ACT Government
Justice and Community Safety

Open Access release outcome decision – Full access granted

Document Category: Ministerial Briefs

Title of document: Minister for Human Rights – Quarter 3 2021 briefs

Description of the information: Question Time Briefs provided to the Minister for Human Rights between 1 July and 30 September 2021.

The original record of this document did not contain information, the release of which would be contrary to the public interest. As such, the information contained in this document has been released in full for the reasons outlined below.

Grounds for decision to release

As per the public interest test set out in section 17 of the FOI Act, I have assessed the information contained in the ministerial briefs as being suitable for full release.

I have included below the relevant factors considered in making this decision.

2.1 Factors favouring disclosure in the public interest

(a) Disclosure of the information could reasonably be expected to do any of the following:

(i) promote open discussion of public affairs and enhance the government's accountability;

(ii) contribute to positive and informed debate on important issues or matters of public interest;

(iv) ensure effective oversight of expenditure of public funds;

(viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

I consider that the release of the ministerial briefs may be expected to help inform ongoing discussions and debate on matters of continued public importance. The disclosure of this information also helps to promote government accountability and transparency.

Review rights

My decision to release or withhold open access information is a reviewable decision as identified in Schedule 3 of the FOI Act. You can seek an Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published on the Justice and Community Safety Directorate website, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision, you may write to the ACT Ombudsman at:

ACT Ombudsman
Attention: ACT Strategy and FOI Section
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

Further assistance

If you have any queries regarding this Open Access release, please contact JACSFOI@act.gov.au or phone (02) 6207 2167.

Authorised by

L. Callow

Lauren Callow
Information Officer
02/10/2026

ACT Government
Justice and Community Safety

OPEN ACCESS Q3 2021 SCHEDULE
PORTFOLIO: MINISTER FOR HUMAN RIGHTS

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4	6-7	ACT Human Rights Commission - Complaints Handling and Resourcing	August		
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ACT Government
Justice and Community Safety

MINISTER TARA CHEYNE MLA
MINISTER FOR HUMAN RIGHTS
QUESTION TIME BRIEFS PACK
3-5 AUGUST 2021

Question Time Briefs	
1.	Human rights specific issues surrounding Check In CBR app (NEW)
2.	Funding for VOCAL
3.	Resourcing of the HRC and complaints handling
4.	Disability complaints to the Discrimination Health Services Disability and Community Services Commissioner
5.	Right to a healthy environment
6.	Right to housing
7.	Victims Rights Legislation Amendment Act 2020
8.	Discrimination Act Review
9.	Progress of PAVER Review
10.	Claims to Victims of Crime Financial Assistance Scheme and Victims Services Scheme
11.	Protecting Vulnerable people (covering matters that arose in the Hearing QON)
12.	Implementation of the Charter of Rights for Victims of Crime
13.	Complaints to the Victims of Crime Commissioner
14.	Work to further Voluntary Assisted Dying and territory rights
15.	Progress of the Aboriginal and Torres Strait Islander Children's Commissioner
16.	Progress of the Protection of Rights Services Review
17.	Employment of Gordon Ramsay (QTON response)

QUESTION TIME BRIEF

JACS2021/48-001-019

Portfolio/s: Human Rights

Health

Human rights specific issues surrounding Check In CBR app

Talking points:

- The compulsory use of the Check in CBR App is considered to be one of the least restrictive means of collecting data for the purposes of managing an outbreak of COVID-19 in the Territory.
- The personal information that is collected is minimal (name and phone number or email address) and is deleted after 28 days in accordance with the privacy policy for the Check in CBR app.
- Furthermore, this personal data is provided directly to ACT Health and not through a third party, and is only accessed by ACT Health if necessary – (if there were to be a COVID-19 positive case in the ACT).
- Using the app is more protective of privacy than using written registers where customers can see the details of previous customers.
- Similar contact tracing measures have been implemented in other states and territories, and both Queensland and Victoria, which are also jurisdictions with Human Rights legislation.
- The Check in CBR app has a 'business profile' enabling businesses and undertakings to check in persons without a smart phone, or who might not be able to check in themselves. In addition, the app has a feature which allows individuals to check-in people who are attending a venue or business with them.
- There is no suggestion that the personal information collected through the Check In CBR App has been used for purposes other than contact tracing.
- Information about the number of check-ins at a business over a period is not personal information and the use of this de-identified data to ensure compliance by businesses with their obligations does not infringe any privacy rights.

Key Information

Statistics to 26 July 2021

- There have been 30.50 million check in entries (includes additional guests checked in at the same time) since launch day on 9 September 2020.
- Of those check ins, 18.15 million check in entries have been deleted in accordance with the requirement to only save data for 28 days from the check in date.

Cleared as complete and accurate:	29/07/2021	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Zoe Hutchinson	Ext: 76192
Lead Directorate:	Justice and Community Safety	INDEX
TRIM Ref:	JACS2021/48-001-019	

QUESTION TIME BRIEF

Background Information

- The Human Rights Commission wrote to the Minister for Human Rights and the Health Minister with concerns that the Check In CBR data could be used for lawful purposes other than contact tracing, contrary to assurances made to the public by the ACT Chief Digital Officer.
- Lawful purposes are those in line with Information Privacy Act and Health Privacy Policy such as required or authorised by law.
- The Commission was also concerned that the Apps safeguards were not contained in legislation.
- Other jurisdictions including the Commonwealth and WA have now introduced laws that expressly limit data to contract tracing and aassociated purposes.
- The ACT Government is now considering introducing laws to similar effect.

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Lead Directorate:	Justice and Community Safety	INDEX
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QUESTION TIME BRIEF

JACS2021/48-001-001

Portfolio/s: Human Rights

ISSUE: FUNDING FOR VOCAL

Talking points:

- There is no doubt that victims of crime need access to services provided by the ACT Government, in particular access to appropriate and trauma-informed therapeutic services to assist in their recovery.
- Prior to 2012, the Victims of Crime Assistance League ACT (VOCAL) provided a volunteer victim support program with financial assistance from the ACT Government.
- However, when Victim Support ACT (VSACT) became part of the ACT Human Rights Commission in 2015-16, the volunteer program transitioned to operation by VSACT to improve its alignment with the Victim Services Scheme, which is administered by VSACT.
- The volunteer program is delivered by experienced and skilled volunteers at VSACT, which provides a single point-of-contact for both victim support and advocacy services.

If asked if the government would consider funding VOCAL again

- I am advised that VOCAL continue to provide a range of free support services to victims of crime in the ACT including emotional support, court support, and practical assistance; and work closely with VSACT including as a key referring agency.
- The ACT Government is committed to continuing to work in partnership with community agencies to support and improve services for victims of crime and other vulnerable groups in the ACT.
- The annual budget consultation process is one of the ways that Canberrans, community groups and local organisations can provide their view on how and where the Government should invest to boost services and infrastructure, as well as how government ensures a fair and sustainable base to fund this. Submissions are made through the YourSay website.

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- Budget submissions to the consultation process are often used to identify funding and service gaps, and for community organisations to propose how they be resourced to meet these gaps.

Background Information

- VOCAL was formed in response to unmet need in the community and was contracted from 2000 to 2012 to deliver practical assistance to victims of crime. At that time, VOCAL was exempted from being required to participate in an open tender process because of its specialty expertise in delivering a volunteer victim support program.
- In October 2011 an open tender process was conducted for the provision of this service, reflecting that a number of not-for-profit organisations had built volunteer service capacity.
- A number of community agencies tendered for the volunteer victim support service, and the contract was awarded to Communities@Work who established the *Side by Side: Volunteers Assisting Victims* program. That contract was entered into for up to three years to provide practical assistance and support to victims of crime, and to develop and conduct a community awareness program to promote the interests of victims.

