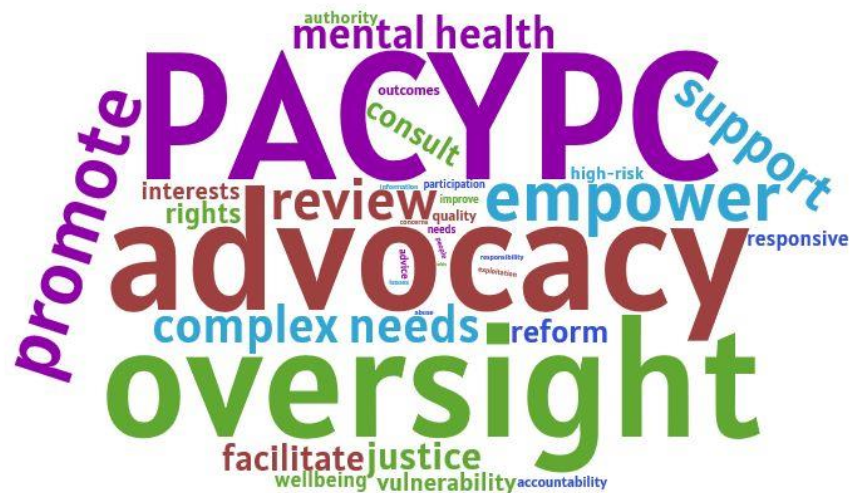

Public Advocate and Children and Young People Commissioner

Decision-Making Framework



Public Advocate and Children
and Young People Commissioner



ACT HUMAN RIGHTS COMMISSION

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PUBLIC ADVOCATE AND CHILDREN AND YOUNG PEOPLE COMMISSIONER

DECISION-MAKING FRAMEWORK

1. Purpose

This document outlines the overarching decision-making framework for advocacy matters and systemic review requests referred to the Public Advocate and Children and Young People Commissioner (PACYPC).

The PACYPC has legislative functions to promote protections for, and uphold the rights of, people experiencing vulnerability in the ACT, and more specifically for children and young people and people with disability (including those with mental health concerns).

This decision-making framework supports the PACYPC to exercise its statutory functions for people at risk of abuse, exploitation or neglect. Notably, this includes those referred to the PACYPC through statutory reporting mechanisms, people requiring advocacy as a last resort in circumstances where other community advocacy options do not exist or have been exhausted, situations where service systems are not working effectively or not upholding people's rights, and in situations where heightened and serious risks prevail, warranting PACYPC intervention.

This framework documents the broad policy platform underpinning the PACYPC's decision-making about whether to intervene either individually or systemically, in respect of the cohorts for whom the PACYPC has statutory responsibility.

In addition to this framework, each portfolio area in the PACYPC (children and young people, disability/complex needs, mental health/forensic, and family violence/personal protection) has its own set of Standard Operating Procedures (SOPs) that outline specific procedures appropriate to relevant functions and responsibilities, for example, a review checklist for documentation received and procedures for the development of advocacy plans.

2. Scope

The PACYPC Decision-Making Framework applies to the PACYPC team and includes all enquiries or referrals for advocacy and service responses across the different portfolio areas: children and young people, disability/complex needs, mental health/forensic and family violence/personal protection. This includes requests for the PACYPC to contribute to policy, legislative or service delivery reforms, including those referred to the Children and Young People Commissioner.

3. Legislative context

A number of legislative instruments give authority to the work of the PACYPC. In particular, section 19B of the [Human Rights Commission Act 2005](#) (HRC Act) outlines the legislative responsibilities for the Children and Young People Commissioner, and section 27B details those for the Public Advocate.

Broadly, these two roles involve legislative responsibility for protecting and promoting the rights and interests of people in the ACT who are experiencing vulnerability, and for consulting with children and young people in ways that promote their participation in decision-making.

