
<p><b>Physical punishment of children &amp; young people</b></p> <p>In April 2015, the CYPC attended the Extraordinary Meeting of the Domestic Violence Prevention Council (DVPC). The DVPC aims to reduce the incidence of domestic violence offences and promote collaboration between government agencies and non-government organisations that provide services and responses to victims and perpetrators of domestic and family violence, including sexual assault. At the meeting, the CYPC noted that in any discussion about domestic violence it is necessary to: talk with children and young people about their views about domestic violence; and consider the relevance of physical punishment of children and young people to the issue. In May 2015, the CYPC was invited by the Global Network to End All Corporal Punishment of Children to establish an Australian branch of the Network.</p>
<p><b>Seeking the views and wishes of children &amp; young people under s352 of the <i>Children &amp; Young People Act 2008</i></b></p> <p>The CYPC continued to encourage Care and Protection Services to seek and consider the views and wishes of children and young people when case management decisions are being made. The CYPC remains of the view that certain decisions, including placement, contact, and choice of school, should not be made without CPS actively seeking and considering the views and wishes of the affected child or young person.</p>
<p><b>Administrative review of decisions made by Care &amp; Protection Services under the <i>Children &amp; Young People Act 2008</i></b></p> <p>The CYPC remains concerned about the lack of avenues for independent review of decisions made by Care and Protection Services in relation to children and young people in the care of the Director-General. The CYPC remains of the view that the current scope of decisions reviewable by the ACT Civil &amp; 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.</p>
<p><b>Limitations to the <i>Working with Vulnerable People (Background Checking) Act 2011</i></b></p> <p>In September 2013, the Commission wrote to the Minister for Disability, Children &amp; 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. In December 2014, the Commission made a submission to the Implementation Review of the Working with Vulnerable People scheme, again raising these concerns. Despite on-going discussions, this issue remains unresolved.</p>
<p><b>Evaluation of the National Framework for Protecting Australia’s Children 2009-2020</b></p> <p>In November 2014, the CYPC, along with other Australian Children’s Commissioners &amp; Guardians, was invited to meet with the consultants engaged to evaluate the National Framework for Protecting Australia’s Children. The CYPC attended the meeting, noting that the Framework might benefit from: a National ‘ambassador’ to champion the Framework; a change of focus from child protection to child well-being; greater clarity around the governance of the Framework and its relevance to other work currently being undertaken across Australia.</p>
<p><b>Third National Action Plan 2015-2018</b></p>



In November 2014, the CYPC received a briefing from the Department of Social Services about the development of the Third National Action Plan 2015-2018. The CYPC agreed in principle with the proposed five priorities of the Action Plan, however recommended that the Plan: focus on child well-being (rather than child protection); have clear and measurable actions and performance indicators; and include a solid commitment to ongoing, meaningful, and respectful consultation with children and young people about the Plan and issues important to them.

**Sharing of information by school counsellors**

In December 2014, the CYPC and the ACT Health Services Commissioner commenced a Commission Initiated Consideration into the sharing of personal health records by school counselors within the public, Catholic, and independent education sectors. It is anticipated that a report on the outcomes of the consideration will be released in the next reporting period.

**Roundtable on children & young people with mental health issues who are in contact with the youth justice system**

In December 2014, the CYPC facilitated a Roundtable to discuss 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. Representatives from 40 government and non-government agencies attended the Roundtable, and a report on the outcomes of the discussions was circulated to participants in January 2015.

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

The CYPC, the ACT Health Services Commissioner, and the Bimberi Oversight Agencies Group continued work on a review 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 late 2015.

**Guidelines for portraying children & young people in the media**

The CYPC is developing draft guidelines about how to respectfully and accurately portray children and young people in the media. The CYPC has discussed the draft guidelines with a number of local media personalities, and it is anticipated that CYPC will be holding a roundtable on the topic in early 2016.

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

In conjunction with ACT Human Rights & Discrimination Commissioner, the CYPC undertook 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. In March 2015, a report on the outcomes of the engagement activity, called Passing the Message Stick, was co-launched at the Gugan Gulwan Youth Aboriginal Corporation by the CYPC and the Chair of the ACT Aboriginal & Torres Strait Islander Elected Body, Mr Rod Little.

**Review of the functions of the Official Visitor for Children & Young People**

During the reporting period, the CYPC continued to advocate for amendments to the Children & Young People Act 2008 to allow the Official Visitor for Children & Young People to visit residential facilities other than the Bimberi Youth Justice Centre and Marlow Cottage. The CYPC understands that relevant amendments will be introduced next reporting period.

**National Alcohol Summit**

In October 2014, the CYPC accepted an invitation to attend the Australian Medical Association's National Alcohol Summit. The CYPC spoke with participants at the Summit about the importance of talking with children and young people about alcohol use, and alcohol related violence.

**Oversight of the Bimberi Youth Justice Centre**

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:

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

Details of activities undertaken by the OAG are detailed elsewhere in this report.

**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 four times during the reporting period. The CYPC is also a member of the Australian & New Zealand Child Death Review & Prevention Group, and in November 2014, attended the 4<sup>th</sup> Australasian Conference on Child Death Inquiries & Reviews.

**Australian Children's Commissioners & Guardians Group (ACCG)**

In November 2014, the ACCG nominated the ACT Children & Young People Commissioner as the ACCG National Convener. The role of the National Convener is to act as the ACCG's contact point and to assist in the dissemination of information for the ACCG. Details of activities undertaken by the OAG are detailed elsewhere in this report.

**Children & young people in Out-of-Home Care**

The CYPC met regularly with the Human Services Registrar, Community Services Directorate, to review and improve mechanisms to improve the accreditation and oversight Out-of-Home Care providers.

**The participation of children & young people in Family Court proceedings**

In October 2014, the CYPC spoke at the Canberra & ACT Region Family Law Pathways Network (FLPN) Forum: *When Can I Decide For Myself* about the importance of involving children and young people in Family Court decisions that impact on children and young people. Following, in December 2014, the CYPC accepted an invitation to join the Family Law Pathways Network.

**How To Grow A Playspace**

In early 2015, the CYPC was invited to submit a chapter to a book being produced by a Melbourne based landscape architect tentatively titled 'How to Grow a Playspace'. The book is intended to be a practical guide for landscape architects, planners, educators and community groups to assist them to design playspaces for children and young people. In June 2015, the CYPC submitted a draft chapter for review.

**Child Safe/Child Friendly Organisations**

In September 2014, at the request of the Royal Commission into Institutional Responses to Child Sexual Abuse, the CYPC developed a 10-point tool to guide an assessment of an organisation's capacity to provide a Child Safe/Child Friendly environment. The tool is currently being evaluated by the CYPC in partnership with Glastonbury Community Services and the Victorian Commission for Children & Young People.

**ACT Criminal Justice Statistical Profile**

In March 2015, the CYPC provided feedback on the development of alcohol and other drug and family violence data sets for the ACT Criminal Justice Statistical Profile (CJSP). Comments were primarily drawn from recommendations about data collection previously made by the CYPC during the 2011 review of the youth justice system.

**NDIS Consultation Paper: Proposal for a National Disability Insurance Scheme Quality & Safeguarding Framework**

In April 2015, the CYPC made a submission to the NDIS Consultation Paper: Proposal for a National Disability Insurance Scheme Quality & Safeguarding Framework. The primary aim of the submission was to outline the important work undertaken in the children and youth services sector towards building capacity for 'child safe child friendly organisations', and noting that the NDIS must take account of the research and evidence on child safety in institutions in order to protect children, young people and vulnerable adults with a disability.

**Passports for children & young people in Out-of-Home Care**

During the reporting period, the CYPC met on a number of occasions with representatives of the Birth, Adoption & Care Branch, Department of Social Services, to discuss mechanisms to improve access to passports for children and young people in Out-of-Home Care. The CYPC subsequently raised the issue at a meeting of the Australian Children Commissioners & Guardians (ACCG) group.

**Asia Pacific Council for Juvenile Justice**

In July 2014, the CYPC was invited to join the Asia Pacific Council for Juvenile Justice (APCJJ), a collection of individuals from across the Asia Pacific region who work together to protect and promote the rights of children and young people who are in conflict with the law. In May 2015, the CYPC presented a paper on The Role of Independent Oversight in Preventing Violence against Young People in Detention at the 2<sup>nd</sup> Meeting of the APCJJ.

**Model Charter of Rights for Children & Young People in Youth Justice Facilities**

In July 2014, in conjunction with the Australian Children's Commissioners and Guardians (ACCG) group, the CYPC released a *Model Charter of Rights for Children & Young People in Youth Justice Facilities*. The Charter is based on international agreements to which Australia is a signatory, and provides children and young people in custody with an easy to understand guide to their rights, and what they are entitled to while in custody.

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.

## **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's Plan 2004-2014.
- The ACT Young People Plan 2009-2014.
- The Canberra Social Plan 2011.
- 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

## **Right Here Right Now: Children & Young People Seen + Heard**

In November 2014, in celebration of the 25<sup>th</sup> Anniversary of the United Nations Convention on the Rights of the Child, the CYPC asked every student in every ACT school to draw a portrait of themselves on coloured card, and to write a message under their portrait about *why it is important for adults to listen to children & young people*.

The Commissioner received 11,500 portraits, from 50 ACT schools. This represents 15% of all ACT school students.

All of the portraits were attached to 700 cardboard boxes, and built into the shape of a double helix. The helix, which is the shape of human DNA, symbolises the individuality of every child and young person, and was developed by design company Thylacine and local architect, Mark Bruce.

The installation was displayed in the Fitters Workshop in Kingston between the 10<sup>th</sup> and 12<sup>th</sup> of April, and was visited by over 700 people.

The CYPC thanks: Visy, who donated the boxes; the ACT Community Services Directorate and the ACT Education & Training Directorate for their financial support; and all of the volunteers who helped in so many ways.

Two short films about the project, and a gallery of images, can be viewed at the CYPC's website ([www.ACTkids.act.gov.au](http://www.ACTkids.act.gov.au)).

## Other consultation & engagement activities with children & young people

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

**Table 9 - CYPC consultation & engagement activities with children & young people**

### **Views on the environment**

In March 2015, the CYPC, in conjunction with the ACT Commissioner for Sustainability & the Environment, undertook a two-day consultation with 81 Year 4 students at Ngunnawal Primary School. The consultation explored how children conceptualise the environment; what about the environment is important to them; and their ideas for protecting the environment. The students also wrote a message to the Commissioner for Sustainability and the Environment about what they would like him to focus on to protect the local environment in the ACT. The consultation confirmed that the students could identify a wide range of features of the natural and human made environment, and broader concepts such as biodiversity and natural and cultural history. The students also demonstrated a strong interest in protecting the environment, and had many innovative ideas about how we could do this. A report on the outcomes of the consultation will be published by the CYPC and the Commissioner for Sustainability & the Environment in late 2015.

### **Message to the ACT Chief Minister**

In January 2015, the CYPC visited a number of School Holiday Programs across Canberra. As well as talking with children and young people about issues important to them, the CYPC invited the children and young people to draw or write a message about how to make Canberra a better place for children and young people to the ACT Chief Minister, Mr Andrew Barr MLA who, in December 2014, had just been elected as the ACT's new Chief Minister. The CYPC received 82 responses, with children and young people providing many interesting comments. There was particular emphasis on a need for more recreational activities for children and young people, such as playgrounds, water parks and museums. Children and young people also wrote about protecting the environment, improving schools, and reducing family expenses. A copy of all of the messages was subsequently provided to the Chief Minister.

### **Service improvement in Bimberi Youth Justice Centre**

In July 2014, in conjunction with the Australian Children's Commissioners and Guardians (ACCG) group, the CYPC released a *Model Charter of Rights for Children & Young People in Youth Justice Facilities*. The Charter is based on international agreements to which Australia is a signatory, and provides children and young people in custody with an easy to understand guide to their rights, and what they are entitled to while in custody. In December 2014, the CYPC and other members of the OAG visited Bimberi to talk with residents about the Charter. Residents were asked their thoughts about what the rights in the Charter mean, and if the rights were easy to understand. Residents were also asked to identify those rights that they thought were well respected at Bimberi, and those that they thought weren't well respected. Residents then broke into smaller groups to talk about programs and activities available at Bimberi, including: which ones they enjoyed; those they thought were helpful; and any programs or activities they would like to see introduced at Bimberi. In this discussion, participants were also asked about supports in place for their transition, and what would be useful for them when they leave Bimberi. Residents were also invited to write down the advice they would give to other young people who might come to Bimberi for the first time. Participants wrote their thoughts on a brick shaped sticker and stuck it to a cardboard 'wall'. A report on the outcomes of the consultation was provided to the Executive Director, Office for Children, Youth & Family Support.