Further Background information

- The Charter of Rights for Victims of Crime, established in the *Victims Rights Legislation Amendment Act 2020* which came into effect on 1 January 2021, will further improve the opportunities for victims of crime to receive information and participate in the justice system including in relation to access to information, supports and assistance.
- The Charter replaces the broad, aspirational 'governing principles for the treatment of victims of crime in the administration of justice' in the *Victims of Crime Act 1994* (under section 4) and details victim rights in areas including protection of privacy and safety; access to support services and assistance; provision of information and case updates; and opportunities to participate in the justice process.
- The *Victims of Crime Regulation 2000* (VOC Regulation) establishes the Victim Services Scheme (VSS) under the *Victims of Crime Act 1994* (VOC Act). The VSS outlines the eligibility criteria, levels of service provision and functions of the Victims of Crime Commissioner (VOCC) in relation to administering the scheme. This includes counselling and other therapeutic services, case coordination, and advocacy and assistance to victims as they navigate the criminal justice system.
- The recommendations from the review of the Victims of Crime Financial Assistance Scheme in the *Victims of Crime (Financial Assistance) Act 2016* (VOCFA Act), Victim Services Scheme (VSS) established in the VOC Regulation and victim levies (in Part 5 of the VOC Act and Part 7 the VOCFA Act) (the PAVER review which was tabled in June 2021) will continue to ensure the ACT is meeting the recovery needs of victims through appropriate financial and therapeutic assistance, and to ensure that these schemes are administratively streamlined and appropriately offset.
- The ACT Government holds an annual community consultation process for individuals and organisations to give feedback on gaps in government funding.

QUESTION TIME BRIEF

JACS2021/48-001-002

Portfolio/s: Human Rights

Issue: ACT Human Rights Commission – Complaints handling and resourcing

Talking points:

- The ACT Human Rights Commission provides a range of important services to our Canberra community which ensure that people's rights are protected.
- The Commission has long offered independent and impartial complaint handling for complaints about discrimination, health services, disability services, services for children and young people and services for older people.
- In 2019-20 the Commission's jurisdiction was expanded so that it could consider complaints about retirement villages and about the abuse and neglect of vulnerable people.
- In 2021, the Commission's jurisdiction was further expanded to cover complaints about occupancy agreements, victims rights and prohibited conversion practices.
- These changes recognise the excellent work that the Commission does in handling complaints fairly and impartially, and the confidence that the community has in the Commission to resolve difficult issues.
- An independent reviewwas conducted during 2020-21, as required under the Human Rights Commission Act, regarding changes that were made to the Human Rights Commission in 2016, including the bringing together of a range of complaints handling roles under one Commissioner. The final review report and the Governmetn response to the review was tabled in the Legislative Assembly in June 2021.
- The final report did not include recommendations that propose significant legislative reform of the Commission.
- The Government will continue to monitor the resourcing needs of the Human Rights Commission to ensure that it is well placed to perform its important functions.

Cleared as complete and accurate:	30/07/2021		
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Lead Directorate:	Justice and Community Safety	INDEX	
TRIM Ref:	JACS2021/48-001-002		

QUESTION TIME BRIEF

Background Information

- The protection of rights services reforms made changes that came into effect on 1 April 2016. These reforms consolidated all complaints handling under one Commissioner (the Discrimination, Health Services and Disability and Community Services Commissioner), with a view improving efficiencies and consistency.
- The effectiveness of these reforms is one of the matters that was considered by an independent review conducted by Insight Consulting Inc. The review sought the views of a range of stakeholders.
    - A separate Question Time Brief on the Progress of the Protection of Rights Services Review has been provided at JACS2021/48-001-014.
- From 1 July 2019 the Commission was given additional jurisdiction to conciliate complaints about retirement villages.
- From 14 May 2020 the Commission was given additional jurisdiction to consider complaints about the abuse and neglect of vulnerable people, as part of the response to the COVID-19 pandemic. These measures are temporary, expiring 12 months after the end of the emergency declaration, but will be reviewed by the Government before that date to determine whether the measures should be extended or made permanent.
- From 1 January 2021, the Commission has had jurisdiction to consider complaints about victims rights.
- From 4 March 2021, the Commission has had jurisdiction to consider complainst about occupancy agreements and prohibited conversion practices.
- The extent to which these new roles create additional work for the Commisison will be monitored, and any need for additional resources will be considered in the Government's normal budget processes.

QUESTION TIME BRIEF

JACS2021/48-001-009

Portfolio/s: Human Rights

Disability complaints to the Discrimination Health Services Disability and Community Services Commissioner

Talking points:

- A person can make a complaint to the Human Rights Commission (HRC) about matters relating to disability. Complaints related to disability can be made in a number of areas including discrimination, disability services, and vulnerable people complaints related to abuse, negect or exploitation of people with a disability.
- A complaint made on the basis of discrimination covers areas of public life including housing, employment, education, access to goods, services and facilities, health services, ACT Government services, accommodation and vilification on the grounds of disability.
- The HRC promotes the complaint handling service to people with a disability through community organisations and networks, disability advocacy and community legal services, the Official Visitors, and community and workplace information sessions.
- The number of disability related complaints received the HRC is consistent with our jurisdiction's size, and I've been advised that there has been a notable increase in the use of the complaint process by parties to a complaint as a way of informally resolving matters through conciliation, such as through the increased number of disacrimination and vilification complaints received over the last four years.

Key Information

Complaints	**2017**	**2018**	**2019**	**2020**	**1/1/21-30/6/21**
Disability service	27	21	13	8	5
Disability discrimination and vilification	47	65	100	89	57
Vulnerable people (disability)	N/A	N/A	N/A	13	9

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Cleared for public release by: Commissioner
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TRIM Ref: JACS2021/48-001-009

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QUESTION TIME BRIEF

TOTAL	**74**	**86**	**113**	**110**	**71**

- The NDIS Quality & Safeguards Commission commenced operation in the ACT on 1 July 2019 and handles complaints about NDIS services and supports
- The ACT Human Services Registrar can handle complaints about disability service providers in the ACT, the Office of the Senior Practitioner can deal with complaints about restrictive practices and people with a disability, and the Australian Human Rights Commission can also accept complaints about alleged disability discrimination in the ACT.
- The HRC continues to receive complaints about NDIS and non-NDIS disability services and supports and we endeavour to resolve complaints through conciliation where appropriate.

Background Information

- The NDIS Quality & Safety Commission commenced operation on 1 July 2019 and is the primary agency dealing with complaints regarding NDIS supprts and services in the ACT.
- While there has been an expected decline in disability service complaints received by the HRC since the commencement of the operation of the NDIS Quality and Safeguards Commission we note an increase in disability discrimination complaints has been received over the last four years.
- The commencement of the vulnerable people jurisdiction was in May 2020 and is not retrospective.

QUESTION TIME BRIEF

JACS2021/48-001-003

Portfolio/s: Human Rights

RIGHT TO A HEALTHY ENVIRONMENT

Talking points:

- The Parliamentary and Governing Agreement for the 10th Assembly commits the ACT Government to giving consideration to the inclusion of a 'right to a healthy environment' in the *Human Rights Act 2004*.

Key Information

- There is no standalone right to a healthy environment in the international human rights treaties to which Australia is a party (including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).
- The right to a healthy environment may be seen as an aspect of the right to health under the International Covenant on Economic, Social and Cultural Rights. In particular, the right to health includes the right to live in conditions that promote a healthy life (such as access to safe drinking water, adequate sanitation, healthy occupational and environmental conditions).
- The right to a healthy environment may also be seen as an aspect of the right to life, which is already protected under section 9 the *Human Rights Act*. This is because the right to life includes an obligation to address the general conditions in society that may give rise to threats to the right to life (including conditions such as environmental pollution).
- Similarly, the degradation of the environment may adversely affect the well-being of individuals and have direct repercussions on a person's private and family life and the home and may therefore be relevant to the right to privacy in section 12 of the *Human Rights Act.*
- Where the right to a healthy environment has been recognised, the content of that right has been expressed in different ways, including as entailing a procedural obligation (such as the right to access environmental information held by authorities), a substantive obligation (such as an obligation to protect against environmental harm), or a combination of both.
- In jurisdictions where a right to a healthy environment is recognised, it has been relevant in challenging administrative decisions that have environmental impacts.

Cleared as complete and accurate:	30/11/2020	
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QUESTION TIME BRIEF

Background Information

- In the statutory review of the Human Rights Act after its first 12 months of operation, it was noted that at the time the Act was introduced the government did not support incorporating a free-standing environmental right directly into law. It considered that many of the civil and political rights protected in the Human Rights Act would apply to environmental matters.[1] The recommendation from that report was that the Government should not consider specific mechanisms to protect environment-related rights before other recommendations were addressed.
- However, since that time a number of reforms have occurred to strengthen the Act and other rights have been added to the Human Rights Act, including cultural rights of Aboriginal and Torres Strait Islander Peoples, the right to education and the right to work.
- The Parliamentary and Governing Agreement for the 10th Assembly foreshadows consideration of the inclusion of a 'right to a healthy environment' in the *Human Rights Act 2004*.
- Government and increasingly companies are the targets of strategic litigation aimed at forcing policy changes on emissions to protect the environment and populations from the effects of climate change. A recent landmark Federal Court judgement (Sharma by her litigation representative *Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560) found the Minister owed a duty of care to the children of Australia not to cause harm to them arising from coal extraction and consequent climate change effects. In recent climate litigation filed by Greenpeace, a Dutch court in the Hague in May 2021 ordered Royal Dutch Shell to reduce its C02 emissions.