While the role of Children and Young People Commissioner is obviously a targeted one, focused on ensuring that relevant stakeholders listen to and seriously consider the views of children and young people, the role of Public Advocate extends to all persons within the ACT whose situation or condition gives rise to a need for protection from abuse or exploitation, or a combination of those things. Statutorily, the HRC Act includes provisions for responsibilities in respect of children and young people and people with disability (including those with mental health concerns).

The responsibilities of the PACYPC are underpinned by a range of functions including advocacy (individual and systemic), representation, investigation, and monitoring. Some of these functions are specific to children and young people, and others encompass people with complex disability needs, including those with mental health conditions and/or forensic patients.

The PACYPC has a strong focus on ensuring that its monitoring and oversight functions (and the recommendations that are made to government and non-government agencies on legislation, policies, and practices) contribute to improvements in the accessibility, responsiveness and quality of supports and services that are available for people experiencing vulnerability.

Further to the provisions of the HRC Act, there are several other pieces of legislation and many accompanying legislative instruments that include obligations associated with the performance of the PACYPC role.

Notably, the *Mental Health Act 2015* and the *Children and Young People Act 2008* establish statutory oversight and monitoring functions for the Public Advocate, including through the submission of documents to the Public Advocate. In the children and young people portfolio, the Public Advocate can make a statutory request to ACT child welfare services for information, services, advice, facilities and documentation that relate to the physical or emotional welfare of children and young people.

Additional statutory responsibilities for the Public Advocate are outlined in the [Senior Practitioner Act 2018](#), [Family Violence Act 2016](#), [Personal Violence Act 2016](#) and the [Guardianship and Management of Property Act 1991](#).

In performing a statutory advocacy function in accordance with other legislation, the PACYPC may deem it necessary to request information from agencies responsible for people experiencing vulnerability, including children and young people, and people with disability (including those with mental health concerns).

The PACYPC draws upon the provisions of these various legislative instruments to develop, maintain and improve our 'line-of-sight' to the various systems, services and supports that respond to the needs of people experiencing vulnerability. In doing so, we focus on ensuring that relevant systems are providing appropriate responses to the individual and collective experiences of children, young people and adults experiencing vulnerability.

For a full listing of the legislation that establishes the statutory authority for the PACYPC, refer to the reference listing at the end of this framework.

4. Definitions

Public advocacy

Public advocacy is a collective term, which encompasses all types of advocacy provided by the PACYPC. This is inclusive of individual (direct) advocacy, systemic advocacy and review, and statutory advocacy. Public advocacy exists to ensure that services and systems do what they are supposed to do, in the way they are supposed to do it, and ideally seeks to ensure this is done in a timely and responsive manner. Public advocacy is generally called upon when community advocacy responses have been unable to facilitate a solution and/or when the need for advocacy relates to a system for which the PACYPC has statutory responsibility.

Statutory advocacy

Statutory advocacy, for the purposes of this decision-making framework, refers to the legislative requirement for the PACYPC to undertake specific functions in accordance with provisions established by the *Mental Health Act 2015*, the *Children and Young People Act 2008*, the *Personal Violence Act 2018* and the *Family Violence Act 2018*.

The PACYPC has developed an Oversight Framework to guide the provision of statutory advocacy. The Oversight Framework operates alongside this Decision-Making Framework and provides the policy context for the PACYPC's statutory monitoring and oversight functions.

While the PACYPC has discretion to target systemic advocacy priorities, there are some legislative provisions where the PACYPC must respond. For example, pursuant to Section 27BA of the HRC Act, the PACYPC must report to the ACT Civil and Administrative Tribunal (ACAT) about a matter before the ACAT, if asked by the ACAT. The *Children and Young People Act 2008* also requires the PACYPC to inspect the Register of searches and uses of force at least once every three months.

Systemic advocacy and review

Systemic advocacy provides the most effective option for administering the PACYPC's limited resources and is the first advocacy option that is considered.

Systemic advocacy and review involves the PACYPC advocating on behalf of a cohort of people to achieve an outcome that is in the interests of that cohort. Systemic advocacy focuses on influencing positive changes to service systems that support people experiencing vulnerability.

