



Professor Aron Shlonsky
Via email to aron.shlonsky@monash.edu

23 September 2022

Dear Professor Shlonsky,

Consultation on External Merits Review mechanism for child protection decisions in the ACT

Thank you for inviting the ACT Human Rights Commission to provide feedback following the roundtable discussion on 16 September 2022 in relation to implementation of an external merits review mechanism for child protection decisions in the ACT.

The provision of external merits review of care and protection decisions made by both CYPS and outsourced service providers is necessary to uphold the human rights of children and young people, and their families. As the Commission has previously observed, the current absence of a mechanism for people to seek review of such decisions gives rise to serious issues of incompatibility with the rights and obligations enshrined in the *Human Rights Act 2004* (HR Act).^{1 2 3}

We appreciate that many of the guiding principles developed through consultation and jurisdictional review are aimed at supporting certain human rights, including the rights of children and families, cultural rights and the right to a fair hearing. However, it is our view that it is vital to *expressly state* that both the design and implementation of an external merits review model are underpinned and informed by the HR Act itself.

Given the importance of the HR Act as a unifying framework for decision-making across ACT Government, lack of specific reference to human rights is a significant oversight. We recommend that human rights are expressly acknowledged both as a standalone Guiding Principle and as an overarching theme underpinning all of the Guiding Principles generally, in language akin to the following:

“be consistent with, and underpinned by, the *Human Rights Act 2004*”

¹ ACT Human Rights Commission, *Submission to the ACT Government’s review of child protection decisions in the ACT* (Submission, 28 June 2019), pp. 3-4, available at: <https://hrc.act.gov.au/wp-content/uploads/2019/07/HRC-submission-Review-of-child-protection-decisions-in-the-ACT.pdf>

² ACT Human Rights Commission, *Submission to the Standing Committee on Justice and Community Safety’s Inquiry into Child and Youth Protection Services: Part Two – Information Sharing under the Care and Protection System* (Submission, 30 August 2019), pp. 7-8, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0003/1437357/Sub-No.-04-ACT-Human-Rights-Commission-authorised.pdf

³ The Commission remains concerned about the significant delay in progressing these reforms since the recommendation of the Glanfield Inquiry that there should be a review of which CYPS decisions are subject to internal and external review (see Laurie Glanfield AM, Report the Inquiry: Review into the system level response to family violence in the ACT (Report, April 2016), 78, available at: https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0010/864712/Glanfield-Inquiry-report.pdf

You observed during the stakeholder roundtable on 16 September 2022 that there may, at times, be tension between some of the Guiding Principles and that such conflicts would need to be resolved in some way. The HR Act in fact provides a coherent, structured and logical framework to balance competing public interests and human rights. Further, the HR Act applies *by law* to all decisions and actions of ACT public authorities, including CYPs and outsourced service providers.

In addition, we wish to highlight relevant observations we have made previously,⁴ including that:

- Decisions about granting access to information (including ‘sensitive information’) about children and young people must be capable of external merits review as part of this mechanism. Ensuring that decisions to withhold information are accountable to external scrutiny is necessary to ensure greater transparency of care and protection decisions.⁵
- Considerations relevant to the best interests of the child must, as part of this process, expressly include whether and how support has been provided to preserve the family and their relationships with one another, as currently required in Victoria.⁶

Should you wish to discuss this matter further the contacts are Kevin Campbell and Naomi Reiner Gould, who may be reached on 6205 2222.

Yours sincerely

Dr Helen Watchirs OAM

President and Human Rights
Commissioner

Jodie Griffiths-Cook

Public Advocate and Children
and Young People
Commissioner

⁴ ACT Human Rights Commission and others, *Joint open letter to Minister Rachel Stephen-Smith on external review for child protection decision-making in the ACT* (Letter, 24 March 2020), see *communiqué* pp. 1-2; available at: <https://hrc.act.gov.au/wp-content/uploads/2020/03/Joint-open-letter-to-Minister-External-review-of-child-protection-decisions-for-website.pdf>

⁵ See above 2, pp. 2-6.

⁶ See *Children, Youth and Families Act 2005*, s 10(3)(a) and s 276(1)(b).