[1] ACT Department of Justice and Community Safety, *Human Rights Act 2004, Twelve-Month Review Report* (2006).

QUESTION TIME BRIEF

JACS2021/48-001-004

Portfolio/s: Human Rights

RIGHT TO HOUSING

Talking points:

- The *Human Rights Act 2004* (HRA) does not contain a specific right to housing.
- A number of stakeholders have called for the HRA to be amended to include a human right to housing.
- There is already some protection of housing related rights in the HRA:
    - Section 12 of the HRA provides for the right not to have one's home interfered with unlawfully or arbitrarily. This protects a person's home from trespass, harassment, nuisance, searches or surveillance.
    - Other human rights in the HRA such as the rights of children and families to protection and the right to equality will also be relevant considerations in decision-making by public authorities regarding public or community housing.
- The ACT Government has also taken practical steps to provide for more secure housing in the ACT. Amendments to the *Residential Tenancies Act 1997* which commenced on 3 March this year, for example, provide minimum rights and standards in occupancy occupancy. The ACT Government has also committed to progressing reforms to end no cause evictions from residential tenancies.
- The Government has previously introduced measures during the COVID-19 pandemic to alleviate the impact of the public health emergency on access to adequate and appropriate housing. This included:
    - changes to sustain tenancies by introducing a moratorium on evictions for non-payment of rent for COVID-19 impacted households (from 22 April to 22 October 2020);
    - the ability for landlords, tenants, grantors and occupants to negotiate temporary rent reductions;
    - a transition or 'grace' period from 22 October to 30 April 2021 to provide COVID-19 impacted households more time to repay rent arrears prior to facing eviction; and

- a requirement that the ACT Civil and Administrative Tribunal consider making a payment order (so that a tenant can stay in their home) rather than ordering eviction for COVID-19 impacted households.

- The Government has committed to an incremental approach to the inclusion of Economic, Social and Cultural rights in the HRA, to ensure that the implications of new rights are properly understood by both public authorities and the community, to allow proper implementation and to build a genuine culture of human rights.
- In recent years the HRA has been expanded to protect the right to education, the cultural rights of Aboriginal and Torres Strait Islander peoples and the rights of workers.
- In the 10th Parliamentary and Governing Agreement, the Government has committed to considering the inclusion of the right to a healthy environment in the HRA.
- Over time other important Economic social and cultural rights such as the right to housing and the right to healthcare are likely to be considered.

Key Information

- Other jurisdictions in Australia with human rights legislation do not yet have a freestanding right to housing in their respective human rights Acts.
- The right to housing is established in international law by article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* and recognises the 'right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.
- The right to housing is not merely a right to have shelter, it encompasses adequate privacy, space, security, lighting, ventilation, basic infrastructure, and location – all at a reasonable cost.[1]
- The right to housing applies to everyone. Individuals as well as families are entitled to adequate housing regardless of age, economic status, group or other affiliation or status. Enjoyment of the right must not be subject to any form of discrimination.[2]

[1] UN Committee on Economic, Social and Cultural Rights, *General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant),* 13 December 1991, E/1992/23.
[2] UN Committee on Economic, Social and Cultural Rights, *General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant),* 13 December 1991, E/1992/23, [6].

QUESTION TIME BRIEF

Background Information

- In 2010 an Australian Research Council linkage project between the Australian National University and the Justice and Community Safety Directorate examined the feasibility of introducing economic, social and cultural rights into the HRA. The report from that project was published in 2010 and recommended that the HRA be amended to include economic, social and cultural rights in the HRA, including the right to housing. [3]
- The Government response to that report noted that an incremental approach to the adoption of economic, social and cultural rights was preferred, with the right to education being the initial focus but with the potential for further economic, social and cultural rights to be considered over time.
- In 2014, the Government undertook a statutory review into the operation of the Human Rights Act focusing on the including of economic, social and cultural rights in the HRA. This report was tabled by the Attorney-General in the Legislative Assembly on 27 November 2014.
- The review concluded that the right to housing was substantially satisfied by existing policy, initiatives and services and given effect by laws including *Residential Tenancies Act 1997* (ACT), the *Housing Assistance Act 1997* (ACT), the *Discrimination Act 1991* (ACT) and the *Utilities Act 2000* (ACT).
- In September 2020 the ACT Council of Social Services (ACTCOSS), supported by Canberra Community Law and the Women's Legal Centre, called for the ACT Government to enshrine the right to housing in the HRA. [4]

[3] Australian Capital Territory Economic Social and Cultural Rights Research Project, Australian Research Council Linkage Project LP0989167 Report September 2010.
[4] https://www.canberratimes.com.au/story/6918107/social-services-call-for-more-act-human-rights-protections/

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TRIM Ref:	JACS2021/48-001-004	

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QUESTION TIME BRIEF

JACS2021/48-001-005

Portfolio/s: Human Rights

ISSUE: Victims Rights Legislation Amendment Act 2020

Talking points:

- The *Victims Rights Legislation Amendment Act 2020* commenced on 1 January 2021, meeting the ACT Government's commitment to establish a Charter of Rights for Victims of Crime.
- The Charter was developed in close consultation with key stakeholders including the Victims Advisory Board, the Victims of Crime Commissioner, justice agencies and most importantly, victims of crime themselves.
- The Charter builds on the ACT's strong history of supporting victims and upholding human rights which includes that the ACT led:
    - Australian jurisdictions with the introduction of legislated governing principles for the treatment of victims of crime in the administration of justice in 1994;
    - the establishment of the *Human Rights Act 2004*; and
    - the introduction of the statutory Victims of Crime Commissioner role in 2010, and the subsequent integration of that position into the Human Rights Commission in 2016.
- The ACT's Charter of Rights for Victims of Crime now acknowledges the important role of victims in the justice system, ensures that victims are treated with respect, and that the risk of their further trauma is minimised.
- The Charter details victim rights in areas including protection of privacy and safety; access to support services and assistance; provision of information and case updates; and opportunities to participate in the justice process.
- An accountability framework for the Charter will ensure that justice agencies uphold victims' rights.
- The accountability framework for the Charter enables victims to approach a justice agency directly, the Victims of Crime Commissioner (VOCC) or the ACT Human Rights Commission (HRC) with a complaint about a victim right.

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Lead Directorate:	Justice and Community Safety	INDEX
TRIM Ref:	JACS2021/48-001-005	

If asked about how the independence of justice agencies is protected under the Charter:

- The Charter builds on the commitment of justice agencies to victims of crime. The independence of justice agencies is protected in the Charter through a range of measures including:
    - The DPP need not comply with HRC complaint process when participation would impact on a prosecution or their independence.
    - Courts and tribunals are only obliged to uphold the Charter in an administrative capacity, not when exercising judicial functions. Judges and Magistrates are excluded from compliance with obligations.
    - The Charter does not create legal rights that could give rise to civil action; affect the interpretation or operation of other territory laws; or affect the validity, or provide grounds for review, of any judicial or administrative act or omission.
    - Justice agencies do not commit an offence if a requirement of the *Human Rights Commission Act 2005* is not upheld in relation to the victim rights complaints consideration process for example to provide a document or attend conciliation.

If asked about the implementation of the Charter:

- The implementation of the Charter is underway to support victims to access rights set out in the Charter and to support justice agencies to uphold rights, including through the development of new information materials.
- Three key issues identified during Charter consultations warrant further consideration and policy solutions are being further explored:
    - ways to strengthen the delivery of Victim Impact Statements;
    - whether to expand the categories of victims who can receive information from the adult victims register; and
    - how to protect victim privacy when personal information such as counselling records are subpoenaed.