### **100<sup>th</sup> Anniversary of Jervis Bay School**

In October 2014, as part of the 100th anniversary celebrations of Jervis Bay School, the CYPC visited the Wreck Bay and Jervis Bay communities. The CYPC ran a consultation session with Year 4, 5 & 6 students from Jervis Bay School, asking the students to draw and then talk about what they liked the most about their school. The students drew and spoke about some of their favourite subjects (reading, maths, writing, art, using the computer and school excursions); their favourite places in the school (the library, the oval, classrooms and the hall); their favourites sports (basketball and soccer); and the location of the school within the natural environment (the bush, the water and the kangaroos). The CYPC also asked the students to write a message to those people who will be making decisions about the future of the school, and what the school will be like for the next 100 years. Messages included: I love this school, because it is a good school; Could you not knock down the school because people want a good education; A new playground; The classes are too tight; A better canteen; New buildings; Make a new playground; Keep it in ACT - do not turn the Territory into NSW; More children coming to the school; Make more classes and gardens; Keep the good teachers; We want it not to be taken down; Don't get rid of the bushes. During later discussions at the school, students and their families also

spoke about the strong sense of community within the school; the way the school reflects and nurtures students' Aboriginal identity and culture; the individualised attention each student receives because of the small school size; and the importance of being educated on country.

**Happy, healthy & safe childhoods**

In September 2014, the CYPC undertook a two-day consultation with 16 preschool children aged 4-5 years old, at Goodstart Early Learning Centre Isaacs. The consultation explored how preschool children conceptualise rights and the things that they consider to be important for children to be happy, healthy and safe. The children spoke about content protected under many of the rights in the Convention on the Rights of the Child, such as rights to family, housing, nutrition, healthcare, recreation and education. Children also identified particular toys and experiences such as family holidays, and play-dates and sleepovers with their friends as important, reflecting their own experiences and activities they enjoy. The children also suggested rules to protect children, including adults being polite to children, listening to them and keeping them safe. The consultation confirmed that even very young children can express clear and thoughtful views about their own needs and interests, and are able to conceptualise the needs and interests of children more broadly. A report on the outcomes of the consultation was published by the CYPC in February 2015.

**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 July 2015, the CYPC will begin 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 in the next reporting period.

**Complaints handling**

During the reporting period, the CYPC continued its policy position 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 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 10 - Number of complaints, complaint related enquiries, & other requests for information or assistance**

	2013-2014	2014-2015
Complaints	30	16
Complaint related enquiries	57	66
Other requests for information or assistance	67	75
<b>Total number of contacts</b>	<b>154</b>	<b>157</b>

During the reporting period, the CYPC received and assisted to resolve 16 *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 66 *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 75 *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 three complaints directly from young people, with all of these being from young people in the Bimberi Youth Justice Centre. In addition, throughout the reporting period, residents of Bimberi telephoned the CYPC for general advice or support.

### 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 three Commission initiated considerations

- Services for children and young people in Jervis Bay Territory.
- Services for students with complex needs and challenging behaviour.
- Sharing of personal health records by school counsellors.

### Service providers subject of complaints

Approximately 37% of all complaints received and investigated involved allegations about services provided by Care and Protection Services (CPS), and approximately 19% involved concerns about the Bimberi Youth Justice Centre.

Approximately 31% of complaints received and investigated were about education providers, with the Education & Training Directorate (ETD) accounting for 80% of these complaints.

**Table 11 - Number of complaints by service provider**

	2013-2014	2013-2014
Office for Children, Youth & Family Support	<b>21 (70%)</b>	<b>9 (56%)</b>
- Care & Protection Services	17 (57%)	6 (37%)
- Bimberi	4 (13%)	3 (19%)
Education providers	<b>5 (16%)</b>	<b>5 (31%)</b>
- Government	5 (16%)	4 (25%)
- Private or independent	0 (0%)	1 (6%)
Other government agencies	2 (7%)	0 (0%)
Community sector agencies	2 (7%)	2 (13%)
Private sector agencies	0 (0%)	0 (0%)
<b>Total</b>	<b>30 (100%)</b>	<b>16 (100%)</b>

### Issues raised in complaints & complaint related enquiries

Due to issues of confidentiality and privacy, the CYPC chooses not to publish any case studies, however, 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.
- Significant 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 continue to address this issue next reporting period.

### **CYPC publications**

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

#### **Table 12 - CYPC publications**

<p><b>Happy, healthy &amp; safe childhoods</b></p>
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<p>In September 2014, the CYPC undertook a two-day consultation with 16 preschool children aged 4-5 years old, at</p>
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Goodstart Early Learning Centre Isaacs. The consultation explored how preschool children conceptualise rights and the things that they consider to be important for children to be happy, healthy and safe. The children spoke about content protected under many of the rights in the Convention on the Rights of the Child, such as rights to family, housing, nutrition, healthcare, recreation and education. Children also identified particular toys and experiences such as family holidays, and play-dates and sleepovers with their friends as important, reflecting their own experiences and activities they enjoy. The children also suggested rules to protect children, including adults being polite to children, listening to them and keeping them safe. The consultation confirmed that even very young children can express clear and thoughtful views about their own needs and interests, and are able to conceptualise the needs and interests of children more broadly. A report on the outcomes of the consultation was published by the CYPC in February 2015.

#### **CYPC Info Sheets**

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 44 Info Sheets, copies of which can be downloaded from the CYPC's website ([www.ACTkids.act.gov.au](http://www.ACTkids.act.gov.au)).

#### **Right Here Right Now**

During the reporting period, the CYPC began production of a book about the CYPC's Right Here Right Now exhibition. It is anticipated that the book will be released in late 2015.

#### **Stuff Kids Said...**

During the reporting period, the CYPC began production of a pamphlet detailing all of the consultations with children and young people undertaken by the CYPC over the past six years. It is anticipated that the pamphlet will be released in late 2015.

#### **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 2015, approximately 650 children and young people have 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 range 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 September 2014, following discussions with the Royal Commission into Institutional Responses to Child Sexual Abuse, the CYPC developed a 10-point tool to assist assess an organisation's capacity to provide a Child Safe/Child Friendly environment. The tool is currently being evaluated by the CYPC in partnership with Glastonbury Community Services and the Victorian Commission for Children & Young People.

In June 2015, the ACT Children & Young People Commissioner was awarded a Churchill Fellowship to travel to Iceland, Sweden and Norway to examine Child Safe/Child Friendly policy and practice.

### **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 Official Visitor for Aboriginal & Torres Strait Islander Children & Young People
- The Public Advocate of the ACT.

During the reporting period, a representative of Legal Aid ACT also attended meetings of 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.

In July 2014, in conjunction with the Australian Children's Commissioners and Guardians (ACCG) group, the CYPC released a *Model Charter of Rights for Children & Young People in Youth Justice Facilities*. The Charter is based on international agreements to which Australia is a signatory, and provides children and young people in custody with an easy to understand guide to their rights, and what they are entitled to while in custody.

In December 2014, the CYPC and other members of the OAG visited Bimberi to talk with residents about the Charter. Residents were asked their thoughts about what the rights in the Charter mean, and if the rights were easy to understand. Residents were also asked to identify those rights that they thought were well respected at Bimberi, and those that they thought weren't well respected.

Residents then broke into smaller groups to talk about programs and activities available at Bimberi, including: which ones they enjoyed; those they thought were helpful; and any programs or activities they would like to see introduced at Bimberi. In this discussion, participants were also asked about supports in place for their transition, and what would be useful for them when they leave Bimberi.

Residents were also invited to write down the advice they would give to other young people who might come to Bimberi for the first time. Participants wrote their thoughts on a brick shaped sticker and stuck it to a cardboard 'wall'. A report on the outcomes of the consultation was provided to the Executive Director, Office for Children, Youth & Family Support.

Additionally, during the reporting period, the CYPC, the ACT Health Services Commissioner, and the OAG continued work on a review 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 next reporting period.

### **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 June 2015, the CYPC spoke at a meeting of the *ACT & South East NSW Region Guide Leaders*.

- In May 2015, the CYPC spoke at the *3rd National Child Aware Approaches Conference* in Melbourne.
- In May 2015, the CYPC spoke at the *2nd Asian-Pacific Council for Juvenile Justice Conference* in Phuket, Thailand.
- In April 2015, the CYPC spoke at the opening of *Right Here/Right Now*.
- In March 2015, the CYPC spoke at the launch of the *Passing the Message Stick* report.
- In November 2014, the CYPC spoke at the launch of *Right Here/Right Now*.
- In October 2014, the CYPC spoke at the *2014 Children's Week Awards*.
- In October 2014, the CYPC spoke at the *Canberra & ACT Region Family Law Pathways Network Forum: When Can I Decide For Myself*.

#### **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 four 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 & 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:

- In June 2015, the ACCG wrote to Minister for Social Services, the Hon Scott Morrison MP, about changes to the Transition to Independent Living Allowance (TILA).
- In May 2015, the CYPC participated in an ACCG panel presentation at the *3rd National Child Aware Approaches Conference* in Melbourne.
- In May 2015, the ACCG wrote to Minister for Social Services, the Hon Scott Morrison MP, about professionalising foster care.
- In November 2014, the ACCG commenced a review of the use of restraint in youth justice centres across Australia. The CYPC and the Western Australian Commissioner for Children & Young People are the two lead authors of the review.
- In July 2014, the ACCG released a Model Charter of Rights for Children & Young People in Youth Justice Facilities.

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.

In November 2014, the ACCG elected the ACT Children & Young People Commissioner as the ACCG National Convener. The role of the National Convener is to act as the ACCG's contact point and to assist in the dissemination of information for the ACCG.

**Liaison with the National Children's Commissioner**

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

In December 2014, the CYPC attended the launch of the National Commissioner's *Children's Rights Report 2104*, and, in June 2015, attended a National Roundtable hosted by the Commissioner to examine the impact of family and domestic violence on children and young people.

**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.

In September 2014, at the request of the Royal Commission into Institutional Responses to Child Sexual Abuse, the CYPC developed a 10-point tool to guide an assessment of an organisation's capacity to provide a Child Safe/Child Friendly environment. The tool is currently being evaluated by the CYPC in partnership with Glastonbury Community Services and the Victorian Commission for Children & Young People.

In May 2015, the CYPC, along with all other members of the Australian Children Commissioners and Guardians (ACCG) group, was asked to attend a Royal Commission Hearing into Out-of-Home-Care. Following discussions with other ACCG members, the ACCG suggested to the Royal Commission that only NSW, South Australia, Queensland, Victoria, and the National Commissioner need attend. The Royal Commission accepted this suggestion.

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

## Disability & Community Services Commissioner

Around 30% of the Commissioner's time is able to be devoted to the Disability Services function, as the dual role of Disability Services Commissioner and Health Services Commissioner requires the Commissioner to assign a considerable proportion of her attention to the health jurisdiction (health complaints being the majority of the complaints work undertaken by the Commission).

As noted in previous reporting periods, 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 the Commission's focus is quite different to the separate work undertaken by the respective Commissioners. This may be a contributing factor to continued low complaint numbers.

Complaints received by the Disability & Community Services Commissioner decreased from those received in the previous year. The lower number of complaints was not statistically significant and the reasons for the reduction could be varied. The perennial concern held by many people with a disability, that they will suffer repercussions from complaining, is a difficult issue to address. It is to be hoped that the greater choice and control provided to people with a disability under the National Disability Insurance Scheme may lead to greater preparedness to complain and resolve issues, as individuals will now hold the power of how and where their funding is spent.

### Complaints & enquiries

Complaints made to the Disability & Community Services Commissioner decreased in the reporting period after an increase in complaints in the previous year. Nineteen complaints were allocated to the Commissioner, compared to the 27 complaints received in the previous reporting period, representing a 30% decrease.

The Commissioner received 40 enquiries regarding delivery of services to people with a disability and/or their carers, 16 of which proceeded to written complaints.

Of the 19 complaints received in this reporting period, 11 were about community sector providers and eight related to government providers (across three directorates). Nine complaints were made by the individual receiving the service being complained about, four were made by parents or carers, and the others were referred from sources, such as the official visitors, Disability ACT and service providers.

### Case study

A client of a disability provider complained about the care she was receiving. She stated that the regular allocated time for her personal care service was often changed by the provider with little notice. She stated that the provider changed her five-hour shift to two separate shifts which she said was not suitable. The service also changed the start time of her shifts to later in the day, which she advised affected her physical ailments as her pain increased as the day went on and she was less able to do things later in the day. This also impacted on her mental health. To compound her concerns, her regular carer left and she was allocated a number of different support staff, causing anxiety attacks and additional stress. In response to the complaint, the provider met with the complainant and they were able to work out a regular schedule for care to be provided.

### Complaint issues

The major themes and trends in relation to complaints were access to personal care or other support services (36%), conduct issues (26%), transport (11%), and advocacy services for people with a disability (11%). Other matters where the Commissioner's office assisted in resolving concerns included facilitating access to a service for the official visitors, and inquiring into the provision of services in Jervis Bay.

The conduct matters included issues around staff behaviour and performance, including allegations of neglect and abuse, and concerns about the management of complaints in relation to alleged violence between residents in a group house. The Commissioner's office worked with police, service providers and the Public Advocate's office in addressing these matters.