The PACYPC approaches its systems advocacy work in a number of ways. Sometimes it may be one issue for one person that highlights a systems gap that may be applicable to a broader cohort and that would benefit from systems change. Progression in contemporary thinking and research into best practice may also indicate a need for systems improvement and change. It could also arise as a result of systems analysis into other issues, which may highlight a disconnect or contributing factor within other systems. Systems advocacy can also arise from everyday engagement with systems that are functioning well, but where applying the principle of continuous improvement results in service improvements that enhance the functioning further.

Systemic advocacy focusses on facilitating improvements to service delivery and/or encouraging the development of new programs or services to benefit particular client groups. To achieve this, the PACYPC may undertake projects, research and review strategies that evidence good/best practice, prepare submissions, develop discussion papers, conduct systemic investigations, or undertake consultations.

Systemic review functions include providing feedback on cabinet submissions and providing or seeking advice (e.g. through consultation) about policy and service developments. Influencing legislative change or policy reforms, and undertaking community development, community education and stakeholder engagement are further examples of systemic advocacy.

Systemic priorities for the PACYPC are as follows:

- Improved outcomes for Aboriginal and Torres Strait Islander peoples
- Improved outcomes for children and young people
- Improved outcomes for people with disability/complex needs
- Improved outcomes for people in contact with mental health/forensic mental health systems
- Improved outcomes for people involved in family violence/personal protection matters.

Individual advocacy

The PACYPC undertakes individual advocacy with a forward focus to promote and ideally secure a response that upholds an individual's rights, promotes the development and implementation of appropriate protections/safeguards, and/or that takes the views of the person into account in decision-making. In both our individual advocacy and our oversight work, the PACYPC focuses on ensuring that systems are doing what they are supposed to be doing in the way they are supposed to be doing it.

In a practical sense, the PACYPC may support people to exercise their rights by providing them with support and/or empowering them to voice their concerns, access information, resolve issues of concern, and identify and access available options. The PACYPC may also advocate for an individual where we identify issues with the provision of a service that is grounded in statutory obligations, particularly where these obligations are not being met.

The PACYPC can advocate on behalf of children, young people and adults whose situation or condition impacts on their rights or wellbeing, or places them at risk of abuse, neglect or exploitation. This may include people with a disability, mental health concern, or other conditions that result in impaired decision-making capacity or a legal disability.

It should be recognised that individual advocacy can be a tool to mitigate against a situation becoming a complaint. In recognition of this, there are often situations where the Discrimination, Health Services and Disability and Community Services Commissioner will refer a matter to the PACYPC for advocacy as a means of facilitating an appropriate and more immediate response to the matter at hand.

Individual advocacy generally occurs in situations where the system has failed to respond in an appropriate way to the needs and circumstances of a person. Individual advocacy involves acting on behalf of, or supporting, people to exercise their rights and/or achieve an outcome that reflects their interests in a matter, for example obtaining services or changing the way services are provided. Individual advocacy may be undertaken in different ways and includes brokering services such as counselling, attending court or tribunal hearings, participating in case conferences or meetings, convening multi-agency panel meetings or negotiating with, fostering and supporting agencies to improve the services they are providing to the person.

Individual advocacy functions undertaken by the PACYPC also extend to family violence and personal protection matters. The PACYPC may also be involved in legal proceedings in ACAT or the courts, including as a party to legal proceedings, which may necessitate adherence to legal processes for obtaining information such as issuing of subpoenas.

Community advocacy

Community advocacy refers to the provision of advocacy by a funded independent community advocacy agency who may provide individual or systemic advocacy. Advocacy provision may be in mental health, in the disability area, on behalf of older people, for children and young people, or in support of carers.

5. Guiding principles

The following principles are used by the PACYPC to maintain accountability in operationalising its advocacy functions, and in determining whether to intervene either individually or systemically in respect of matters brought to the attention of the PACYPC.