QUESTION TIME BRIEF

Background Information

- A Question Time Brief on Implementation of the Charter of Rights for Victims of Crime has been separately provided at JACS2021/48-001-016.
- The Parliamentary Agreement to the 9th Legislative Assembly committed to the introduction of an ACT Rights of Victims Charter. All other states and territories in Australia have introduced victim rights as principles or guidelines.
- During the public consultation period from 22 June to 27 August 2018, over 440 community members were reached including feedback from over 100 direct victims of crime.
- Common feedback from victims of crime during consultations included that they wanted information and support in a timely manner so they can choose how to interact with the justice system, and opportunities to participate in processes and be consulted about key decisions. Having a voice in the justice system is particularly important for diverse and marginalised community members.
- Providing opportunities for victims of crime to be informed and have a voice in the justice process leads to improved outcomes for the community and justice system more broadly, including increased confidence in reporting crimes, better evidence provision, reduced re-traumatisation, and a more efficient and transparent justice process.

ACT Government

QUESTION TIME BRIEF

JACS2021/48-001-006

Portfolio: Human Rights

ISSUE: DISCRIMINATION ACT REVIEW

Talking points:

Discrimination Act

- The ACT's Discrimination Act makes it unlawful for someone to discriminate against another person on the basis of a protected attribute, in areas of public life. These areas include education, employment and in receiving goods and services.
- The Discrimination Act identifies a wide range of protected attributes, including race, sex, disability, sexual orientation, religious conviction, and gender identity. More recently added attributes are accommodation status, employment status and immigration status.
- Under the Parliamentary and Governing Agreement for the 10th Assembly, this Government agreed to review the Discrimination Act as part of the implementation of the Capital of Equality Strategy.
- The First Action Plan under the Capital of Equality Strategy commits to "Progress consultations on reforms to the *Discrimination Act 1991*, including reforming exceptions that have a discriminatory effect on the LGBTIQ+ community, drawing on recommendations of the Law Reform Advisory Council."
- The Government has already given effect to a number of the ACT Law Reform Advisory Council Council's recommendations, including through:
    - the *Discrimination Amendment Act 2016*, which refined the objects of the Discrimination Act, broadened its coverage by introducing new protected attributes, refined existing protected attributes, simplified the complaints procedure to promote access to justice, strengthened the law on victimisation so complainants are protected from the threat of detriment for exercising their rights, and expanding protections against vilification to apply to people with disability;
    - the *Discrimination Amendment Act 2018*, which made targeted reforms to prevent discrimination against LGBTIQ+ students and staff in religious educational institutions;

- the *Justice Legislation Amendment Act 2020*, which changed the definition of 'intersex status' to 'sex characteristics' and included 'gender expression' within the definition of 'gender identity'.

- I intend to release a discussion paper for public consultation focusing on reform proposals in relation to the range of exceptions in the Discrimination Act (there are currently over 50 exceptions) as well as the scope of application of the Act to different areas of public life and positive duties to prevent discrimination.
- Public consultations will take place with government stakeholders and affected groups, including LGBTIQ+ advocacy groups, clubs, employer and employee groups, and the ACT Law Society and ACT Bar Association.
- Former Attorney-General Mr Ramsay, as a special adviser, has also undertaken preliminary high level conversations with key stakeholders in the community. The results of these coversations will feed into the consultation process.

QUESTION TIME BRIEF

JACS2021/48-001-007

Portfolio/s: Human Rights

ISSUE: Progress of PAVER Review

Talking points:

- Victims need access to therapeutic support services and financial assistance to aid in their recovery and encourage crime to be reported.
- The PAVER (Project Assisting Victims' Experience of Recovery) Review of the:
    - Victims of Crime Financial Assistance Scheme - in the *Victims of Crime (Financial Assistance) Act 2016*
    - Victim Services Scheme - established in the *Victims of Crime Regulation 2000,* and
    - victim levies - in Part 5 of the *Victims of Crime Act 1994* and Part 7 the *Victims of Crime (Financial Assistance) Act 2016*)

  will ensure the ACT is well positioned to meet the recovery needs of victims, and that ACT's schemes are administratively efficient and appropriately offset by victim levies.
- $120,000 was allocated for the Review which was conducted by an independent consortium led by the Australian National University (ANU).
- An independent Review team has consulted with justice and legal stakeholders, people who have experience of crime and accessing the relevant victim support schemes, as well as vulnerable groups including Aboriginal and Torres Strait Islander community members.
- I would like to thank these groups for their valuable contributions to the Review, so that victim schemes continue to be trauma-informed, accessible and flexible.

If asked about the current status of the Review

- The Review was tabled in the Legislative Assembly on 24 June 2021.
- The Review report makes recommendations intended to ensure the schemes are operating together efficiently, and in a way that supports recovery and acknowledges the harmful effects of crime on victims.

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Cleared for public release by:	Executive Branch Manager	Ext: 61451
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Some of these have cost and legislative implications which need to be further considered.

- A Government Response to the Review is under consideration with the support and expertise of the Victims of Crime Commissioner, ACT Courts and Tribunal, and ACT Policing.
- The tabling of this Review is the start of the current process, and more work lies ahead to understand how the Review recommendations can be meaningfully implemented to achieve strong outcomes for victims.

Background Information

- On 9 March 2021 the final report of the Review of the Victims of Crime Financial Assistance Scheme, Victims Services Scheme and the Victim levies was provided to JACS and included 17 overarching recommendations for Government to consider with 81 recommendations in total (ie including sub-recommendations).
- The methodology for the Review included considering feedback from written submissions, interviews, focus groups and surveys, as well as analysis of relevant data. Key stakeholders were invited to participate including justice and victim support agencies, people who have experienced crime as a victim, and therapeutic service providers who are brokered to provide services under the VSS:
    - The first phase of the Review gathered data from relevant justice agencies.
    - The second phase gathered data from people who have experienced violent crime in the ACT and have accessed Victim Support ACT (VSACT).
    - The Review also collaborated with Aboriginal and Torres Strait Islander stakeholders and VSACT staff to co-design services that best meet client needs and utilise resources.

What is the Financial Assistance Scheme?

- The Financial Assistance Scheme (FAS) set out in the *Victims of Crime (Financial Assistance) Act 2016* (VOCFA Act) provides payments to victims, including their families and carers, to assist them to recover from acts of violence, including in relation to immediate needs, economic loss and recognition of the harm and trauma caused by violence. The review was required because:
    - The operation of VOCFA Act was required to be reviewed as soon as practicable after the end of its third year of operation (expired section 98(2), VOCFA Act).

- The introduction of the VOCFA Act on 1 July 2016 reformed the statutory scheme for financial assistance for victims of crime in the ACT, transitioning from a Court-based process to an administrative scheme where applications are determined by the Victims of Crime Commissioner (VOCC), and a timely review of those arrangements was appropriate as part of the overarching FAS review.

What is the Victim Services Scheme?

- The Victim Services Scheme (VSS) outlines the eligibility criteria, levels of service provision and functions of the VOCC in relation to administering the scheme. This includes counselling and other therapeutic services, case coordination, and advocacy and assistance to victims as they navigate the criminal justice system.
    - Reviewing the VSS at the same time as the FAS presented an opportunity to ensure the Schemes are operating effectively and in alignment.

What are the victim levies?

- The victims levies offset the delivery of services to victims of crime. They include the victims' services levy (Part 5 of the VOC Act) and the victims' financial assistance levy (Part 7 of the VOCFA Act).
    - Reviewing the amount and administration of the victim levies will assist in ensuring that they are administratively streamlined and that services available to victims of crime under the FAS and VSS are appropriately offset.

QUESTION TIME BRIEF

JACS2021/48-001-15

Portfolio/s: Human Rights

Claims to Victims of Crime Financial Assistance Scheme and Victims Services Scheme

Talking points:

- Victim Support ACT (VSACT) provides services to victims of crime in the ACT to promote their recovery and continued participation in the social, economic and cultural life of their community.
- Victims of crime in the ACT have approached VSACT in unprecedented numbers recently and VSACT is helping more community members than ever before, with 2019-20 being the service's busiest year in VSACT's history.
- VSACT administers two key schemes for the benefit of victims of crime, the Victim Services Scheme and the Victims of Crime Financial Assistance Scheme.
- In 2019-20, the Victim Services Scheme registered 689 new clients for case coordination, a 31% increase on 2018-19. In the same year, the Scheme helped over 2,100 clients with case coordination, advice and information, counselling, court support and justice advocacy. This was a 27% increase on the previous year, and a 53% increase on the same data 5 years ago.
- The Victims Financial Assistance Scheme received 513 applications in 2019-20, a 13% increase on 2018-19, and a 375% increase in comparison to the scheme's first year of operation (2016-17). The Scheme paid victims a total of $3.3 million in financial assistance in 2019-20, a 32% increase on 2018-19.
- Further, VSACT's Aboriginal and Torres Strait Islander program provides crucial outreach services to community. The program assisted 186 clients in 2019-20, a 48% increase on 2018-19.