#### **Case study**

A woman who received supports from a disability provider to help her go swimming and with home care, raised concerns about poor communication between the care coordinator and staff. The woman was concerned that the coordinator was not passing messages on from the client regarding a change in the care required, leading to the client missing out on a service as staff were sent to the wrong place. She also raised concerns about a worker leaving her pets at her house and that they stained her carpet. The provider responded, recognising that communication with the client was inadequate and they apologised for the inconvenience that this caused. They undertook to change their communication process to ensure that messages were passed on to workers. The provider also stressed to the worker involved that it was not appropriate to leave pets with clients and they organised to have the client's carpets cleaned.

#### **Complaint outcomes**

Throughout the reporting period the Commissioner's office finalised 24 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:

- One service ceased operations.
- Suitable care plans were developed for complainants.
- Reporting to the Commissioner for Fair Trading regarding concerns about workers who held Working with Vulnerable People registration.
- Assisting families to negotiate with service providers regarding their transition to the NDIS, in particular regarding modified transport vehicles attached to disability group homes and how these would be managed under the scheme.
- Assisting a complainant to negotiate with her disability provider regarding shift and staff changes, and to improve communication between the service provider and the complainant.
- Making a range of recommendations regarding services provided to residents of a group home, including implementing personal support plans, providing meaningful activities for residents, implementing communication strategies between staff and residents' families and guardians, ensuring staff are trained in medication and epilepsy management, making a referral to a health nutritionist and ensuring staff are all made aware of processes for responding to allegations of neglect.

#### **Case study**

A woman living in a group residence raised concerns about the availability and consistency of staff to assist her in her home, with staff often being directed to attend to clients at other houses. She also complained about poor communication with her carer, lack of access to hydrotherapy sessions, and lack of consultation about her care planning. The complainant had brought her grievances to the provider's attention but felt they had not been adequately addressed. The Commissioner referred the matter to conciliation to discuss the woman's complaints and explore options for an improved relationship into the future. The complainant, her disability support advocate, and two senior representatives of the provider attended the conciliation conference. The complainant and provider achieved a clearer understanding of the complainant's support needs and the structures required to provide the support. The parties reached a conciliated agreement to guide future services and communication pathways between them.

#### **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:

- [Service provider] has improved its communication with me and has a better understanding of my needs and why it is important for them to maintain good communication with me.
- Fair and had a great outcome.
- Conciliator was very open and facilitated session well. Elizabeth summed up both sides and managed an agreed outcome.
- The [organisation] has been found to be managing its client's affairs in an appropriate manner.
- Thank you very much for your help. My case worker Aggie was wonderful.

#### **Case study**

The parents of a man with a disability complained that their son had been deliberately frightened and provoked by his carers. While the family firmly believe their son was traumatised by his carers, the Commissioner found no reliable evidence to demonstrate that this was the case. The allegations emerged over a considerable period of time, were discussed by a range of people, and came to be accepted by some as truth. The Commissioner concluded that, while the claims could not be proven, this course of events had considerable consequences for the ongoing diagnosis and treatment of the client, and significant distress was caused to his family. Several recommendations were made in relation to staff training; improved reporting of critical incidents; and improved communication and information sharing between the agencies involved in the client's care. The Commissioner also questioned the nature of the client's accommodation, as it appeared that he was unable to leave his accommodation of his own volition, and the doors of his residence were locked. The Commissioner recommended that a human rights analysis of the client's care and treatment be undertaken, including assessment of the authority under which his freedom of movement was restricted. The recommendations were accepted towards the end of the reporting period.

#### **Working partnerships with key stakeholders**

The Commissioner met regularly with executives from the Community Services Directorate and the Minister for Disability, as well as with service providers, advocacy organisations, the National Disability Insurance Agency, the Coroner's office, peak bodies and the official visitors for disability services.

A range of activities were undertaken in relation to the development and implementation of the National Disability Insurance Scheme. The Commissioner also continued to work with the community sector in relation to the implementation 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. An important component of one of these meetings was a roundtable discussion between Commissioners, the Commonwealth (DSS), State and Territory government and disability sector representatives, the Chair of the NDIA Board, and National Disability Services to discuss safeguarding under the NDIS.

#### **Community engagement & education**

During the year, the Commissioner and her staff conducted a number of community engagement activities designed to inform the community about the Commissioner's role and to raise awareness of the rights of people with a disability. Many of these initiatives are discussed elsewhere in this report under specific themes.

The Commissioner and/or staff attended a number of forums including the Disability and Housing Symposium and Disability Quarterly Forum meetings.

Staff also conducted Disability Awareness training for the government and community sectors, and gave lectures to students at the CIT who are undertaking training to be disability support workers.

## 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 Disability Inclusion Statement - Involve.
- The National Disability Service's Zero Tolerance initiative, designed to give service providers guidance around managing abuse and neglect of people with a disability.
- The Senate inquiry into the prevalence of violence against women.
- Design proposals for the new court precinct in relation to disability access.
- Consultation paper about the Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework.
- Implementation Review of the Working with Vulnerable People Scheme.
- Comment to the Senate inquiry into domestic violence regarding issues for women with disability.
- Disability ACT's restrictive practices policy, through independent membership on the Restrictive Practices Committee.
- Implications for people with a disability in relation to the Residential Tenancies Act Review.

The Commissioner noted in the previous reporting period that her office was advising in relation to the Commission's intervention in a case before the ACT Civil and Administrative Tribunal - in the *Matter of ER* - regarding the capacity of a woman to make her own decisions. The Tribunal's decision was not handed down during the reporting period.

As complaint numbers remained low during the reporting period, the Commissioner wrote to all service providers and peak bodies regarding potential issues of concern that could benefit from a systemic inquiry by the Commissioner's office. As a result of those consultations, planning was underway at the end of the reporting period to undertake systemic inquiries into two areas:

- Planning in relation to supports for people with a disability in the event of major emergencies, such as bushfires or other disasters.
- Measures to ensure that younger people with a disability are not inappropriately placed in residential aged care, rather than being supported in the community.

## Disability Action Plan (DAP)

Since the Commissioner's office launched the Human Rights Commission's inaugural DAP on the International Day of People with Disability on 3 December 2013, the Commission has continued to implement initiatives in the plan over 2014-15. A number of initiatives in the first Commission DAP have been completed. Most of the actions of the access audit have been finalised, with two outstanding physical accessibility issues still being worked on by the building owners. The Commission's website has been upgraded and now complies with the WCAG 2.0 AA standard for accessibility for people with disabilities.

A range of other actions were undertaken in accordance with the DAP in the reporting period:

- A person with a disability was employed on a contract basis for six months.
- The Commission used the services of business that provide employment for people with a disability, including Branch Out Café for catering and Donkey Wash to wash tea towels.
- Staff attended training on disability awareness from the Australian Network on Disability and from the ACT Deafness Resource Centre.
- The Commissioner and staff attended meetings of the Australian Network on Disability.
- A person with a disability spoke to attendees at Disability Awareness Training conducted by the HRC for external participants about his lived experience of disability.



- The Commissioner sponsored and attended a Rebus Theatre Forum, an interactive theatre experience presented by actors with and without disabilities, to raise disability awareness across the public sector.

The Commissioner's Office has commenced drafting the Commission's new three year DAP, which will include further initiatives to progress the rights of people with a disability. Accessibility will continue to be monitored in the new DAP - both the physical accessibility of the Commission, as well as barriers for people with a disability to make complaints to the Commission. This will include reviewing written materials and requesting feedback from complainants and enquirers.

Employment continues to be a priority for the Commissioner both in terms of ensuring the ACT government is a best practice employer for people with disabilities, as well as providing employment opportunities at the Commission. To that end, opportunities for internships and student placements will be provided by the Commission for people with a disability, and a reasonable adjustment policy is currently being developed. The new DAP will also concentrate on human rights, with actions promoting both the *Human Rights Act 2004* and the UN Convention on the Rights of Persons with Disabilities.

Originally the Ministerial Disability Advisory Council agreed to act as the reference group for ongoing monitoring of the DAP. The Council was disbanded in 2014 and the Commissioner's office is currently actively sourcing community members to form a new reference group for its three-year DAP. Members of peak disability organisations have been approached to be involved in this group.

#### **Official visitors**

As noted in the previous reporting period, two official visitors were appointed to conduct visits to people with disabilities in specified places of accommodation. The Commissioner has continued to maintain 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. Similarly, the Commissioner on occasions requested official visitors to visit residences when anecdotal concerns were raised with the Commissioner about the conditions of disability group homes.

#### **Case study**

Concerns were raised with the Commissioner that a service was struggling with supporting some clients with disabilities whose care needs were increasing. As the levels of assistance needed for the clients increased, the service proposed to families that an option would be to place them in an aged care facility. The Commissioner worked with the provider to ensure that clients continued to be provided with an appropriate level of service in their own home. The Commissioner made a number of recommendations including that all staff be trained in positive behaviour support and supporting people with dementia; that the service review its practices regarding decision-making to ensure that clients maintain maximum possible control over their own lives; that the service review its eligibility requirement of only providing services to people who were represented by a family member, guardian or advocate; and to conduct planning in conjunction with expert advice to ensure that the future needs of the service's clients were anticipated and addressed early. The service agreed to implement the recommendations.

The Commissioner provided a submission to the consultations on a Quality and Safeguarding Framework for the national rollout of the National Disability Insurance Scheme (discussed elsewhere). In that submission, the Commissioner proposed that a national official visitors scheme be introduced, citing the added value that local official visitors have brought to the oversight framework in the ACT.

### *Official Visitors Board*

The Commissioner continued to represent the Commission on the Official Visitors Board, which oversees administrative arrangements for the Official Visitors. During the reporting period, the Board addressed issues relating to workers compensation arrangements, record keeping policies, processes for the appointment of official visitors, and arrangements for reporting by official visitors. Posters were developed for places of detention to provide simple directions about how to contact official visitors. A training day for the official visitors was also conducted.

### **National Disability Insurance Scheme**

The National Disability Insurance Scheme commenced operation in the ACT on 1 July 2014. Amendments to the *Disability Services Act 1991* commenced operation to ensure that safeguards in the current system were carried over to the new regime with the implementation of the NDIS.

The Commissioner attended a range of meetings with the Community Services Directorate and the newly established Human Services Registrar to ensure that oversight arrangements were seamless. The Commissioner entered into a Memorandum of Understanding with the Commonwealth Ombudsman to ensure the appropriate referral of complaints between the respective offices.

Agreed protocols were also developed between the Commissioner's office and the National Disability Insurance Agency 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.

### *The national framework*

The Commissioner lodged a submission to the *Consultation paper about the proposal for a National Disability Insurance Scheme Quality and Safeguarding framework*. In summary, the submission proposed that the following elements be implemented to ensure a robust and responsive national safeguarding system:

- That a network of dedicated Disability Complaints Commissioners be available in each State and Territory with a visible profile to demonstrate to the community the importance that governments place on disability issues.
- The National Healthcare Agreement can provide a model for ensuring that all States and Territories can provide independent and impartial options for dealing with complaints by Commissioners who have a local understanding of service providers and legislative frameworks. The immediacy of local resolution in small jurisdictions should not be lost.
- That complaint avenues need to be available for all people with disabilities and not just those who are eligible for the NDIS.
- That the reporting on, and investigation of, serious incidents should appropriately sit within the domain of independent and impartial complaint handling authorities.
- That services providers should be required to establish internal complaints handling mechanisms, and that external complaint handling should be undertaken by independent Disability Complaints Commissioners.
- The powers outlined for the proposed external complaints mechanism should include an emphasis on alternative dispute resolution as a means of resolving complaints.
- That Disability Community Visitors be established in each jurisdiction, who are able to work hand-in-hand with Disability Complaints Commissioners and refer matters that require investigation or the use of formal powers for resolution.
- That the national negative licensing scheme being developed by the Australian Health Ministers Council for barring persons who fail to comply with the Code of Conduct, be replicated for workers in the disability sector, utilising the existing infrastructures of State and Territory based Health and Disability Complaints Commissions.
- That the recommendations in the submission from the ACT Children and Young People Commissioner be given serious consideration if the NDIS is going to appropriately address the unique needs of children and young people.

### **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 (DVCS), 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. The discussions led to the establishment of a Crisis Services Scheme to ensure that women with disabilities have access to the crisis accommodation, transport, equipment and personal care that they need in order to ensure their safety.

The Commissioner provided a report on the Crisis Services Scheme to the Attorney-General towards the end of the previous reporting year for tabling in the Legislative Assembly. The report recommended that the Government respond to the report within three months of the report being tabled. The Government response was tabled in the Assembly on 12 May 2015.

On 17 December 2014, DVCS and Victim Support ACT signed a Memorandum of Understanding to agree to work together to deliver on the Scheme. Under the MOU, DVCS will continue to fund transport and accommodation costs for women escaping violence, including women with disabilities. It will also provide for any upfront costs associated with equipment or personal care needs during a crisis. Victim Support ACT agreed to reimburse the funds to DVCS for costs associated with personal care and equipment.