Rights-based: As a public authority, the PACYPC must undertake its functions in accordance with the [Human Rights Act 2004](#) (HR Act). The PAYPC also seeks to act in accordance with relevant international conventions to which Australia is a state party.

The PACYPC applies a human rights framework to its own actions as well as to those of the systems for which the PACYPC has monitoring and oversight responsibilities (notably those services and systems relating to children and young people and people engaged with the mental health system). In doing so, the PACYPC seeks to ensure that agencies are accountable for delivering services that are human rights compliant.

The HR Act imposes direct obligations on ACT public authorities to act compatibly with the human rights protected in the HR Act, and to take relevant human rights into account in decision-making (s40B). Children and young people are entitled to all the human rights guaranteed under the HR Act. Further, the HR Act specifically provides in s 11 (2) that ‘every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind’. The right incorporates, in effect, a right to special or positive measures, and also generally requires a higher standard to be adopted in relation to children and young people when the application of other human rights is considered. Section 31 of the HR Act recognises that international law can be used to interpret human rights and is an important source of guidance as to the scope and meaning of rights protected in the HR Act.

Adopting a rights-based approach in decision-making requires the PACYPC to consider the human rights (of the person or cohort) when making a decision about the need for PACYPC intervention.

Statutory independence: The PACYPC must maintain statutory independence when appearing before courts, tribunals and when representing a person at a conference, meeting or care team process. The PACYPC does not provide ongoing case management or case coordination but will instead intervene as considered appropriate in situations where there is a risk of abuse or exploitation, and/or where an individual’s rights have been or are at risk of being breached.

Safeguarding: As protected in the HR Act and by seeking to act in accordance with relevant international human rights instruments, the PACYPC recognises and upholds the need for additional safeguards for children, young people and adults experiencing vulnerability, particularly when facing unique barriers to accessing services and supports such as raising concerns and making complaints.

Many matters referred to the PACYPC evidence underlying safety concerns or risks that may or may not constitute the presenting issue. In making the decision to intervene either individually or systemically, the PACYPC will consider whether the presenting issue/s warrant PACYPC involvement and whether there is a risk of exploitation or abuse.

People in high risk or vulnerable situations brought to the attention of the PACYPC through statutory reporting processes (such as through mental health and child protection oversight processes) are prioritised in decision-making. Where required, the PACYPC uses the HRC's risk register to document the likelihood and consequence of risks.

The PACYPC actively promotes the implementation and integration of the National Principles of Child Safe Organisation (the Child Safe Principles) in mainstream service provision across the ACT. The Child Safe Principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. These national principles reflect the ten child safe standards recommended by the *Royal Commission into Institutional Responses to Child Sexual Abuse*, with a broader scope that goes beyond sexual abuse to cover other forms of potential harm to children and young people.

The Child Safe Principles create a framework for establishing the necessary leadership, cultural and administrative elements of child safe practice within organisations. Recognising the important protective factor that comes from children and young people being able to have their say about matters that impact their own lives, the PACYPC is particularly focused on two principles, these being ensuring children's participation and empowerment (Principle 2) and establishing child-focused processes (Principle 6).¹



Figure 1. Child Safe Organisations: Wheel of Safety

¹ For an overview of The National Principles of Child Safe Organisation: <https://chidsafe.humanrights.gov.au/national-principles>

Responsive: The PACYPC can be contacted at any time to discuss emerging issues, to provide advice on individual or systemic matters, and respond to requests for assistance, including advocacy and consultation. Where possible, the PACYPC aims to respond to requests for advocacy and referrals within 48 hours.

It should be noted that the provision of individual or direct advocacy on behalf of children, young people and adults focuses on those people most vulnerable and at risk of exploitation or abuse. This means that the PACYPC will not necessarily accept all referrals and may make suggestions for alternate services or supports to assist in facilitating the required outcome.