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QUESTION TIME BRIEF

Key Information

- The Victims Services Scheme provides therapeutic care and advocacy to victims which includes:
    - access to free therapeutic supports using a brokerage model that relies on over 100 approved small business providers who deliver counselling, massage and other services to clients;
    - in-house case coordination, safety planning and justice advocacy (including ensuring victims rights are protected in line with the new Charter of Victims Rights); and
    - a court support program provided by trained, highly skilled volunteers.
- The Financial Assistance Scheme acknowledges the harmful effect of crime and assists victim to recover through three types of payments:
    - immediate needs payments which assist with urgent medical and safety expenses;
    - payments to cover economic loss; and
    - recognition payments which acknowledge the trauma experienced by victims.
- Both schemes have experienced a significant increase in demand over the past 3 years.
- In the last 12 months, additional safety and financial pressures reported by clients in the context of COVID-19, and community need arising from current community discussion about sexual assault, have further driven demand for victim services.
- VSACT has worked intensively to respond to this increased demand, prioritising clients with urgent safety concerns whilst maximising access to long-term, intensive support for clients with complex needs.

QUESTION TIME BRIEF

Background Information

- The Victims of Crime Commissioner is the head of agency for VSACT which became part of the Human Rights Commission in 2016.
- Government is in the final stages of a review of VSACT's frontline services. The review will explore whether both schemes represent best practice in the delivery of support, assistance and advocacy to victims. The review also includes a legislative review of the first three years of operation of the *Victims of Crime Financial Assistance Act ACT* (2016).
- Other functions undertaken by the Victims of Crime Commissioner include:
    - The resolution of victims rights concerns brought under the new Charter of Rights for Victims of Crime that commenced on 1 January 2021.
    - Administration of the ACT's groundbreaking Witness Intermediary Program, which involves independent communication experts assisting vulnerable witnesses to communicate their best evidence to police and at court.
    - Administration of the ACT's new 'Family Violence Safety Action Pilot', a project facilitated by the ACT Government via the Commonwealth's National Partnership Agreement on Family Violence. The Pilot, which will be evaluated in June 2021, provides coordinated risk identification, assessment and response for high-risk family violence matters that present outside of the criminal justice system.

QUESTION TIME BRIEF

JACS2021/48-001-011

Portfolio/s: Human Rights

ISSUE: Protecting Vulnerable people (covering matters from the Hearing QON)

Talking points:

- As part of the COVID-19 emergency measures, the ACT Government has provided an enhanced jurisdiction to the ACT Human Rights Commission to consider complaints about the abuse, neglect or exploitation of vulnerable people, including older people with a disability.
- This new measure complements other reforms progressed by the Government to address elder abuse and support vulnerable people.
- The Human Rights Commission has already dealt with a number of matters under this new power and has been able to provide assistance to vulnerable people to address a range of concerns, to resolve issues with family members or others and to ensure that they are receiving appropriate support.
- We will consider these powers before they are due to expire (which is a year after the last emergency declaration ceases) with a view to continuing this jurisdiction on a permanent basis.

Background Information

- A number of protections for vulnerable people were introduced in response to the COVID-19 emergency. The new complaint handling jurisdiction for vulernable persons for the ACT Human Rights Commission was introduced by the *COVID-19 Emergency Response Legislation Amendment Act 2020*.
- Some measures, including safeguards relating to the risk of misused powers of attorney, have already been made permanent, and others will be reviewed prior to expiry to consider whether they should be continued on a permanent basis.
- The Government is considering whether the vulnerable complaints mechanisms will be made permanent.
- Other measures taken in this space include the establishment of a criminal offence in relation to the abuse and neglect of vulnerable persons. The HRC powers complement this offence as the HRC can undertake and initial consideration of

matters and refer particularly serious cases to the police for consideration of prosecution.

QUESTION TIME BRIEF

JACS2021/48-001-016

Portfolio/s: Human Rights

Implementation of the Charter of Rights for Victims of Crime

Talking points:

- The *Victims Rights Legislation Amendment Act 2020* commenced on 1 January 2021, meeting the ACT Government's commitment to establish a Charter of Rights for Victims of Crime.
- The Charter is being underpinned and implemented by a range of practical initiatives to ensure that victims can access their rights.

If asked about key implementation initiatives:

- The Victims of Crime Commissioner (VOCC) has been allocated $45,000 for the development of community education and information resources about the Charter and justice processes.
- The adult, youth and affected persons registers are relocating to Victim Support ACT (VSACT) to improve information flow and provide wrap-around support and advocacy for victims when engaging with the justice system.
- Justice agencies are developing guidelines about how they will support victims' rights, which must be published on their website by 1 January 2022.
- Key justice agencies have been given extra ongoing staff resources to assist with victim engagement, including communicating with victims and providing information to other agencies.
- The Victims Advisory Board, a statutory body tasked with providing advice to me on policy and the interests of victims of crime, is monitoring the implementation and impact of the Charter.
- A two year VOCC flexible fund pilot is being trialled, to ascertain how flexible funds can assist to meet diverse and individually identified victim needs to support access to victim rights in practice, filling gaps where other provisions are not available (with funding of $25,000 per year for two years from July 2021).

Cleared as complete and accurate:	30/07/2021		
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Lead Directorate:	Justice and Community Safety		
TRIM Ref:	JACS2021/48-001-016		

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Background Information

- The Parliamentary Agreement to the 9th Legislative Assembly committed to the introduction of an ACT Rights of Victims Charter. All other states and territories in Australia have introduced victim rights as principles or guidelines.
- The Charter details victim rights in areas including protection of privacy and safety; access to support services and assistance; provision of information and case updates; and opportunities to participate in the justice process.
- The accountability framework for the Charter enables victims to approach a justice agency directly, the VOCC or the ACT Human Rights Commission (HRC) with a complaint about a victim right.

If asked about the purpose of the victims registers:

- The adult, youth justice and affected persons registers provide information to victims about an offender's sentence and treatment so victims can make decisions about their safety and participate in justice processes.

If asked about the flexible pilot fund:

- A flexible pilot fund is being trialled to respond to public consultation feedback that victims most want and value a justice system that is responsive to their individual needs. While the ACT has multiple avenues for victim support, there are often gaps. As the ACT is a small jurisdiction, it is not viable to establish entirely new services to meet these individualised needs, which are often varied and difficult to predict.
- This pilot is based on a South Australian model. Examples of where funds may be used to support victim participation in the justice process include providing transport, childcare, or interpreting costs for a victim to watch a court proceeding.

If asked about FTE for justice agencies:

- Justice agencies have been provided with the following additional resource (some of which are currently being recruited):
    - VOCC & HRC: 1.2 FTE (in addition to relocation of ASO6 FTE from Corrections to VSACT when the adult victims register is relocated)
    - DPP 1 x FTE
    - ACT Policing 1 x FTE
    - Courts 1 x FTE
    - Corrections 0.5 x FTE

QUESTION TIME BRIEF

JACS2021/48-001-017

Portfolio/s: Human Rights

Complaints to the Victims of Crime Commissioner

Talking points:

- The ACT Charter of Victims Rights commenced in January 2021 and is legislated in the *Victims of Crime Act 1994* (ACT). The Charter aims to protect and promote the rights of victims of crime in the ACT when they engage with criminal justice agencies, including ACT Policing, the DPP, ACT Corrective Services, the Sentence Administration Board and the administrative arm of the courts.
- The Charter is a crucial opportunity to strengthen the ACT's human rights framework and better uphold the rights and interests of those affected by crime. All citizens in the ACT are rights holders under the *Human Rights Act 2004* and the Charter assists to detail how human rights apply in situations where a citizen is the victim of a crime.
- The Charter is the most comprehensive, legislated set of victims rights in Australia and contains specific rights for victims of crime in relation to:
    - respect, privacy and safety;
    - access to support services and other forms of assistance;
    - provision of information about the criminal justice system and its processes;
    - provision of updates and information about the police investigation, court proceedings and decisions made throughout the criminal justice process;
    - participation and the right to be heard as a victim wherever possible throughout criminal justice proceedings, for example the right to provide views on key decisions made by prosecution.
- The Charter has an accountability framework that ensures victims' concerns are heard, acknowledged and addressed and that provides victims with choices about how they wish to raise concerns regarding a breach of their rights.