Commission staff delivered two training sessions and developed an online e-learning module for workers in the domestic and sexual violence workforce on disability and in particular specific issues relating to women with disabilities. This e-learning is now on the Commission's website and is available for anyone to access. DVCS and the Canberra Rape Crisis Centre delivered training sessions for disability service providers on issues for women seeking to escape domestic violence and sexual assault.

In the first year of operation DVCS supported five people with disabilities to escape violence. DVCS has indicated that another five women may be eligible for support. Examples of supports provided included:

- Assistance to obtain an exclusion order to remove a violent partner and the provision of childcare so the woman could work.
- Assistance for a woman to move out of her home where she was being subject to violence and to provide her with personal care in a motel until another housing option was available.
- Provision of an AUSLAN interpreter to assist a person to communicate their needs.
- Assistance to access refuge accommodation and provide 24hr personal care for a woman who had physical disabilities and an intellectual disability.
- Sourcing accessible refuge accommodation and supports for a woman with physical disabilities and other complex personal challenges.

The Victims of Crime Commissioner has committed to funding the supports needed for women needing to access the Scheme for the next two years. It is envisaged that an evaluation of the project will be conducted after its first three years of operation.

A number of ongoing issues have been identified, including that many refuges remain physically inaccessible despite a 2008 report by Women with Disabilities ACT and the Women's Centre for Health Matters into the accessibility of refuges. One refuge had a door that opened the wrong way for someone using a wheelchair, so one woman seeking support under the Scheme was not able to access it. The availability of accessible housing for women with a disability, once the immediate crisis is over, also needs to be addressed. These issues will be pursued further by the Steering Committee in the coming reporting period.

### **People with disabilities & the criminal justice system**

As noted in previous Annual Reports, the Commissioner has maintained ongoing discussions with relevant parties on issues associated with people with disabilities and the criminal justice system.

Further discussions were held with police during the reporting period in relation to supports for people with disabilities. Representatives from the AFP also attended training in relation to the Crisis Services Scheme for women with disabilities seeking to escape domestic violence and/or sexual assault, which is discussed elsewhere in this report.

As noted in the previous reporting period, the Commission wrote, in conjunction with the Victims of Crime Commissioner, to the Attorney-General encouraging the development of a Disability Justice Strategy for the ACT. This approach was recommended by the Australian Human Rights Commission in its report on *Access to Justice for People with Disability in the Criminal Justice System*. This was followed up during the current reporting period, with further correspondence to the Justice and Community Safety Directorate regarding the elements of a Disability Justice Strategy.

Specific issues that were raised during the reporting period included support for women with a disability when seeking protection orders, and access to the courts for people with a disability, specifically to enable people who are Deaf or hearing impaired to be on a jury.

### **Working with vulnerable people checks**

Because of privacy concerns, service providers who are concerned about employees, or former employees, have been reluctant to report those concerns to the Office of Regulatory Services (ORS), which administers the Working with Vulnerable People (WWVP) Scheme. 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 allegations raised and any adverse comment made by the Commission following investigation.

As noted in previous reports, the Commissioner, in conjunction with the Children and Young People Commissioner, wrote to the Attorney-General and Minister for Disability in September 2013 recommending that the legislation for the WWVP Scheme be amended. The Commissioners proposed amendments 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.

Despite ongoing discussions, this issue remains unresolved.

### **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. While the Commission entered into a Memorandum of Understanding with the Public Advocate in a previous reporting period, with a view to increasing understanding of respective roles, the Public Advocate referred only one matter to the Commissioner during the reporting period that indicated systemic concerns may exist. This was the same as the previous reporting period. The Public Advocate has referred two matters to the Commissioner since the creation of the Commission in 2006.

The Commissioner's office continues to refer matters regularly to the office of the Public Advocate where individuals may benefit from individual advocacy or guardianship orders, rather than pursuing complaint issues.

**Community services**

Despite the title of Disability & Community Services Commissioner, the Commissioner has no functions in relation to community services. The Commission received a small number of enquiries during the reporting period relating to potential community services matters. As there is no power to investigate complaints about community services, the Commission 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. The ongoing review of statutory officers aligned with the Justice and Community Safety Directorate has failed to address this issue.

## Health Services Commissioner

As noted in previous reporting periods, the Health Services Commissioner sought to significantly scale back operations in recent years 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 unlikely that the matter might result in disciplinary action, policy changes or compensation. The Commissioner continued to handle complaints from particularly vulnerable people. In the last Annual Report, the Commissioner noted that the strategy ensured that staff focussed primarily on the more serious complaints but it had not resulted in reduced complaint numbers. Complaints received by the Health Services Commissioner in the previous reporting period reached a record high.

During the current reporting period complaint numbers significantly reduced for the first time since the commencement of the Commission.

### **Workload mitigation strategy**

The reasons for the significant reduction in complaint numbers during the reporting period are difficult to ascertain. The strategy to reduce complaints is clearly a factor, as many people were turned away through stricter triaging by the Commission's intake team. On the other hand, anecdotal evidence appears to indicate that a reduction in complaint numbers has been a national trend.

Twenty six of the health complaints made to the Commissioner were referred back to providers for resolution, which was comparable to the 27 dealt with in this way in the previous reporting period. In similar proportion to the previous reporting period, the Commissioner retained an interest in 15 of these cases by seeking a copy of the provider's direct response to the consumer, while 11 matters were closed at the time of referral. Additionally, seven matters were assessed and closed on the basis of the contents of the complaint itself. This approach is followed when the allegations are relatively trivial, relate to services or conduct that are clearly not unreasonable, or where a response already given by the provider is considered by the Commission to be adequate.

Complaints about registered health professionals are generally being referred to the Australian Health Practitioner Regulation Agency (AHPRA) for them to act as lead agency, and 52 matters were accordingly referred to AHPRA that would previously have been handled by the Commissioner's office. This figure is down from 84 referred in the last reporting period, which is more a reflection of reduced incoming complaint numbers than an indication that a higher proportion of matters were retained by the Commission. While referrals to AHPRA ensure 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.

Thirteen complaints (down from 34 in the previous reporting period) 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. The reduction in this category of complaints is likely, again, to be as a result of strict triaging at the time the Commission is first contacted. Consumers are referred back to providers to resolve the issue themselves, unless access to the records was required for urgent and serious medical treatment.

## **Complaints & enquiries**

During the reporting period, the Health Services Commissioner received 336 complaints. This represents a 19% reduction from the 413 matters received in the previous reporting period. The historic high reached in 2013-14 formed the peak of a consistent upward trend over previous years. This year's reduction represents a return more closely aligned to previous levels.

Despite this tangible reduction, the number of complaints still represents an increase of 47% since the Commission's first full year of operation.

The 336 complaints comprised:

- 198 complaints that were made directly to the Commissioner, including five complaints about services for older people (down from 273 - a 27% reduction).
- 124 notifications that were sent to the Commissioner by the Australian Health Practitioner Regulation Agency on behalf of the various National Health Practitioner Boards (down 7%, from 134).
- 14 complaints sent to the Commissioner by the Veterinary Surgeons Board of the ACT (an increase from 6).

## **Commission intake service**

The Commission's intake service is managed by the health services team and acts as first point of contact for phone, email and face-to-face enquiries across all of the Commission's jurisdictions.

In addition to formal written complaints and referrals, the intake team responded to 402 enquiries that raised health issues. Whenever these were outside the Commissioner's jurisdiction, callers were referred to appropriate authorities. 362 enquiries were about health services relevant to the Commissioner's jurisdiction, down from 469 in the previous reporting period (a 23% reduction, proportionate with the reduction in written complaints). 293 of these enquiries did not result in a written complaint, while a further 69 enquiries led to a written complaint being lodged during the reporting period. This is likely related to the more assertive advice being given to enquirers with low threshold concerns, regarding the approach the Commission would take if a complaint were to be lodged.

In addition to the jurisdiction-specific enquiries covered elsewhere in each individual Commissioner's report, 232 enquiries that did not relate to the Commission's various complaint or human rights jurisdictions, were dealt with by way of advice or referral.

## **Complaint issues**

As with previous reporting periods, the issue of treatment (noted in 132 cases) was the most prevalent issue raised in complaints that were finalised. Communication was noted as an issue in 53 cases, professional conduct in 59, and medication in 42 matters.

There has been a significant increase on complaints in relation to medication issues than in previous years. Issues raised included incorrect dosages of medications being administered by nurses; dispensing errors on the part of pharmacists; varied concerns about access to medications in the Alexander Maconochie Centre; inappropriate storage of medications; and inappropriate prescribing of medications, for example when people have medication allergies or the prescribing of particular medications with others is contraindicated.

## **Complaints lodged with the Commissioner**

Of the 198 health complaints lodged directly with the Commissioner, 70 matters related to the Health Directorate, a significant 33% decrease from the 104 matters in the previous reporting period. The distribution of those complaints across the various service areas, were similar to the previous reporting period.

**Table 13 - Complaints by area of the ACT Health Directorate 2014-15**

	Number	%
Justice Health (including AMC dental)	14	20%
The Canberra Hospital	30	43%
Mental Health ACT	12	17%
Calvary (Public) Hospital	11	16%
Dental Health	1	1%
Other	2	3%
<b>Total</b>	<b>70</b>	<b>100%</b>

The remaining complaints related to private sector organisations or individuals. Of the 81 instances in which individual providers were named in complaints made direct to the Commissioner, 46 (56%) related to medical practitioners, and 15 (25%) related to dental practitioners. The remainder related to low numbers from a range of professions.

Of the medical practitioners, 39% were general practitioners, and the remainder were spread across a range of specialties in low numbers.

### **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.

During the reporting period, the Commissioner was forwarded 124 matters by AHPRA, a decrease on the 134 matters received during the previous reporting period, plus an additional 14 from the ACT Veterinary Surgeons Board. The Commissioner forwarded 52 matters (down from 84 in the 2013-14 year) to AHPRA for an initial assessment or investigation.

### *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.

571 matters were jointly considered with the national Boards, including 40 joint consideration decisions for immediate action. This compared to 346 matters during the previous reporting period, representing a substantial 65% increase. This is largely attributable to new triage processes instituted by the Medical Board (discussed elsewhere in this report), and the increasing number of regulatory outcomes that involve secondary 'show cause' processes.

### **Case study**

A woman attended an emergency department after experiencing a fall and injuring the skin under her eye. She agreed to have the wound cleaned operatively but voiced concern about any resultant scarring. She complained that during surgery the wound had been repaired with a flap reconstruction leaving significant scarring. The consultant surgeon advised that invasive surgery was needed to avoid eyelid deformity, problems with the cornea, or blindness. A peer reviewer disagreed with the consultant surgeon, advising that the more invasive surgery was unnecessary treatment, to which the patient had not consented. The peer reviewer preferred conservative management allowing the wound to heal prior to any intervention. Due to the differences in clinical opinion, a further peer review was obtained by the Medical Board. The second peer reviewer also recommended conservative management, stating that the aggressive treatment was unreasonable. The practitioner was issued with a formal caution. Attempts were made to offer conciliation, however the patient did not respond to efforts to contact her to facilitate this.



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

- Seven referrals to ACAT for revocation of registration or consideration of professional misconduct (two nurses and five medical practitioners).
- Twenty suspension processes (ten medical practitioners, eight nurses, a psychologist and a dentist).
- Thirteen referrals to performance & professional standards panels (six medical practitioners, five nurses, a psychologist, and a dentist).
- Two referrals of nurses for a performance assessment.
- Sixteen referrals for health assessments (seven nurses, six medical practitioners, a dentist, a pharmacist and a psychologist).
- Five referrals to a health panel (four medical practitioners and one nurse).
- Fifty-seven processes in relation to the imposition of conditions (28 nurses, six dentists, ten medical practitioners, seven psychologists, three midwives, two chiropractors, and a pharmacist).
- Fifty caution processes (21 medical practitioners, nine nurses, eight dentists, seven pharmacists, a physiotherapist, a midwife, a chiropractor, a psychologist and a Chinese medicine practitioner).
- Five undertakings (two medical practitioners, a nurse, a pharmacist, and a chiropractor).

While some of these decisions were made, the outcomes may have been different in a number of cases. The National Law provides for a 'show cause' process and there are occasions where that process indicates a change from the original decision is warranted.

#### *'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.

The Boards took the stronger view on seven occasions. The Nursing and Midwifery Board initiated processes for a caution in one case, and conditions for another practitioner, when the Commissioner disagreed with these actions. In two instances the Commissioner agreed with the Nursing and Midwifery Board that conditions were warranted, but considered the extent of the proposed conditions were not reasonable or necessary. The Pharmacy Board sought to initiate caution processes on two occasions, and the Psychology Board did so in relation to conditions for one practitioner, when the Commissioner would have taken lesser action.

The Commissioner took the stronger view on six occasions. The Commissioner considered that investigation, rather than closure, was warranted in relation to three Medical Board matters and one Dental Board matter. The Commissioner considered that a caution, rather than closure, was appropriate in relation to one Medical Board and one Dental Board matter.