Proactive monitoring: The PACYPC adopts a proactive approach that seeks to mitigate the escalation of risk issues for a person, or to identify and respond to service concerns or systemic issues. This generally occurs through regular meetings with service providers or when visiting services. Policy work and systemic activities also target identified service gaps and issues with a view to facilitating quality service provision.

Person-centred and participatory: The PACYPC seeks to ensure the views, wishes and interests of people seeking assistance are foremost in decision-making. Public advocacy upholds the participation rights of people experiencing vulnerability, assisting them to give effect to their rights and access their entitlements. The PACYPC is respectful of people's views, needs, their culture and experiences.

In ensuring that a service system fully enacts participation rights, the PACYPC commits to providing a safe and inclusive space for all people to express their views, listening seriously to the views expressed and acting upon these views to promote the influence of people, particularly vulnerable cohorts who access services and supports in the ACT.

Privacy and Confidentiality: The privacy and confidentiality of people accessing services are paramount. The Human Rights Commission Privacy Policy details the provisions that are applied by the PACYPC.

6. Initial assessment

When the PACYPC is initially contacted in relation to a matter, the PACYPC must assess whether the situation or circumstance warrants public advocacy or the involvement of the Children and Young People Commissioner. This includes consideration as to whether other community advocacy options are better placed to respond to the person's needs or situation. Action by the PACYPC may, however, be the only suitable option in situations where serious risks exist and/or where there are human rights breaches.

As part of the triage process, the PACYPC will also assess whether the situation or issue gives rise to the need for systemic advocacy or systemic review.

7. Decision-making priorities – systemic advocacy and review

7.1 Focus on systemic advocacy and review

Priority is directed towards systemic advocacy and review processes. When a request for assistance or intervention is received by the PACYPC, and/or where issues are identified for individuals through our oversight activities, decision-making must, in the first instance, assess whether the matter or issue is systemic in nature, and whether it may be better addressed through a systemic advocacy strategy or project.

Systemic advocacy focuses on improving the service system and outcomes for a cohort and offers the best value-add for the PACYPC's limited resources. Where possible, this form of advocacy is the approach the PACYPC will use to tackle issues brought to the attention of the office, even when the issues arise out of a request for individual advocacy.

In its simplest form, systemic advocacy by the PACYPC may take the form of a letter to relevant agencies/Directorates raising the issue, proffering potential recommendations and requesting a response to how this will be addressed. Conversely, more complex and/or multi-faceted matters may be better addressed by undertaking a case study analysis, preparing a research report or discussion paper, or developing a project brief for more in-depth project activities.

After discussion within the HRC, the PACYPC will take the lead for developing policy advice or a submission when it is agreed that it is best placed to do so, taking into account subject matter expertise and resource capacity.

Considering the broad functions of the HRC, it may be optimal or appropriate for another section of the HRC to lead the development of policy advice or a submission due to subject expertise, particularly relating to human rights issues. The PACYPC will, however, contribute to all such processes where we hold knowledge or views relevant to the issue.

7.2 Responsibility for systemic advocacy and review

Senior Advocates/Advisors in each of the PACYPC portfolios have responsibility and carriage of systemic advocacy and review activities. This includes responsibility for reviewing cabinet documents to assess whether the PACYPC has information that should be raised in a submission.

If the PACYPC decides to undertake systemic advocacy or systemic review, the standard operating processes for the relevant work section guide this process. This generally requires scoping of the project, the development of a project brief and/or further consultation processes with stakeholders, as relevant to the issue. Decision-making considerations for any systemic advocacy and systemic review project form part of the brief for that project.

8. Decision-making priorities – individual advocacy

The provision of advocacy must be consistent with the statutory remit of the PACYPC.

8.1 Serious, heightened risks and vulnerability

Priority will be given to high profile and high-risk matters that relate to the PACYPC's statutory monitoring and oversight functions. This generally involves matters where statutory action has been taken by government (for example in child protection, mental health, and youth justice matters).

The PACYPC prioritises the provision of advocacy to those people most at risk of human rights breaches, exploitation or abuse, and in need of protection.