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Contact Officer name:	Karen Toohey
Lead Directorate:	Justice and Community Safety
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- Under the Charter victims may choose to raise concerns about a breach of rights either:
    - directly with the justice agency;
    - with the Victims of Crime Commissioner;
    - by making a complaint to the Disability and Community Services Commissioner at the Human Rights Commission; or
    - with any other relevant complaints body, for example the Ombudsman or integrity commission.
- A victim is not required to have made a complaint to a justice agency before raising a concern with the Victims of Crime Commissioner, the Disability and Community Services Commissioner or any other complaints body.
- The Victims of Crime Commissioner has broad information gathering powers to assist in rapid resolution of victim rights concerns.
- The Disability and Community Services Commissioner can offer victims an independent conciliation process that is restorative in nature and provides a safe environment for the victim to express their concerns about the justice agency's conduct and its impact on their life. This is a new option for victims seeking to resolve their concerns about justice agencies.
- The accountability framework also aims to drive systemic improvements in the way that justice agencies engage with victims.
- Each year, the Victims of Crime Commissioner must include a statement of how many victim rights concerns were received in her annual report. For each concern raised, the Victims of Crime Commissioner must also include information concerning the right in relation to which the concern was raised and whether the concern was resolved.
- More information about the Charter of Victims Rights can be found at the Victim Support ACT website. Victim Support ACT provides a range of free and confidential services to assist victims of crime with their recovery and to access their rights and entitlements. Victims of crime may contact Victim Support ACT via email at VictimSupportIntake@act.gov.au or by phone on 02 6205 2222. To get information about the complaint process, the charter or rights or to make a complaint victims of crime can call the Human Rights Commission on 6205 2222 or email human.rights@act.gov.au.

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QUESTION TIME BRIEF

Key Information

- Since 1 January 2021, the Victims of Crime Commissioner has received and recorded 35 victims rights concerns under the Charter of Rights.
- To date, the most common agency about whom concerns have been raised is ACT Policing.
- To date, the most common rights which victims have raised concerns about with the Victims of Crime Commissioner have been about a justice agency not engaging with a victim respectfully and with appropriate regard to the victim's personal situation, needs, concerns, rights and dignity (s 14C) and the police not updating victims about the status of investigations as required (s 16A).

Background Information

- Prior to 1 January 2021, the Victims of Crime Commissioner had an obligation under the *Victims of Crime Act 1994* (ACT) to monitor and promote compliance with the 'Governing Principles'.
- The Governing Principles were a set of statements that established a framework for how criminal justice agencies should engage with victims. The Victims of Crime Commissioner was required to try to resolve any concern raised by a victim about a justice agency's non-compliance with the Governing Principles.

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QUESTION TIME BRIEF

JACS2021/48-001-008

Portfolio/s: Human Rights

Work to further Voluntary Assisted Dying and territory rights

Talking points:

- The ACT is not able to legislate in relation to voluntary assisted dying due to restrictions imposed by the Commonwealth under the *Australian Capital Territory (Self-Government) Act 1988* (Self Government Act).
- This is a limitation on the rights of people in the ACT to participate in public life and decision-making as part of a democratic process, and also limits equality rights as these restrictions do not apply to residents of other States.
- In the first half of 2021, all States in Australia will have either passed legislation for voluntary assisted dying or will likely have a Bill before their parliament. This starkly demonstrates the inequitable position of the ACT and the Northern Territory - which is subject to similar restrictions.
- On 3 March 2021 The Northern Territory Attorney General the Hon Selena Uibo and I wrote to the Commonwealth Attorney-General, Deputy Prime Minister and Assistant Minister for Regional Development and Territories raising our concerns about the impact of the Commonwealth legislative impediment on Territory rights.
- On 31 March, members from the ACT Legislative Assembly across the three parties called on the federal Parliament to bring forward a bill to remove the law by the end of the year.
- On 23 April 2021, Minister Uibo and I wrote to the incoming Commonwealth Attorney-General Michaelia Cash, drawing her attention to our original letter and requesting a response.
- On 24 May the Federal Labor member for Fenner, Andrew Leigh introduced a motion in the Commonwealth Parliament calling for the restoration of Territory rights to legislate on voluntary assisted dying.
- The ACT Government will continue to advocate for change until this unfair Commonwealth law is removed to allow people in this Territory to exercise democratic rights and decide the laws that govern them on such an important issue.

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Cleared for public release by:	Executive Branch Manager	Ext:	
Contact Officer name:	Zoe Hutchinson		76192
Lead Directorate:	Justice and Community Safety	INDEX	
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QUESTION TIME BRIEF

Key Information

- Voluntary assisted dying engages the right to life and the right to privacy and autonomy. It also engages the freedom of thought, conscience, religion and belief where health practitioners conscientiously object to participating in voluntary assisted dying.
- The right to life is generally not interpreted as conferring a 'right to die', but it also does not require an absolute prohibition on assistance in dying.
- The United Nations Human Rights Committee has expressly considered the issue of voluntary assisted dying and its interaction and consistency with the right to life under certain circumstances, noting:

  > "States parties that allow medical professionals to provide medical treatment or the medical means to facilitate the termination of life of afflicted adults, such as the terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity, must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and unambiguous decision of their patients, with a view to protecting patients from pressure and abuse." (Human Rights Committee, General Comment No. 36: Article 6: Right to life (2019), [9]).

- A balance must be struck between the protection of human life and the protection of a person's right to respect for their privacy and personal autonomy.
- If the ACT were to legislate a voluntary assisted dying regime, strong safeguards would need to be in place to prevent abuse. This would include strong safeguards around eligibility criteria, as well as provisions allowing for conscientious objection by health practitioners.
- Amendments introduced into the ACT's Self Government Act by the Federal Parliament in 1997 prohibit the ACT from legislating on euthanasia or assisted suicide.
- It has been the Government's longstanding view that Commonwealth laws that preclude the ACT from legislating in this area should be amended.
- By prohibiting the citizens of the ACT from deciding for themselves, through their elected representatives, whether to legislate in the area of voluntary assisted dying, the legislative restrictions on the ACT imposed by the Federal Parliament limit the right to take part in public life.
- Citizens of the ACT are also entitled to enjoy their human rights without distinction or discrimination of any kind. Citizens of the ACT are denied their right to participate in public life on questions relating to voluntary assisted dying on the basis of their residence in a Territory; their counterparts in neighbouring States are able to decide such questions for themselves (through electing representatives).

- Regardless of one's views on voluntary assisted dying, there should not be any controversy in allowing the ACT to decide for itself whether to introduce such legislation, and to allow citizens of the ACT an equal opportunity to legislate on this matter if the community desires.
- Other states in Australia have taken action on this:
    - Victoria introduced voluntary assisted dying legislation in 2017 - with significant focus on human rights issues.
    - Voluntary assisted dying became an end of life option available to eligible adults in Western Australia in mid-2021.
    - In March 2021, the Tasmanian parliament passed the *End of Life Choices (Voluntary Assisted Dying) Bill 2020*.
    - On 10 June 2021 the South Australia's lower house passed the *Voluntary Assisted Dying Bill 2021*.
    - The Queensland Law Reform Commission is currently considering draft legislation.
    - A private member's bill will be introduced in New South Wales in 2021.
- In the first half of 2021, *all* states in Australia will have either passed legislation for voluntary assisted dying or will likely have a Bill before their parliament. This starkly demonstrates the inequitable position of the ACT.

Background Information

- The effect of the *Euthanasia Laws Act 1997* (Cth) was to amend the *Australian Capital Territory (Self-Government) Act 1988* (Cth) so that the ACT is prohibited from legislating on euthanasia or assisted suicide.
- The issues surrounding legislating voluntary assisted dying in the ACT are considered in some detail in the Report of the ACT Legislative Assembly Select Committee into End of Life Choices in March 2019.