#### *Veterinarian matters*

Another category of health professional that comes under the Commissioner's jurisdiction is veterinary surgeons. As with other regulated health professionals, the Commissioner and the Veterinary Surgeons Board jointly consider complaints about veterinarians.

Six Veterinary Surgeons Board matters were closed with no further action during the reporting period, after reasonable responses were obtained from the practitioners involved. A range of other matters were referred to the ACAT in relation to one practitioner, described in the case study below.

**Case study**

Over the years, 17 matters have been lodged with the Commissioner's office raising concerns about the competence of a veterinary surgeon. Complaints have included allegations of failure to diagnose serious conditions or reaching incorrect diagnoses; failure to undertake proper examinations or keep proper records; the prescribing of inappropriate medications; failure to maintain the surgery in accordance with expected standards; and adverse events during and following operations, including premature death. During this reporting period, and the previous year, the Commissioner and the Board determined to refer a number of matters to the ACT Civil and Administrative Tribunal to assess the veterinary surgeon's suitability to practice.

**Commission-initiated matters**

Commission-initiated considerations are commenced by the Commissioner where there may be concerns of a systemic nature; where the Commissioner has received a number of complaints or notifications about a particular practice or organisation; where a complaint to the Commission is made anonymously; where the person does not have personal standing, involvement or authority to make a complaint; or where the community raises a particular issue, such as through media publications. In these circumstances, the Commission becomes the complainant and the matters are investigated as a complaint.

In the reporting period, the Commissioner decided to commence a total of 25 Commission-initiated considerations. Eight of those 25 matters were closed, while 17 remain ongoing and continue to be investigated. The Commissioner closed a total of 21 Commission-initiated considerations, 13 of which were commenced in prior reporting periods.

Some of the concerns and outcomes for Commission-initiated considerations included:

- During investigations into an unrelated matter, the Commission received health records for six patients from a health service provider as an administrative oversight. The breach of patient privacy was taken seriously and a meeting was held with the provider's management team and staff to review their policies and procedures for improved handling of private health records. The provider took reasonable steps to improve their processes and the matter was closed.
- The Commissioner initiated a matter to explore antenatal services for women experiencing pregnancy-related problems less than 20 weeks gestation. The hospital provided a response explaining the improvement to available services and the Commissioner and staff conducted a site visit. Based on feedback from the Commissioner the provider agreed to redraft standard operating procedures for assessing a woman's suitability for treatment in the unit.
- The Commissioner initiated an investigation into a health provider's discharge policy of non-acute patients into aged care facilities. The purpose was to consider whether the placement policy appropriately determines the ability of the residential aged care facility to meet the ongoing health care needs of patients discharged to them. The Commissioner recommended policy amendments to alleviate potential situations of perceived duress.
- A health practice closed without performing its legal obligations on practice closure. The Commission made contact with the practitioner's legal representatives to provide education and advice about their legal obligations. The matter was closed once these obligations were completed.
- The Commissioner received concerns about the suitability of modified meals for detainees experiencing acute psychological episodes. The matter was resolved after meals were reviewed by a dietician.
- An AHPRA notification, regarding immediate action on concerns about the performance of a radiologist, led the Commissioner to pursue public interest concerns. The Commission sought to ensure the employing hospital's efforts to identify other patients who may have had missed radiological findings were adequate. The Commissioner was satisfied that the hospital's review and look-back process conducted by an independently contracted organisation, was thorough and reasonable.
- An article published on a community website raised concerns about an alleged policy of an ACT medical practice to ban the prescription of opiate medication for the purpose of preventing patients

with existing addiction problems from 'doctor shopping'. It was perceived that this alleged policy could preclude reasonable treatment for patients who have a genuine medical need for the medication, and would therefore compromise their right to good quality health care. The provider refuted the allegations, clarifying that it did not have any opioid policy relevant to this matter.

- Concerns were raised about an organisation's mandatory notification policies and procedures when a health practitioner's capacity was in question as a result of apparent drug or alcohol use. The provider made some amendments to its contractual documents, to more clearly reinforce individual practitioners' reporting obligations, and satisfied the Commissioner that the organisational response was appropriate.

### **Conciliation**

Five health service matters were referred to conciliation during the reporting period, down from 11 in the previous reporting period. Fourteen matters were finalised, including a number of conciliation complaints open from the previous reporting period. Although there has been a decrease in conciliated health services matters, many complaints are resolved without referral to conciliation processes, including in discussions about the potential for conciliation.

Generally, matters are suited for conciliation where there may be an ongoing relationship between the parties and attending conciliation would assist with setting up an agreed framework to guide their ongoing relationship. Conciliation is also suitable where both parties benefit from improved understanding of each other's circumstances. For example, a complainant may want to understand why a clinical decision was made, and a health service provider may want to hear about and understand the patient experience from the complainant's perspective. In some matters, conciliation is an option where financial compensation is being sought, however, this outcome is rarely the complainant's primary objective in participating in the conciliation process. Participating in conciliation is voluntary, and for most, driven by a desire to see improvements in the system to prevent adverse events for future health service consumers.

#### **Case study**

A woman complained on her son's behalf, who was receiving mental health services. The woman raised concerns about the adequacy of her son's treatment plan and about poor communication channels between the providers and herself, as her son's carer. The matter was referred to conciliation to facilitate a meaningful discussion about the woman's concerns for her son and to plan for ways to improve their ongoing relationship. The conciliation was attended by the woman and two senior executives from the health services provider and the parties were able to reach a number of agreements. The provider acknowledged that input from the patient's mother and loved ones is an important aspect of patient care, and agreed to facilitate a meeting between the complainant and relevant members of the son's treating team to discuss her son's medication history and her observations of her son's behaviour over the course of his extended history of mental health recovery. The parties also agreed on a number of communication pathways to guide future communications between the complainant and the provider, ensuring the complainant would have a clear point of contact whenever she wished to raise concerns.

Conciliation can be a confronting experience for both the health services provider and the consumer but for the consumer, who is generally a first-time participant, it can be a particularly intimidating prospect. In the past year, the Commissioner's office has taken a number of steps to assist parties participating in the conciliation process to know what to expect, what they can do to prepare, and understand how conciliation works step by step.

To that end, the office developed a general guide to conciliation, *Conciliation: A Guide for Health Consumers and Health Providers in Health Services Complaints*.

This 4-page resource is accessible and written in plain English, and intended for both the complainant and the provider. It responds to common questions about conciliation, such as:

- What is conciliation?
- What does the conciliator do?
- Who participates?
- What happens in the conciliation meeting?
- Do I need legal advice?
- How can I prepare for conciliation?

Additionally, it includes as an attachment, an 'Agreement to Conciliate' which sets out the ground rules and expectations for each party attending a conciliation meeting. Each person attending, including support persons or advocates, are asked to acknowledge they have read this document, agree to participate in the meeting in good faith, and will make a reasonable and honest effort to resolve the complaint. Each party must also agree to treat each other respectfully and keep the discussions in confidence. Informal feedback from participants has indicated that the Guide and the Agreement to Conciliate have been useful to help them know what to expect, how to prepare and to reflect upon their concerns and desired outcomes before the conciliation meeting.

#### **Case study**

A man complained about treatment provided to his wife by a hospital. He was specifically concerned that the hospital did not provide appropriate treatment to address his wife's illness, did not follow requests for specific treatments from the family, and did not facilitate any counselling support for him and their three daughters during a traumatic experience. The man sought changes to practices to ensure another family did not go through the same experience and compensation for the pain and suffering caused to his family as a result of poor treatment, communication and lack of counselling support for the family. A conciliation meeting was held and the provider was able to address many of the concerns raised by the complainant, with a number of agreements reached in relation to improved practices and support for patients' families. One outstanding issue of financial settlement remained for resolution. Negotiations over compensation quantum progressed post-conciliation, settling with an agreed sum accepted by both parties.

The Commissioner's office has also developed *Seeking Compensation: A Guide for Health Service Complainants*. It is a 4-page resource for people who wish to make a financial claim as a part of the outcomes they are seeking to achieve from the conciliation process. For complainants, it can be a daunting task to quantify the cost of one's pain or to identify the appropriate expenses to include. The Commission is not in a position to provide legal advice about how to quantify one's costs.

Complainants are not required to seek legal advice, but the resource is able to provide an overview of general information to help inform a person about whether they should seek advice, as well as other considerations to keep in mind. For example, the compensation guide informs complainants about their obligations to make payments back to Medicare, where there is a settlement greater than \$5000. It also explains that where a financial outcome is being sought, the matter will take longer to progress through the conciliation process.

This is because for complainants who indicate that they are seeking a substantial financial outcome (over a threshold of approximately \$10,000), we recommend they seek legal advice to inform their formulation of a quantum figure, and to be better informed about their legal position and legal options that may be available to them. 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. However this can cause significant delays and complainants are informed about these expectations.

In general, complainants and their lawyers are given two months to formulate a quantum figure, and a further two months for the provider to consider the complainant's quantum and seek their own instructions and advice. Despite contacting solicitors to inform them of the conciliation process and requirements, it can be a source of frustration when the matter is delayed, sometimes significantly,

because the quantum figure has not been made available for the health service provider to consider. 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.

### **Complaint outcomes**

Throughout the reporting period the Commissioner's office finalised 231 health complaints that were lodged directly with the Commission, exceeding the number of incoming complaints. The strategy to reduce complaint numbers has enabled resources to be more actively directed to dealing with complaints in a timely manner.

#### **Case study**

A woman was taken in an ambulance transfer and admitted to hospital for abdominal surgery. She experienced diabetic ketoacidosis after the treating team at the hospital failed to recognise and treat her pre-existing insulin dependent diabetes. The complaint highlighted concerns about inconsistencies in notations about the woman's condition as a Type 1 or Type 2 diabetic between ambulance and hospital treating teams. The Commission sought an independent opinion on the matter, which concluded the service was below reasonable standards, arising from a systemic issue of a typographic error being carried forward. The complaint raised additional concerns about appropriate nutrition and diet for the woman's condition, management of electronic equipment used in patient care, and responsiveness in communications with patients. The complainant also sought a financial settlement to assist with expenses arising from the experience in hospital. A conciliation meeting was attended by the woman, her partner and two senior executive members of the hospital, where they were able to reach a number of agreements to improve the hospital's processes and reach a financial settlement. Agreements included additional training for clinical staff about developments in diabetes research, as well as undertakings by the hospital to ensure electronic equipment is regularly monitored and appropriately labelled. The complainant also agreed to provide a summary of her experience to be used as a case study for future staff training and development in improved communication and responsiveness to patients.

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 remedial massage therapist was reminded of his obligations with respect to confidentiality of client information, appropriate record keeping, transfer protocols, and professional boundaries.
- A hospital amended its procedures to clearly note, prior to the birth of a child, a mother's Hepatitis B status and to ensure the child receives both immunisation and immunoglobulin within the prescribed window of 72 hours. The hospital also agreed to pay for counselling sessions for the parents to help them address the anxiety they experienced.
- A service provider apologised for treatment provided to a woman during and after birth by caesarean and offered ten counselling sessions to assist the woman.
- A woman's pathology results were not communicated to her GP, resulting in delayed treatment of advanced stage gall bladder cancer. After the woman's death, a financial settlement was negotiated in conciliation.
- A doctor and administrative staff committed to ensure they are treating the correct patient and to be particularly careful when patients have limited English language skills.
- A man complained about the lack of support he and his family received from the hospital while his wife was in hospital and passed away. The man and the hospital negotiated a financial settlement through the conciliation process.
- A mental health facility and a woman reached an agreement in conciliation to guide future treatment necessary for the woman's daughter.
- A woman received a refund from a health provider after her surgery had a poor outcome.
- After an instance of administrative oversight, a meeting was held with the Commissioner and a service provider's management team and staff to review policies and procedures relating to obligations under the Health Records (Privacy and Access) Act.

- Annotations were made to a woman's clinical records that contained inaccurate information.
- A health provider reimbursed a man with a disability for remedial treatment required for injuries sustained as result of a fall.
- A health provider wrote off a \$20,000 invoice in response to an issue of obtaining informed financial consent.
- A dentist committed to ensuring his communication is effective, that his record keeping is accurate and that he ensures he acquires accurate patient medical histories.
- A mental health facility was reminded of their obligation to maintain appropriate hygiene in accordance with hospital and national health guidelines.