In making the decision to accept a referral or request for service, the PACYPC must first consider whether the issue, concern, or case situation falls within the legislative remit of the PACYPC and second, whether the PACYPC's intervention is necessary to facilitate the required outcomes.

Matters involving possible court or tribunal attendance by the PACYPC are closely reviewed. Priority is given to matters that involve people with high levels of vulnerability, including those for whom there is significant potential for their rights to be breached (such as infants, forensic mental health matters, complex disability, intensive support needs).

In considering attendance at such matters, the PACYPC will also consider whether the view/position of the PACYPC in relation to handling of the matter is already being appropriately supported/communicated by others (eg a person's legal representative).

8.2 Public advocacy as a last resort

For referrals made to the PACYPC (e.g. by community members, service providers, etc.), the PACYPC must be satisfied that the matter involves services/systems not doing what they are supposed to do in the way they are supposed to be doing it (including by breaching or being at risk of breaching a person's human rights).

Before deciding to provide individual advocacy, the PACYPC will seek to ensure that all other available and appropriate advocacy options have been explored and exhausted, and that individual advocacy by the PACYPC is appropriate, taking into account that public advocacy should be a last resort unless otherwise warranted due to high level risk and safety issues for the referred person, or due to statutory monitoring and oversight functions.

The PACYPC does not provide case management functions and public advocacy assistance is not available to fill a service gap (for example, undertaking casework or social work functions) that are the responsibility of another service. Further, the PACYPC will not intervene in matters where advocacy support is available and more appropriately undertaken by a community advocacy agency, for example matters of low/moderate risk or where sustained engagement is required.

8.3 Person's views and wishes

The nature of the PACYPC's statutory monitoring and oversight roles, particularly for matters before a court or tribunal, mean that it is not always possible for the PACYPC to obtain the person's views and wishes before intervening in an individual matter. This is particularly the case when it relates to the PACYPC's oversight of child protection matters in the Children's Court.

Wherever possible and appropriate, however, the views and wishes of the person will be sought before initiating individual advocacy. This may be done directly or, alternatively, the PACYPC may identify more appropriate avenues to connect with the person, for example, through another stakeholder or agency. Consideration is always given to any potential conflicts of interest that may arise when seeking information through a third party.

In cases where the PACYPC speaks directly with the person, consultation with relevant stakeholders and significant others may also be necessary, particularly in identifying possible risk issues for the person and for PACYPC staff. Prior planning may be required, including obtaining the consent of the person and arranging for additional assistance and support (where necessary) to facilitate this contact (for example, interpreters, clinical assistance and joint interviews with support persons).

8.4 Procedure for individual (direct) advocacy

i) Making referrals for individual advocacy

The PACYPC prefers that individuals/agencies make referrals in writing using the Public Advocate Referrals email address, which enables monitoring of referrals across the PACYPC. The referral email is as follows: PublicAdvocatereferrals@act.gov.au

Referral requests may also be made by telephone either by the person themselves or by a third party. The telephone number for the PACYPC in the ACT Human Rights Commission is 6205 2222.

ii) Review of referrals

All referrals/requests for advocacy assistance are reviewed for appropriateness prior to making a decision about whether to intervene. Further assessment may be required throughout a matter to assess whether there continues to be a need for PACYPC involvement.

Each portfolio in the PACYPC (children and young people, disability/complex needs, mental health/forensic, and family violence/personal protection) has its own SOPs that detail the process by which documentation is reviewed and direct advocacy provided.

Whilst the SOPs detail specific processes, the PACYPC may accept, open and progress an individual advocacy matter in the following circumstances:

- The person is at imminent risk of serious harm, abuse or exploitation; and/or
- A high-risk situation exists for the person and the person may be seriously disadvantaged by a decision or by a lack of service; and/or
- The person's rights have been breached or there is a significant risk of their rights being breached.

Where appropriate, the person will have consented or assented to PACYPC involvement (refer to consent processes in SOPs) and the sharing of information about them and their circumstances.