Media attention

- Rita Joseph's Letter to the Editor (Legal duty to protect life) was published in the Canberra Times on 19 July 2021.
- The letter focuses on the right to life under the International Covenant on Civil and Political Rights (ICCPR), and the duty therein to protect individuals from the arbitrary deprivation of life, as well as the obligation of the Federal Government to strike down any State or Territory law inconsistent with Commonwealth law. Joseph argues that the Commonwealth's ratification of the ICCPR empowers the Commonwealth to override State or Territory law inconsistent with the rights included in that Covenant, including the right to life.
- Joseph submits that legislation providing for voluntary assisted dying would be inconsistent with the right to life.

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- For the reasons set out briefly above, Joseph's argument is not a correct interpretation of the status of voluntary assisted dying legislation and the right to life under international human rights law (IHRL).
- Another letter to the Editor from Steve Ellis of Hackett (Argument flawed) was published in the Canberra Times on 20 July also noting the flaws in Joseph's argument. While not engaging specifically with IHRL arguments, Ellis notes Joseph's lack of focus on a key element of the right to life – namely the right to protect against arbitrary deprivations of life.
- Joseph has made similar submissions to previous mechanisms considering voluntary assisted dying or end of life choices legislation in both the ACT and other jurisdictions.

QUESTION TIME BRIEF

JACS2021/48-001-013

Portfolio/s: Human Rights

ISSUE: Progress of the Aboriginal and Torres Strait Islander Children's Commissioner

Talking points:

- The Government is fully committed to implementing all the recommendations of the Our Booris Our Way (OBOW) review - including the recommendation to establish an Aboriginal and Torres Strait Islander Children's Commissioner. That's why we've included this commitment in the 10th Parliamentary and Governing Agreement.
- The Protection of Rights Services Review also supported the establishment of this new Commissioner role and the Government has formally agreed to this recommendation in its response to that Review.
- There is a desire in the community to have the Commissioner established as soon as possible. This is a priority I share as the Minister responsible for this reform.
- However, it is essential that the Commissioner have the confidence of the Aboriginal and Torres Strait Islander community, and that the policy and legislative framework should be developed through an authentic and representative co-design process. Project timeframes need to accommodate the considered, significant and time-intensive nature of such a process.
- JACS has been working with the Our Booris Our Way Implementation Oversight Committee to develop a co-design process to develop and refine the proposed Commissioner's scope, functions, governance arrangements and recruitment process.
- The ACT Government has engaged Jumbunna Institute for Indigenous Education and Research (Jumbunna) at University Technology Sydney, to lead the co-design process to establish an Aboriginal and Torres Strait Islander Children's Commissioner. Professor Larissa Behrendt will lead the project team.
- Work on the co-design process commenced in June 2021 and a timeline to establish the new Commissioner will be made public.

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- The co-design process will involve the release of a discussion paper and a number of community consultation sessions, to develop a model for the Commissioner.

Key Background Information

- The Our Booris, Our Way review was announced in large part to address the over-representation of Aboriginal children in the care and protection, and juvenile detention, systems.
- In December 2019, the OBOW Review issued 28 recommendations to Government. However as early as 2018, the Government was informed of the recommendation that an Aboriginal Children's Commissioner be established.
- The establishment of the proposed Commissioner sits within your portfolio as Minister for Human Rights, but many of the OBOW recommendations will be actioned and implemented by the Minister for Aboriginal and Torres Strait Islander Affairs.
- The Protection of Rights Services Review also considered the OBOW recommendation to establish a Commissioner. The PoRS Review final report and Government Response to the review was tabled in the Legislative Assembly on 22 June 2021. The PoRS review underpins the broad community and stakeholder support for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT. The Government Response to the PoRS Review Report agreed to establish the new Commissioner role.

Further Background Information

- On 12 February you received a redirected Question on Notice regarding the progress the Government is making toward appointing and Aboriginal and Torres Strait Islander Children's Commissioner.
- You replied [MIN:2021/000379] that the Government did not have a specific timeframe and that preliminary work on this recommendation has been underway for some time.

QUESTION TIME BRIEF

JACS2021/48-001-014

Portfolio/s: Human Rights

Progress of the Protection of Rights Services Review

Talking points:

- The Protection of Rights Services Review (PoRS Review) formally commenced on 24 June 2020.
- The PoRS Review was conducted by an independent reviewer, Insight Consulting Australia.
- The purpose of the review was to consult with stakeholders and the broader community to consider the extent to which the protection of rights services reforms achieved their intended aims across the following areas:
    - leadership and governance;
    - complaint handling;
    - service delivery;
    - improving the operation of the Public Trustees and Guardian;
    - visibility in the community; and
    - other issues raised by stakeholders during the consultation.
- The review also considered and consulted stakeholders and the community in relation to the recommendation from the interim report on the *Our Booris, Our Way* review to establish an Aboriginal and Torres Strait Islander Children's Commissioner.
- The PoRS Review final report and the Government Response to that report was tabled in the Legislative Assembly on 22 June 2021.
- The final report did not include recommendations that propose significant legislative reform of the HRC or PTG.
- The PoRS Review and the Government response to the report supports the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT, which the Government committed to in the 10th Parliamentary and Governing Agreement.

Cleared as complete and accurate:	30/07/2021		
Cleared for public release by:	Executive Branch Manager		Ext: 76192
Contact Officer name:	Erin Maher	INDEX	Ext: 51445
Lead Directorate:	Justice and Community Safety		
TRIM Ref:	JACS2021/48-001-014		

- The Government agreed, or agreed in principle to all recommendations coming out of the Protection of Rights Services Review final report.
- The review consulted widely with government directorates and agencies and external stakeholders, including peak bodies, non-government organisations, Aboriginal and Torres Strait Islander organisations and community members and the public.

Key Background Information

- The *Protection of Rights (Services) Legislation Amendment Act 2016* brought about a range of reforms to the structure and operation of protection of rights services in the ACT, bringing the Public Advocate and the Victims of Crime Commissioner into the ACT Human Rights Commission (HRC), and transferring the guardianship functions of the Public Advocate to the Public Trustee and Guardian (PTG).
- The complaints handling function of the HRC was consolidated under one Commissioner (the Discrimination, Health Services, Disability and Community Services Commissioner) and the Public Advocate and Children and Young People Commissioner role was combined. The leadership of the HRC was also reformed with the establishment of a position of President and the development of new governance mechanisms, including a Governance Protocol with the Justice and Community Safety Directorate, a Community Client Service Charter and an Internal Operations Protocol.
- The aims of the reforms included strengthening the leadership, governance and co-ordination of key rights protection services forming the HRC, and improving accountability of these agencies, while ensuring that service accessibility was maintained. It was also intended that the reforms to the PTG would result in a joined-up service for clients and bring a wider range of experienced staff with expert personal guardianship and financial management skills together to act for Canberrans with impaired decision-making capacity.
- The review report recommends that the Government proceed with a co-design process to establish an Aboriginal and Torres Strait Islander Children's Commissioner. The Government agrees with these recommendations and is commencing a co-design process with Jumbunna led by Professor Larissa Behrendt.
- Under the *Human Rights Commission Act 2005*, the Minister must review the operation of that Act and the *Public Trustee and Guardian Act 1985*, as amended by the protection of rights services amendments, to review the effectiveness of the restructuring of the rights protection services including how the amendments promote the objects (express or implicit) of those Acts.

Further Background Information

- A Question Time Brief on QTB- LPP - HRC - Progress of Our Booris Our Way recommendations (including the Children's Commissioner) has been separately provided at JACS2021/48-001-013.

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

QTON No. JACS 9

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
JEREMY HANSON CSC MLA (CHAIR), MARISA PATERSON MLA (DEPUTY CHAIR), JO CLAY MLA

Inquiry into referred 2019–20 Annual and Financial Reports and Budget Estimates 2020-21
ANSWER TO QUESTION TAKEN ON NOTICE
19 February 2021

Asked by Mr Jeremy Hanson MLA:

In relation to: Review of the Discrimination Act and engagement of former Minister Gordon Ramsay

> "I have got a follow up for you on Mr Ramsay. I just want to clarify, is he on a contract or has he been employed in the Chief Minister's office? Do you know?
> Who commissioned—I thought you would commission that body of work.
> Right. Who did execute the contract?
> Could you take that on notice? Is that possible?
> If you could provide just some information on who executed the contract and was it put to tender or information you get around that would be viable without a breach of privacy. Who employed him, for what duration, was there any tender process for a contract and so on."