### *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:

- Independent!
- Thank you for assisting. You were very assertive and quick to respond to emails and calls.
- You assisted with a stressful situation and relieved my worries.
- I found the services and assistance given to me was absolutely first class. It helped me tremendously with my grieving.
- A fair and balanced evaluation with a helpful conclusion.
- As a service that works with people living with complex issues and vulnerability we consider the role of the Commission to be vital. We are always open to improving our services.
- [Your services] seemed to be perfect.
- Toothless. Waste of time.
- I can only convey my gratitude and affirmation for the sensitive, non-judgmental and professional approach that was taken by all involved. I never felt excluded or not important – I felt my concerns were listened to and that all parties would be allowed the same respect and dignity.
- It is a sobering experience and made me re-evaluate my professional practice.
- Transparency and clear direction in resolving the matter quickly and efficiently.
- Just a word of deep gratitude to [staff person] for her skills, compassion, great support in alignment with human values. I got support and guidance under very difficult circumstances when my wife passed away due to medical negligence.
- Caused us to examine our systems and protocols and to implement improvements.
- We think your services are outstanding: they took it seriously and even had a meeting with [provider] who is in charge of surgery. Thank you for believing in us. It shook them up, otherwise we would have been ignored.
- The complaint I made about [provider] made them act on my health concerns and things I have problems with are now being looked at.
- I think my complaint was handled very professionally and I got the outcome I requested. I think all the staff I had the opportunity to speak to were absolutely fantastic.
- Waste of time. Bureaucratic waste of time and bias towards providers. Thanks for nothing.
- I think that if I had just contacted the hospital I would have just got a brush off. Getting some real attention paid to my distressful experience (and my dad's) really helped. Thank you.
- Commission's role and the information required to resolve the complaint were clearly articulated.
- Direct communication might remove some of the anxiety but is not recommended by the legal advisers.

### **Health records: privacy & access issues**

As noted earlier, people making enquiries about health records access issues are generally provided with information about the legislation and referred back to providers to seek a resolution of their concerns regarding access to their health records.

Instead of dealing with individual complaints, the Commissioner has focussed on specific projects, with a view to encouraging improvements across the health system.

#### *School counsellors' records*

Following a complaint handled by the Commissioner and concerns raised in the national media, the Commissioner, in conjunction with the Children & Young People Commissioner, commenced an inquiry into the protection of school counsellors' records. The Health Records (Privacy and Access) Act establishes a regime for maintaining the privacy of health information. The Act contains a range of exemptions, including that counsellors are able to share relevant information in circumstances where there is an immediate threat to the safety of the consumer or someone else. The Commissioners are concerned that some school policies provide for the files held by school counsellors to be shared with principals on request. Children and young people's trust in, and engagement with, school counsellors can be eroded if they are aware that confidential counselling sessions are open to scrutiny by others.

During the reporting period, the Commissioners requested policies from a range of government and non-government educational authorities. The Commissioner also discussed the issue with the Federal Privacy Commissioner, as the matter is one that extends beyond the ACT. At the end of the reporting period, further inquiries were being made with respondents.

#### *Legislative amendments*

As noted in the previous reporting period, the Commissioner wrote to the Health Directorate 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 last reporting period, and again in the current year, to seek progress on the recommendations. Further correspondence was sent to the Director-General of ACT Health to seek progress on the amendments.

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.

The amendments were not progressed during the current reporting period.

#### *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 last reporting period, some further research on this issue was commissioned, with a view to identifying potential solutions to the problem. A proposal for the Government's consideration was being finalised at the end of the reporting period.

## **External liaison & community engagement**

Over the past year the Commissioner has continued to engage with a range of stakeholders, including executives in the Health Directorate and Calvary Hospital. Meetings were also held with advocacy organisations and specific service providers.

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 reducing complaint numbers and handling times. A number of these activities are discussed throughout this report.

The Commissioner also gave a lecture to ANU Medical School students on complaints involving health professionals and 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.

Targeted presentations or discussions on specific topics of interest were held with a range of agencies, including:

- The Executive Officer of the Women's Centre for Health Matters on a number of issues.
- ACT Health on the model of care for the secure mental health unit.
- The Centenary Hospital for Women and Children regarding the early pregnancy assessment program
- The President of the ACT Civil and Administrative Tribunal ACAT and Victims of Crime Commissioner on subpoenas and health records.
- The Women's Centre for Health Matters Annual General Meeting.
- The Chief Psychiatrist on health services for immigration detainees.
- The Chief Ambulance officer on a range of issues.
- The Australian Competition and Consumer Commission on potential health projects.
- The Health Care Consumers' Association on electronic queueing systems.
- The Australian Federal Police on complaint issues.
- The Justice and Community Safety Directorate (JACS) regarding implementation of recommendations from the Martin Place siege inquiry and compatibility with the Health Records (Privacy and Access) Act.
- The Chief Coroner, JACS, the Australian Federal Police and the Courts Administrator regarding amendments to the Coroners Act.
- The Chair of the Aboriginal and Torres Strait Islander Elected Body on the provision of health services to indigenous Canberrans.
- Commissioner speech to ACT Justices of the Peace Society.
- The ACT Council of Social Services on a range of issues.

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 New Zealand Health and Disability Complaints Commissioner and by the Victorian Health Services Commissioner. These meetings continue to provide 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 above, and throughout this report, comments were provided on a range of other matters, including:



- The use of interpreters in the Canberra Hospital and Calvary Hospital.
- Guidelines for information sharing between law enforcement agencies and compatibility with the Health Records (Privacy and Access) Act.
- Barcoding and checking processes in pharmacies, following a number of complaints about errors in dispensing medications.
- Data on fees and billing issues was provided to the Australian Medical Association.
- Feedback to the Royal Australian College of General Practitioners on a draft Patient Charter.
- Proposed amendments to mental health legislation regarding agreements between clinicians and carers.
- Consultations on the University of Canberra public hospital.
- Comment on draft legislation relating to forensic procedures.
- Comment on a draft Crimes Legislation Amendment Bill.

### **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 previous reports, 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. During the current reporting period the Commissioner held discussions on this and other issues with the Medical Board, the Nursing and Midwifery Board and the Dental Board. The Commissioner continued to urge for discussions on individual complaint matters with a view to further reducing handling times and to enhance the practicality and usefulness of the joint consideration process.

#### *Triage trial*

The Medical Board of Australia requested local Boards of the Medical Board to trial a revised process for triaging medical complaints. The Commissioner wrote to the Chair of the ACT Medical Board, agreeing to the pilot project and met with AHPRA to discuss implementation. In essence, a number of complaints are 'triated out' at the point of receipt if they appear frivolous or vexatious, if they do not raise issues of public health and safety and are unlikely to lead towards regulatory action. Alternatively, some complaints may be sent straight to investigation under the National Law if they are of sufficient concern. The aim of the pilot is to reduce delays in complaint handling.

While the pilot may have reduced delays in other jurisdictions, the experience in the ACT is mixed. The ACT legislation already provides for a streamlined approach in handling complaints and the Commission or AHPRA have been processing the majority of matters as soon as they are received, rather than waiting for Board meetings. The triage trial has, in effect, increased delays in some matters because the handling of a complaint is not progressed until a meeting of the triage committee of the Medical Board occurs, the Board's minutes are prepared and cleared, the material is put to the Commission, the Commissioner considers the Board's proposals, and the Commissioner's view is communicated to AHPRA to enable a request for a response to be sent. On the other hand, some matters are dealt with more efficiently because they are closed without seeking a response from the practitioner.

26 matters were considered as part of the trial, which began in April 2015.

- In seven matters (27%), it was agreed that the matter should be closed prior to seeking a practitioner response. For those cases, the triage process expedited the case and reduced unnecessary regulatory actions.
- In 16 matters (62%), it was determined that a response would be sought. For these matters, the triage process introduced a delay that would not have occurred under previous arrangements, where a response would have been sought on receipt of the complaint.

- In three cases it was agreed that moving straight to formal investigation was appropriate, as it was evident that more than just a practitioner response would be necessary to form a final view. Some efficiencies were probably gained in these cases.

### **Three year review of the National Registration & Accreditation Scheme**

As indicated in the previous reporting period, the Commissioner was a member of a subcommittee established by national commissioners to develop a submission to the three year review of the National Registration and Accreditation Scheme for health professionals. The review was conducted by Mr Kim Snowball at the request of the Australian Health Ministers' Advisory Council.

The submission (signed by five of the national Commissioners) argued that the review should head in the direction of co-regulation to address issues of transparency and perceptions of bias when Boards are making decisions about their own practitioners. The submission noted that:

*... transparency, accountability, and achieving a fair balance of rights between complainants and practitioners in the handling of complaints, are essential to public confidence. All of these attributes would, in our view, be strengthened by providing independent complaints Commissioners with an increased role in the procedures for handling complaints against practitioners.*

The review report had not been released at the end of the reporting period.

### **Regulation of veterinary surgeons**

Another category of health professional that comes under the Commissioner's jurisdiction is veterinary surgeons. As with other regulated health professionals, the Commissioner and the Veterinarian Surgeons Board jointly consider complaints about veterinarians. While this may appear somewhat incongruous, many of the same considerations apply in relation to veterinary surgeons as in relation to other health professionals, particularly in relation to the prescribing and management of medications, but also regarding personal health and competence issues that may impact on a veterinary surgeon's ability to practice safely.

The expertise in the Commissioner's office in dealing with complaints, and ensuring that natural justice applies to complaints handling, contributes to the overall fairness and transparency of processes. This has proven valuable in assisting the Territory & Municipal Services Directorate (TAMS) to undertake secretariat support for the Board when it was transferred from ACT Health. An increase in complaint numbers has been experienced during the reporting period, possibly due to the increased emphasis within TAMS to providing the public with information about processes for lodging complaints.

During the reporting period, the regulation of veterinary surgeons was overhauled, with the repeal of the *Health Professionals Act 2004* and the introduction of a *Veterinary Surgeons Bill* to deal specifically with veterinarian matters. The Commissioner met with the Minister, TAMS and the Parliamentary Counsel's Office to ensure that the legislative amendments, and subsequent Regulations, provide a robust mechanism for dealing with concerns about veterinary surgeons.

The Bill was introduced on 14 May 2015 and had not been passed at the end of the reporting period.

The Commissioner's office participated in discussions with TAMS, the Board and the Government Solicitor's Office to progress some problematic matters where the Board and the Commissioner have determined that action in the ACT Civil and Administrative Tribunal is warranted.

### **Unregistered health practitioners**

As reported previously, consultations on a proposal to increase the options for dealing with health service providers who do not come within the national regulatory scheme (and who cannot therefore be deregistered), have been protracted. During the current reporting period, Commonwealth and State Health Ministers determined to implement a scheme that would see the adoption of a national Code of Conduct, which would provide Health Complaints Commissioners with increased powers to take action against practitioners who deviate from the Code's standards.

Discussions were held with the Director-General and senior executives within ACT Health regarding implementation of the national decision. A planning meeting was held with ACT Health in May 2015 to identify the measures needed to provide the ACT with the same powers that are already available in a number of other jurisdictions, to prevent health providers from practising in unsafe ways. A process for pursuing the appropriate legislative amendments, and to inform unregistered practitioners about the changes, was discussed. Despite a number of requests from the Commissioner that this initiative be implemented, little progress appears to have been made. The Commissioner continues to deal with a number of complaints, albeit small, where such powers would be invaluable in maintaining public health and safety.

### **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.

In the previous reporting period, the Commissioner wrote to 39 medical practices requesting copies of their internal complaint handling policies. The aim was to use this material to establish best practice models and potentially share models that can be put into practice more broadly. Responses were varied and a number of practices failed to engage with the Commissioner's office.

During the current reporting period the Commissioner's office commenced a process of comparing all the responses with best practice models for internal complaint handling. At the end of the reporting period, letters were being drafted to respond to the practices with suggestions for improvement. Particular emphasis is being given to areas where ACT law differs from other jurisdictions. A number of primary health care practices are owned by national corporations, which have national policies that fail to take account of local regulations. For example, many practices adopt policies that are consistent with national privacy laws but which fail to take into account the requirements of the ACT's *Health Records (Privacy and Access) Act 1997*, which sets out a regime for how consumers are able to access their personal health information.

### **Corrections health**

Eighteen complaints were received regarding issues related to health services at the Alexander Maconochie Centre (AMC), compared to 24 in 2013-14. The majority of these related to medication (ten), particularly pain management (five). While one complaint revealed that there had been an error in the administration of medication, another identified a need for improving the information available to emergency department doctors when prescribing pain relief in a correctional environment. Other complaints included perceived delays in consultations, in scheduling external appointments and in receiving test results. Two complaints concerned the time taken to see a dentist.

Telephone enquiries reverted to previous moderate levels, with 37 calls during the reporting period, down from the previous year's peak of 66 calls.