It is not always possible or appropriate to obtain consent or assent for matters brought to the attention of the PACYPC and, in some circumstances, it may be determined that it is in the interests of the person to provide direct advocacy on their behalf. The following circumstances may lead to the PACYPC intervening in a matter without seeking or obtaining consent:

- the person has been brought to the attention of the PACYPC as a result of the PACYPC having received compliance documentation and/or through performance of the PACYPC's statutory monitoring and oversight functions (e.g. mental health paperwork, CYPS involvement, request to be involved in care teams); and/or
- where a situation appears intractable and the PACYPC has assessed its involvement is necessary to resolve the issue/s and/or facilitate an outcome in the interests of the person or cohort; and/or
- the situation has reached a stalemate, all other advocacy or support avenues have been exhausted, and the person is at serious risk. For example, all attempts to resolve a matter have failed, or parties involved are not prepared to shift their position and this is detrimental to the person; and/or
- the person is experiencing issues that are consistent with a trend or pattern that the PACYPC has identified in exercising its monitoring and oversight functions, and intervening will be advantageous to facilitating changes in the system of care and support for the client cohort. Such matters may also be prioritised for systemic advocacy or systemic review.

iii) Communicating and actioning decision

After a referral has been reviewed, the Senior Advocate (or delegate) will make a decision regarding acceptance (or otherwise) of the referral.

For matters that have emerged through avenues not associated with the PACYPC's statutory advocacy or oversight functions, it may be necessary to discuss the referral with the Deputy Public Advocate or the PACYPC, particularly if the referral is from another government agency or where it relates to a high risk or high profile situation.

Following review of the referral, and any consultation that may have been undertaken (if indicated), the person making the referral will be advised via email or by phone about the outcome of the referral. The PACYPC may communicate their acceptance of the referral or may recommend another course of action.

Where a referral for individual advocacy is accepted, the Senior Advocate (or delegate) will allocate the matter in accordance with the relevant SOP.

iv) Provision of advocacy

Where the PACYPC makes a decision to accept a referral and provide direct advocacy, advocacy provision occurs in accordance with the relevant SOP. Advocacy may involve attending court, case conferences, or conducting further investigations.

Ongoing review is required to ascertain whether the matter can be finalised and subsequently closed. It may also be possible for the PACYPC to take on a monitoring and oversight role. This may occur, for example, by the PACYPC no longer attending care team meetings but still receiving minutes from these meetings in order to monitor service provision.

iv) Resuming a monitoring and oversight role

At any stage, a matter involving individual advocacy may become a monitoring case. This may occur if additional supports or services now exist for the person, which address initial concerns or risks and meet the person's needs. Adopting an oversight role allows the PACYPC to monitor ongoing developments, identify possible trends, or pursue other action if necessary.

In undertaking a monitoring role, the PACYPC may still need to speak with the person regarding service provision, meet with staff of an agency or attend interagency meetings or conferences regarding the person. Obtaining regular updates, minutes of care team or discharge meetings are other strategies the PACYPC may use. The focus, however, is on monitoring or maintaining a 'watching brief' regarding the matter.

At any time, the PACYPC may determine a need to re-commence direct advocacy in respect of a matter, particularly if new risks emerge or agencies are not working effectively together, which may subsequently increase the person's vulnerability.

Where a situation has stabilised, the PACYPC may close the matter. This would usually occur where the PACYPC is satisfied that there has been a sufficient resolution of concerns and the person's needs are being met.

9. Referrals

9.1 Referrals within the Human Rights Commission

A matter brought to the attention of the PACYPC may necessitate referral to another area of the HRC (for example, complaints about services for children and young people or disability or health services or discrimination or matters involving a victim of crime). In these circumstances, the PACYPC makes a referral to the Commissioner of that area (or to their delegate).

If the PACYPC makes a referral to another area of the HRC, this must be approved by and forwarded through the PAYCPC or the Deputy Public Advocate.

The PACYPC prioritises the initial intake/assessment of, and advice in relation to, referrals received from other parts of the HRC.

9.2 Community advocacy agency involvement

Some matters referred to the PACYPC require ongoing advocacy, home visits and intensive work with a client or family to facilitate their empowerment and participation in decision-making. The provision of community advocacy may be more appropriate if a matter is of lower risk and not directly related to statutory oversight functions.

If ongoing assistance with supported decision-making is required, the PACYPC will generally refer the matter to a community advocacy agency funded to provide this advocacy support.

Community advocacy is preferred when the matter is of a lower risk and when ongoing advocacy may be required. Prior to accepting a referral, all community advocacy options must be considered in the first instance, with referrals made to relevant agencies where indicated.

9.3 Public Trustee and Guardian matters

If the Public Trustee and Guardian (PTG) are appointed as guardian or financial manager for a person, the PACYPC recognises they have decision-making authority in relation to the matters for which they are appointed, and they will be the lead agency for that person. The PACYPC does not routinely provide advocacy for PTG clients.

While the PACYPC is available to be consulted by the PTG on matters relating to those for whom they are appointed, the PACYPC would only engage directly in matters where the PTG indicates they have a conflict of interest or where there are other complexities or high risk circumstances that indicate the PACYPC should be involved. Requests for PACYPC assistance from the PTG are subject to the assessment and review processes of the relevant portfolio area of the PACYPC (children and young people, disability/complex needs, mental health/forensic, and family violence/personal protection).

All matters referred by the PTG (where the PTG are appointed as guardian or financial manager) are subject to a decision by the Senior Advocate prior to acceptance. In more complex matters, the Senior Advocate may refer the matter to the Deputy Public Advocate for their advice and/or for a decision.

9.4 Involvement of other agencies, services and stakeholders

Some matters referred to the PACYPC indicate that other agencies are already actively involved, for example, NDIS disability services, mental health, Child and Youth Protection Services and ACT Together. These agencies may be better placed to provide further assistance or support to the person in respect of the matter that is the subject of the referral.

Prior to accepting a matter for the provision of individual advocacy, the PACYPC must be satisfied that no other advocacy options exist. Public advocacy would usually occur as a last resort when the systems that exist to respond are not fulfilling their responsibilities. Public advocacy focuses on matters of high risk, which necessitate statutory advocacy by the PACYPC.

10. Document Review

The PACYPC will review this framework annually.

11. Supporting Documents

Each portfolio area within the PACYPC (i.e. children and young people, disability/complex needs, mental health/forensic, and family violence/personal protection) have SOPs, which are informed by this Decision-Making Framework.

12. Operating environment

12.1 Legislation

[Adoption Act 1993](#)

[Children and Young People Act 2008](#)

[Corrections Management Act 2007](#)

[Court Procedures Act 2004](#)

[Crimes Act 1990](#)

[Crimes \(Child Sex Offenders\) Act 2005](#)

[Disability Services Act 1991](#)

[Family Violence Act 2016](#)

[Guardianship and Management of Property Act 1991](#)

[Human Rights Act 2004](#)

[Human Rights Commission Act 2005](#)

[Mental Health Act 2015](#)

[Mental Health \(Secure Facilities\) Act 2016](#)

[Official Visitor Act 2012](#)

[Ombudsman Act 1989](#)

[Personal Violence Act 2016](#)

[Powers of Attorney Act 2006](#)

[Senior Practitioner Act 2018](#)

[Terrorism \(Extraordinary Temporary Powers\) Act 2006](#)

12.2 International human rights instruments

[UN Convention on the Rights of the Child](#)

[UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#)

[International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#)

[United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment \(CAT\) and the Optional Protocol to this Convention](#)

[UN Convention on the elimination of all forms of discrimination against women \(CEDAW\)](#)

[UN Convention on the elimination of all forms of racial discrimination \(CERD\)](#)

12.3 Other policy frameworks

PACYPC Oversight framework

HRC Privacy Policy