#### **Case study**

A detainee with a history of challenging behaviours, complained that he was refused medical assistance and was not provided with appropriate support from Corrective Services officers when he was threatening and undertaking self-harm. Following an extensive investigation, including obtaining an expert opinion, the Commissioner concluded that the detainee maintained possession of a razor blade and a piece of broken perspex for protracted periods of time; that officers did not comply with policy in managing the detainee; and that, while the officers' actions may have been consistent with a management plan discussed with health services, that management plan was not documented. The Commissioner made a range of recommendations, including:

- That Corrective Services explore options for producing computer generated logs of intercom calls that will enable the time coding of sequence of events.
- That all management plans in relation to individual detainees be documented and signed by both Corrective Services and relevant health professionals if those plans are based on advice from health services.
- That Detainee at Risk policies and procedures make clear that weapons (and potential weapons) are to be removed from detainees at risk, particularly when they are threatening self-harm, and the process for managing and recording operational risk when doing so.
- The relevant Corrective Services policies and procedures provide clear direction to staff on the process for managing and recording those incidents where operational discretion may be required for the safe resolution of an incident, and provide clear approval authority for circumstances that may warrant a departure from policy. This should include information on liaison with and the recording of advice obtained from other agencies such as ACT Health.
- That Corrective Services provide the Health Services Commissioner with a plan and timeframe for removing perspex from the Management Unit (and the CSU, if also present there) and replacing it with a more appropriate material.

#### *Medication management at the AMC*

The Commissioner received several complaints concerning the scheduling of external medical appointments (such as x-rays, ultrasounds, MRIs) and the ordering of diagnostic tests (including pathology tests) for detainees. The Commissioner met with staff at the Hume Health Centre (HHC) to learn more about how tests are ordered, actioned and tracked. Following this meeting, the Commissioner remained concerned that the HHC's processes were not sufficiently robust to ensure that overdue or missing tests results are identified in a timely matter, and that there are too many points in the current paper based system where errors could occur. It is clear from current literature and past litigation that reviewing the results of ordered tests is fundamental to clinical practice. While the Commissioner acknowledged that ACT Health intends to introduce an electronic system, the Commissioner has recommended that ACT Health develop and implement a system at the HHC that can identify in one place all tests that have been ordered, whether results have been returned, and whether the results have been drawn to the attention of the medical practitioners within a reasonable timeframe.

The Australian Nursing and Midwifery Federation (ANMF) complained that registered nurses may be breaching their professional standards by supplying detainees with medications in blister pack for self-administration. The ANMF argued that nurses are required to sign for individual medications in acknowledgement that their legal and professional obligations have been met. However, blister packs do not allow nurses to identify individual medications. In response, ACT Health advised that the nurses are not 'administering' individual medications but are signing off that the list of medications in the blister pack has been checked against the medication chart and provided to the detainee to self-administer. The ANMF remain concerned that the position taken by ACT Health does not acknowledge a nurse's legal and professional obligations.

The Commissioner met with the Canberra Hospital Pharmacist to discuss whether blister packs could contain identifying information for each medication to enable nurses to more adequately satisfy

themselves regarding the medications being provided to detainees. The Pharmacist advised their software does not have this capability and there is no available budget to implement new software. The Commissioner wrote to the Nursing and Midwifery Board of Australia, requesting advice regarding whether the Board considered the issue to be of concern and whether, if an adverse event occurred, nurses may be found in breach of their professional standards. The Board advised that “nurses are expected to exercise appropriate professional judgement relevant to the situation and setting”. Moving forward, the Commissioner has made a number of suggestions that remained under discussion at the end of the reporting period.

#### *Reducing the risks of transmission of blood borne viruses*

Concern was raised with the Commissioner that detainees did not have consistent and discrete access to full-strength household bleach in the context of reducing, preventing, and managing the incidence of blood borne viruses (BBV). While criticisms were not raised about the content of the current *AMC BBV Management Strategy*, concern was raised about the implementation of the policy. Corrective Services ACT was responsible for providing bleach in each of the blocks but it was alleged that the consistency of supply throughout the AMC was variable. The Commissioner recommended that ACT Health assume responsibility for the provision and distribution of bleach powered sachets from the Hume Health Centre, and to delegates in each residential block. ACT Health accepted the Commissioner’s proposal and bleach sachets are now available to detainees.

#### *Crisis Support Unit*

During previous 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 remained open while all of the Commissioner’s concerns were addressed.

Following a site visit to the CSU and a presentation on initiatives to improve services for detainees, the Commissioner was satisfied that all relevant issues were being implemented and that all of the Knowledge Consulting recommendations were satisfactorily addressed. The file was closed during the current reporting period.

#### *Other issues*

The Commissioner met with the AMC official visitor to discuss issues related to health services for detainees, and with the Auditor-General regarding the health component of her report on *The Rehabilitation of Male Detainees at the Alexander Maconochie Centre*. The Commissioner also received a briefing from ACT Health on the provision of health services for detainees who were being transferred to the Symonston facility to deal with overcrowding issues at the AMC.

The Commissioner chaired a two day Corrections Health Conference in Melbourne and also conducted a session in the ACT for doctors from around the country who were undertaking training in a Custodial Physicians Course.

#### **Mental health issues**

The Commissioner commenced a joint consideration with the Children & Young People Commissioner during the previous 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.

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 a person’s right 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 previous reporting period and is still awaiting determination.

### **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 on 4 June 2010, no action had been taken to amend the legislation.

The Commissioner noted in her 2013-14 Annual Report that another matter had come to the Commissioner's attention in which a psychologist had allegedly failed to report child abuse allegations, and that she and the Children & Young People Commissioner jointly wrote again to the Minister urging for an update to the legislation. The Minister had responded in April 2013 advising that the Commissioners' recommendation would be progressed.

Following media coverage of the Commissioner's 2013-14 Annual Report, the Community Services Directorate wrote to the Commissioners again on 6 November 2014, advising that the amendments would be progressed in 2015 amendments to the Children and Young People Act. As at the end of the reporting period, no such amendments had been introduced.

The Commissioners remain concerned that psychologists are not covered by mandatory reporting requirements that apply to other health professionals who work with children and young people.

### **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 a number of alternative health providers (naturopaths, homeopaths, herbalists, massage therapists etc) with section 95 notices that they could display at their premises and thus comply with their legislative responsibilities.

## 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. Promoting this function continues to be a problem and illustrates the challenges of obtaining visibility for a role when that role is not reflected in a dedicated Commissioner's title or the title of the organisation. The community fails to recognise that a Commissioner exists to assist them with their problems. The Commissioner has raised this issue with government on a number of occasions but it has not gained priority.

### Complaints

Five complaints were received relating to services for older people during this reporting period. All five of these complaints, in addition to two complaints received in the previous year, were closed during this reporting period. Complaint numbers continue to be low in this jurisdiction and were too small to identify any trends.

#### Case study

A woman's mother was receiving home care services, which she believed were of poor quality. The woman advised that she had already complained to management about improving their procedures but this had not occurred. Her concerns included non-attendance by staff and poor medication administration. On one occasion the mother was mistakenly provided a double dose of medication. The Commissioner's office sought a response from the provider about the complaint and medication incident. The provider's response addressed the incident with corrective action reports and revised policies and procedures. The provider also addressed the issue with a national review of relevant guidelines and procedures. The Commissioner's office met with two representatives to discuss the complaint response and issues raised in the complainant's feedback. The outcome was a family meeting to review concerns and to consider review of care needs. The complainant was encouraged to raise any further concerns with the provider but was assured that it remained open to her to address unresolved issues with the Commissioner's office.

### Enquiries

In this reporting period, the Commissioner received two enquiries about services for older people, a decrease from the six enquiries received in 2013-2014. The numbers represent a continuing downward trend since the dedicated position of adviser in relation to services for older people was trialled, but abolished due to the lack of dedicated funding. This had resulted in 36 enquiries in 2011-2012.

### 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 three matters to the ACCS during the reporting period:

- One related to concerns about the care of a woman in the dementia wing of a residential aged care facility.
- The second was about a woman's treatment in a nursing home that resulted in bed sores.
- The third concerned the adequacy of pain relief and availability of medical staff to a woman's mother at an aged care facility over the holiday period.

Two matters were resolved without referral to the ACCS, with the Commissioner's office facilitating direct communication between the parties. One related to concerns about a woman not being

informed about her uncle's injuries after a fall, and the other to communication issues and insufficient information on a tax invoice from a home care provider.

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 other concerns around health care. 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 relating to a Commonwealth-subsidised aged care facility was retained with the Commissioner's office because it raised concerns relating to a registered health practitioner.

#### **Case study**

A woman complained about treatment provided to her mother, who resided in an aged care facility. The woman stated that she arranged for a GP to attend the facility and provide treatment for medical issues including chronic pain, urinary tract infections, reduced mobility, dizziness, falls and rashes. The woman was concerned that the GP attended infrequently, was not very responsive and communicated poorly. The woman stated that her mother's condition continued to decline over a three month period. Following two falls on one day which resulted in injury, she requested the doctor to respond that day and the following day. Two days after the fall the woman was contacted by the facility at 7:30 am and agreed that an ambulance be called. On arrival at the hospital she was told by ambulance officers she was found to be unconscious, underweight and had a virulent UTI. A blood transfusion was ceased due to cardiac arrest. Despite treatment the woman died. In accordance with statutory obligations, the Commissioner's office notified the Australian Health Practitioner Regulation Agency (AHPRA) about the complaint lodged relating to a registered health practitioner. AHPRA investigated the complaint and concluded that the doctor's management and communication with the family in the final days could have been better. The Medical Board and the Commissioner jointly considered the matter and were satisfied that the doctor acknowledged the deficiencies and took steps to remedy the issues. The Commissioner's office also worked with the aged care facility to ensure that its falls policies, procedures and training of staff were up to date and appropriate.

#### **Retirement villages**

The Commissioner accepted an invitation from the Minister for Justice towards the end of the reporting period to be a member of a Review Advisory Group to review the effectiveness of the Retirement Villages Act. One meeting of the Advisory Group was held during the reporting period, following which the Commissioner contributed to Terms of Reference for the Review.

#### **Strategic work**

Two staff members from the Commissioner's office attended the *Challenging Elder Abuse in the ACT* forum, hosted by COTA, representing the Commissioner as a key stakeholder in identifying and addressing elder abuse in the ACT. The forum provided an opportunity for constructive conversations with other stakeholders to hear perspectives and explore options towards improved collaboration for elder abuse prevention.

The Commissioner's office participated in COTA's research into elder abuse in the ACT by sharing its perspectives and experiences of issues raised with the Commissioner's office. Two staff members met with a Council of the Ageing (COTA) researcher to discuss the types of complaints and concerns the Commissioner receives from older people. Concerns have primarily related to poor management of health and poor communication in aged care facilities and residential villages. Two case studies representing common concerns about services for older people were provided for use as a part of the research and as background for COTA's stakeholder forum.

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 Active Ageing



Framework, and liaison with the AFP and the Coroner on reporting mechanisms for aged care facilities.

### **Community education & engagement**

Community education and engagement activities were minimal during the reporting period. The Commissioner 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.

Commission staff visited two aged care facilities to talk with residents about the role of the Commissioner and matters that can be dealt with by the office. The Commissioner attended the launch of the LGBTQI Ministerial Council's *Consultation report on Ageing and Aged Care issues* at the Legislative Assembly, and two functions at which the Commonwealth Age Discrimination Commissioner canvassed strategies to increase employment opportunities for older people.

The Commissioner conducted a range of presentations during the reporting period about her role as Health Services Commissioner, which always include reference to the older people jurisdiction. The Commissioner gave a specific presentation to The English in Australia older persons group on what the Commission is able to offer to assist older people.

The Commissioner sought to maintain some profile for the older persons' function by continuing to sponsor 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 towards the end of the reporting period and looks forward to presenting the Age-Friendly City Award, which is sponsored by the Commissioner.

### **Role of the 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. As noted in the previous reporting period, survey data indicates there is little knowledge of the Commissioner's role in the older community. Forums attended by Commission staff have continued to include calls for a specific Commissioner for older people, indicating there is little awareness of the Commissioner's role.

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### **B3: Scrutiny**

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

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### **B4: Risk Management**

During the reporting period, the Commission updated its 2015 Risk Management Plan. All Commissioners formally review the Plan every four months.

During the reporting period, the Children & Young People Commissioner attended the Justice & Community Safety Directorate's *Introduction to Whole of Government Risk Management* training session managed by the ACT Insurance Authority.

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### **B5: Internal Audit**

The Justice & Community Safety Directorate's internal audit policies and procedures apply to the Commission, and are detailed in the Directorate's 2014-2015 Annual Report.

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### **B6: 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 2014-2015 Annual Report.

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### **B7: 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 for the bulk of the reporting period, had a fully qualified Fire Warden; First Aid Officer; Respect, Equity and Diversity Contact Officer; and 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.

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### **B8: 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.

In line with the Justice & Community Safety Directorate's Personal Achievement and Development Policy, the Commission is also 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.

In September 2013, the ACT Attorney-General, Mr Simon Corbell MLA, announced a review of all statutory office holders within the Justice & Community Safety Directorate, including the Commission.

The review has yet to be finalised, with the on-going delays and uncertainty about the future of the Commission and individual staff within the Commission causing significant disruption to the morale and productivity of the Commission. The Commission is struggling to attract and retain staff, and to undertake any meaningful workforce planning.

### **B9: Ecologically Sustainable Development**

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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 - FINANCIAL MANAGEMENT REPORTING

### C1: Financial Management Analysis

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See C2: Financial Statements

### C2: Financial Statements

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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 2014-2015 Annual Report.

In 2014-2015, the Commission's total operating budget was \$3.508 million, with the actual total cost being \$3.521 million. Last reporting period, the Commission's total operating budget was \$3.511 million, with the actual total cost being \$3.610 million.

The Commission's reporting in relation to this measure is in the consolidated financial statements of the Justice & Community Safety Directorate's 2014-2015 Annual Report.

### C3: Capital Works

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

### C4: Asset Management

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The Justice & Community Safety Directorate's asset management strategies apply to the Commission, and are detailed in the Directorate's 2014-2015 Annual Report.

### C5: Government Contracting

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During the reporting period, the Commission engaged five contractors or consultants. Total expenditure for these services was \$7,686.80.

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 \$600 to the following organisations:

- Australian National University - \$200 contribution to the ANU Medical School for the Health Services Commissioner's Prize for Professionalism & Leadership for Year 2 students.
- 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.

### C6: Statement of Performance

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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 14 - Statement of performance**

<b>Output 1.5: Protection of Rights</b>				
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.				
<b>Accountability Indicator</b>	<b>Original Target</b>	<b>Amended Target</b>	<b>Actual Result</b>	<b>% Variance<sup>1</sup></b>
High level of client satisfaction with Human Rights Commission complaints processes:				
<ul style="list-style-type: none"> <li>Percentage of survey respondents who consider the process fair, accessible &amp; understandable</li> </ul>	75%		78%	+4%
<ul style="list-style-type: none"> <li>Percentage of complaints concluded within Commission standards and targets</li> </ul>	75%		69%	-8%
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"> <li>Number of community engagement activities undertaken by the Commission</li> </ul>	30		32	+7%

## SECTION M - COMMUNITY ENGAGEMENT & SUPPORT

### M1: Community Engagement & Support

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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 whole-of-Commission information and engagement stalls, including at:

- National Multicultural Festival
- ACT Seniors Week.
- National Youth Week.
- Choice & Control Expo.
- NAIDOC on the Peninsula.

During the reporting period, the Commission continued to increase awareness about 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.

#### 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 previous reporting period, the Commission developed its inaugural Disability Action Plan. The Plan was developed in consultation with the former 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 updated its website. The new website is designed to be WCAG 2.0 compliant to level AA.

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.

**Twitter (@ACTHumanRights)**

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.

As at 30 June 2014, the Commission had tweeted 641 times, had 654 followers, and was following 333 accounts.

## SECTION N - JUSTICE & COMMUNITY SAFETY

### N1: Bushfire Risk Management

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

### N2: Freedom of Information

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#### 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).

Throughout the reporting period, the Discrimination Commissioner and the Human Rights Commissioner held dual appointments within both the Commission and the Public Advocate of the ACT, with both agencies sharing salary contribution.

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](http://www.hrc.act.gov.au) or [www.ACTkids.act.gov.au](http://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](mailto: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](http://www.hrc.act.gov.au)), or by contacting the Commission:

Telephone: (02) 6205 2222  
Fax: (02) 6207 1034  
Email: [human.rights@act.gov.au](mailto:human.rights@act.gov.au)

### **Section 79 Statement**

During the reporting period, the Commission did not receive any Freedom of Information requests.

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### **N3: 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.

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### **N4: Legal Services Directions**

During the reporting period, the Commission complied with all legal services directions issued under s 11 of the *Law Officers Act 2011*.

## SECTION O - PUBLIC SECTOR STANDARDS & WORKFORCE PROFILE

### O1: Culture & Behaviour

During the reporting period, the Commission, and Commission staff, continued to operate in accordance with ACT Respect, Equity & Diversity (RED) Framework. In doing so, the Commission strives to be a workplace that is respectful, courteous, fair, and that values individual differences.

For the bulk of the reporting period, the Commission had a fully qualified RED Contact Officer, and also provided training to other agencies under the RED Framework.

In the 2015 Justice & Community Safety all-staff survey, 100% of Commission staff said that ‘the people I work with put into practice the value of respect, integrity and collaboration’.

### O2: Public Interest Disclosure

During the reporting period, the Commission did not receive any public interest disclosures.

The Justice & Community Safety Directorate’s public interest disclosure policies and procedures apply to the Commission, and are detailed in the Directorate’s 2014-2015 Annual Report.

### O3: Workforce Profile

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.

Throughout the reporting period, the Discrimination Commissioner and the Human Rights Commissioner held dual appointments within both the Commission and the Public Advocate of the ACT, with both agencies sharing salary contribution.

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 2015, the Commission had the following, non-executive, staffing structure.

**Table 15 - Commission staffing structure (at 30 June 2015)**

<b>Children &amp; Young People Team (1.6 FTE)</b>	
Senior Policy Adviser	0.6 x Senior Officer Grade C
Senior Legal Policy Adviser	1 x Legal Officer Grade 1
<b>Disability &amp; Community Services Team (1 FTE)</b>	
Senior Review Officer	1 x Senior Officer Grade C
<b>Health Services Team (including Services for Older People) (3.6 FTE)</b>	
Principal Review Officer	1 x Senior Officer Grade B
Senior Review Officer	1.6 x Senior Officer Grade C
Senior Conciliator	1 x Senior Officer Grade C
<b>Human Rights &amp; Discrimination Team (4.8 FTE)</b>	
Principal Legal Policy Adviser	1 x Senior Officer Grade B
Senior Legal Policy Adviser	1.4 x Legal Officer Grade 1
Senior Policy Adviser	0.6 Senior Officer Grade C
Senior Conciliator & Review Officer	1.8 x Senior Officer Grade C
<b>Intake &amp; Enquiries Team (1.0 FTE)</b>	
Intake & Review Officer	1 x Administrative Officer Class 5
<b>Corporate Support Team (3 FTE)</b>	
Corporate Manager	1 x Senior Officer Grade C
Administrative Officer	1 x Administrative Officer Class 3

Administrative Assistant	1 x Administrative Officer Class 2
<b>TOTAL</b>	<b>15 FTE</b>

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 agency**

	FTE	Headcount
Human Rights Commission	18.8	21

**Table 17 - FTE & headcount by gender**

	Female	Male	Total
FTE by gender	13.2	5.6	18.8
Headcount by gender	15	6	21
Percentage of workforce	71.4%	28.6%	100.0%

**Table 18 - Headcount by classification & gender**

Classification Group	Female	Male	Total
Administrative Officers	2	3	5
Legal Officers	2	0	2
Senior Officers	9	2	11
Statutory Office Holders	2	1	3
<b>TOTAL</b>	<b>15</b>	<b>6</b>	<b>21</b>

**Table 19 - Headcount by employment category & gender**

Employment Category	Female	Male	Total
Casual	0	0	0
Permanent full-time	5	4	9
Permanent part-time	5	0	5
Temporary full-time	4	1	5
Temporary part-time	1	1	2
<b>TOTAL</b>	<b>15</b>	<b>6</b>	<b>21</b>

**Table 20 - FTE & headcount by diversity group**

Diversity Group	Headcount	Percentage of Workforce
Aboriginal and/or Torres Strait Islander	0	0.0%
Culturally or linguistically diverse	3	14.3%
People with a disability	1	4.8%

**Table 21 - Headcount by age group & gender**

Age Group	Female	Male	Total
< 25 years	1	1	2
25 - 34 years	1	1	2
35 - 44 years	4	3	7
45 - 54 years	6	1	7
55+	3	0	3

**Table 22 - Recruitment & separation rates**

	Recruitment Rate	Separation Rate
Human Rights Commission	0.0%	6.3%

**Table 23 - Recruitment & separation rates by classification group**

	Recruitment Rate	Separation Rate
Administrative Officers	0.0%	30.6%
Legal Officers	0.0%	0.0%
Senior Officers	0.0%	0.0%
Statutory Office Holders	0.0%	0.0%
<b>TOTAL</b>	<b>0.0%</b>	<b>6.3%</b>

**Table 24 - Recruitment FTE & headcount by diversity group**

<b>Diversity Group</b>	<b>Headcount</b>	<b>Percentage of Workforce</b>
Aboriginal and/or Torres Strait Islander	0	0.0%
Culturally or linguistically diverse	3	14.3%
People with a disability	1	4.8%

## SECTION P - TERRITORY RECORDS

### P1: Territory Records

The Justice & Community Safety Directorate's Records Management Program has been adopted and is in use in the Commission. A senior officer within the Commission retains responsibility for records management as required by Territory Records Office standards.

The public can inspect the Records Management Program by viewing it on the Justice & Community Safety Directorate's website.

Records management procedures have been created and are available to all staff in the Commission via the Commission's corporate server and/or business system.

The Commission's policy and procedures include specific arrangements for preserving records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage.

The Commission's Corporate Support Team maintain overall responsibility for the Commission's records management program, and all staff receive training on records management upon induction, and throughout the year as required.

**Table 25 - Record disposal schedules used by the Commission**

Records Disposal Schedule	Effective	Year & Number.
Territory Records (Records Disposal Schedule - Equipment and Stores Records) Approval 2012 (No 1)	13 April 2012	NI2012-186
Territory Records (Records Disposal Schedule - Fleet Management Records) Approval 2012 (No 1)	13 April 2012	NI2012-187
Territory Records (Records Disposal Schedule - Compensation Records) Approval 2012 (No1)	11 April 2012	NI2012-183
Territory Records (Records Disposal Schedule - Financial Management Records) Approval 2011 (No 1)	2 September 2011	NI2011-482
Territory Records (Records Disposal Schedule - For preserving records containing information that may allow people to establish links with their Aboriginal and Torres Strait Islander heritage) Approval 2011 (No 1)	25 March 2011	NI2011-162
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Community Relation Records) Approval 2011 (No 1)	8 March 2011	NI2011-84
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Government Relations Records) Approval 2011 (No 1)	8 March 2011	NI2011-88
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Industrial Relations Records) Approval 2011 (No 1)	8 March 2011	NI2011-90
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Information Management Records) Approval 2011 (No 1)	8 March 2011	NI2011-92
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Personnel Records) Approval 2011 (No 1)	8 March 2011	NI2011-97
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Property Management Records) Approval 2009 (No 2)	11 December 2009	NI2009-625
Territory Records (Records Disposal Schedule - Territory	11 September 2009	NI2009-437



Administrative Records Disposal Schedules - Establishment Records) Approval 2009 (No 1)		
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Legal Services Records) Approval 2009 (No 1)	11 September 2009	NI2009-443
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Occupational Health and Safety (OH&S) Records) Approval 2009 (No 1)	11 September 2009	NI2009-444
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Publication Records) Approval 2009 (No 1)	11 September 2009	NI2009-450
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Strategic Management Records) Approval 2009 (No 1)	11 September 2009	NI2009-453
Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Technology and Telecommunications Records) Approval 2009 (No 1)	11 September 2009	NI2009-454

## COMPLIANCE STATEMENT

The Commission must comply with the 2015 Annual Report Directions (the Directions). The Directions are found at the ACT Legislation Register:  
<http://www.legislation.act.gov.au/ni/annual/2015.asp>

This Compliance Statement indicates the subsections, under the five Parts of the Directions, that are applicable to the Commission, and the location of information that satisfies these requirements:

### **Part 1: Directions Overview**

The requirements under Part 1 of the 2015 Directions relate to the purpose, timing and distribution, and records keeping of annual reports. The Commission complies with all subsections of Part 1 under the Directions.

In compliance with section 13, Part 1, of the Directions, contact details for the Commission are provided within this Report (inside front cover) to provide readers with the opportunity to provide feedback.

### **Part 2: Agency Annual Report Requirements**

The requirements within Part 2 of the Directions are mandatory for all agencies and the Commission complies with all subsections. The information that satisfies the requirements of Part 2 is found in this Report as follows:

- A: Transmittal Certificate (immediately preceding table of contents)
- B: Organisational Overview and Performance, inclusive of all subsections (see page 5)
- C: Financial Management Reporting, inclusive of all subsections (see page 70)

### **Part 3: Reporting by Exception**

The Commission has nil information to report by exception under Part 3 of the Directions for the 2014-15 reporting period.

### **Part 4: Agency Specific Annual Report Requirements**

The Commission has nil information to report under Part 4 of the 2015 Directions.

### **Part 5: Whole of Government Annual Reporting**

All subsections of Part 5 of the Directions apply to the Commission. Consistent with the Directions, the information satisfying these requirements is reported in the one place for all ACT Public Service Directorates, as follows:

- Q: Community Engagement and Support, see the 2014-15 Annual Report of the Chief Minister, Treasury & Economic Development Directorate
- R: Justice & Community Safety (including all subsections R1-R4), see the 2014-15 Annual Report of the Justice & Community Safety Directorate
- T: Territory Records, see the 2014-15 Annual Report of the Chief Minister, Treasury & Economic, Development Directorate.

ACT Public Service Directorate annual reports are found at the following web address:  
[http://www.cmd.act.gov.au/open\\_government/report/annual\\_reports](http://www.cmd.act.gov.au/open_government/report/annual_reports)

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