Minister Cheyne: The answer to the Member's question is as follows:

> Mr Ramsay is a Legislative Assembly Members Staff (LAMS) member working within the Chief Minister's Office.
>
> Mr Ramsay has been engaged by the ACT Executive on a LAMS temporary contract.
>
> The standard LAMS executive staff appointment process was followed.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature: Tara Cheyne Date: 26/2/21

By the Minister for Human Rights, Tara Cheyne MLA

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Justice and Community Safety

MINISTER TARA CHEYNE MLA
MINISTER FOR HUMAN RIGHTS
QUESTION TIME BRIEFS PACK
16 SEPTEMBER 2021

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QUESTION TIME BRIEF

JACS2021/48-001-019

Portfolio/s: Human Rights

Health

Human rights specific issues surrounding Check In CBR app

Talking points:

- The mandatory use of the Check in CBR App (the app) is considered to be one of the least restrictive means of collecting data for the purposes of minimising the impact of COVID-19 outbreaks in the Territory.
- The personal information that is collected is minimal (name and contact details) and is securely stored by ACT Health and deleted after 28 days in accordance with the privacy policy for the app.
- Furthermore, personal information is provided directly to ACT Health through the app and not through a third party. Personal information collected through the app can only be accessed by ACT Health if necessary for contact tracing purposes to ensure health authorities are able to quickly and effectively identify potential close and casual contacts of a positive COVID-19 case.
- Using the app is more protective of privacy than using written registers where customers can see the details of previous customers.
- Similar contact tracing measures have been implemented in other states and territories, including Queensland with a Human Rights Act and Victoria with a Charter of Human Rights.
- On 4 August 2021 the Government introduced the COVID-19 Emergency Response (Check In Information) Amendment Bill (the Amendment Bill) into the Legislative Assembly to provide additional privacy safeguards for personal information collected through the Check In CBR App.
- The Check in CBR app has a 'business profile' enabling businesses and undertakings to check in persons without a smart phone, or who might not be able to check in themselves. In addition, the app has a feature which allows individuals to check-in people who are attending a venue or business with them.
- There is no suggestion that the personal information collected through the Check In CBR App has been used for purposes other than contact tracing.
- Information about the number of check-ins at a business over a period is not personal information and the use of this de-identified data to ensure compliance by businesses with their obligations does not infringe any privacy rights.

Cleared as complete and accurate:	09/09/2021	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Zoe Hutchinson	Ext: 76192
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-019	

QUESTION TIME BRIEF

Key Information

Statistics to 9 September 2021

- There have been 49.3 million check in entries (includes additional guests checked in at the same time) since launch day on 9 September 2020.
- Of those check ins, 41.33 million check in entries have been deleted in accordance with the requirement to only save data for 28 days from the check in date.

Background Information

- The Human Rights Commission wrote to the Minister for Human Rights and the Health Minister with concerns that the Check In CBR data could be used for lawful purposes other than contact tracing, contrary to assurances made to the public by the ACT Chief Digital Officer.
- Lawful purposes are those in line with Information Privacy Act and Health Privacy Policy such as required or authorised by law.
- The Commission was also concerned that the Apps safeguards were not contained in legislation.
- Other jurisdictions including the Commonwealth and WA have now introduced laws that expressly limit data to contact tracing and aassociated purposes.
- The Minister for Health introduced the Amendment Bill into the legislative Assembly for consideration, with the objective of introducing laws similar to other jurisdictions by entrenching in primary legislation appropriate privacy safeguards for personal information collected through the app.

Cleared as complete and accurate:	09/09/2021	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Zoe Hutchinson	Ext: 76192
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-019	

QUESTION TIME BRIEF

JACS2021/48-001-001

Portfolio/s: Human Rights

ISSUE: FUNDING FOR VOCAL

Talking points:

- There is no doubt that victims of crime need access to services provided by the ACT Government, in particular access to appropriate and trauma-informed therapeutic services to assist in their recovery.
- Prior to 2012, the Victims of Crime Assistance League ACT (VOCAL) provided a volunteer victim support program with financial assistance from the ACT Government.
- However, when Victim Support ACT (VSACT) became part of the ACT Human Rights Commission in 2015-16, the volunteer program transitioned to operation by VSACT to improve its alignment with the Victim Services Scheme, which is administered by VSACT.
- The volunteer program is delivered by experienced and skilled volunteers at VSACT, which provides a single point-of-contact for both victim support and advocacy services.

If asked if the government would consider funding VOCAL again

- I am advised that VOCAL continue to provide a range of free support services to victims of crime in the ACT including emotional support, court support, and practical assistance; and work closely with VSACT including as a key referring agency.
- The ACT Government is committed to continuing to work in partnership with community agencies to support and improve services for victims of crime and other vulnerable groups in the ACT.
- The annual budget consultation process is one of the ways that Canberrans, community groups and local organisations can provide their view on how and where the Government should invest to boost services and infrastructure, as well as how government ensures a fair and sustainable base to fund this. Submissions are made through the YourSay website.

Cleared as complete and accurate:	02/09/2021	
Cleared for public release by:	Executive Branch Manager	Ext: 51451
Contact Officer name:	Anthony Butler	Ext: 53091
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-001	

- Budget submissions to the consultation process are often used to identify funding and service gaps, and for community organisations to propose how they be resourced to meet these gaps.

Background Information

- VOCAL was formed in response to unmet need in the community and was contracted from 2000 to 2012 to deliver practical assistance to victims of crime. At that time, VOCAL was exempted from being required to participate in an open tender process because of its specialty expertise in delivering a volunteer victim support program.
- In October 2011 an open tender process was conducted for the provision of this service, reflecting that a number of not-for-profit organisations had built volunteer service capacity.
- A number of community agencies tendered for the volunteer victim support service, and the contract was awarded to Communities@Work who established the *Side by Side: Volunteers Assisting Victims* program. That contract was entered into for up to three years to provide practical assistance and support to victims of crime, and to develop and conduct a community awareness program to promote the interests of victims.

Further Background information

- The Charter of Rights for Victims of Crime, established in the *Victims Rights Legislation Amendment Act 2020* which came into effect on 1 January 2021, will further improve the opportunities for victims of crime to receive information and participate in the justice system including in relation to access to information, supports and assistance.
- The Charter replaces the broad, aspirational 'governing principles for the treatment of victims of crime in the administration of justice' in the *Victims of Crime Act 1994* (under section 4) and details victim rights in areas including protection of privacy and safety; access to support services and assistance; provision of information and case updates; and opportunities to participate in the justice process.
- The *Victims of Crime Regulation 2000* (VOC Regulation) establishes the Victim Services Scheme (VSS) under the *Victims of Crime Act 1994* (VOC Act). The VSS outlines the eligibility criteria, levels of service provision and functions of the Victims of Crime Commissioner (VOCC) in relation to administering the scheme. This includes counselling and other therapeutic services, case coordination, and advocacy and assistance to victims as they navigate the criminal justice system.
- The recommendations from the review of the Victims of Crime Financial Assistance Scheme in the *Victims of Crime (Financial Assistance) Act 2016* (VOCFA Act), Victim Services Scheme (VSS) established in the VOC Regulation and victim levies (in Part 5 of the VOC Act and Part 7 the VOCFA Act) (the PAVER review which was tabled in June 2021) will continue to ensure the ACT is meeting the recovery needs of victims through appropriate financial and therapeutic assistance, and to ensure that these schemes are administratively streamlined and appropriately offset.
- The ACT Government holds an annual community consultation process for individuals and organisations to give feedback on gaps in government funding.

QUESTION TIME BRIEF

JACS2021/48-001-002

Portfolio/s: Human Rights

Issue: ACT Human Rights Commission – Complaints handling and resourcing

Talking points:

- The ACT Human Rights Commission provides a range of important services to our Canberra community which ensure that people's rights are protected.
- The Commission has long offered independent and impartial complaint handling for complaints about discrimination, health services, disability services, services for children and young people and services for older people.
- In 2019-20 the Commission's jurisdiction was expanded so that it could consider complaints about retirement villages and about the abuse and neglect of vulnerable people.
- In 2021, the Commission's jurisdiction was further expanded to cover complaints about occupancy agreements, victims rights and prohibited conversion practices.
- These changes recognise the excellent work that the Commission does in handling complaints fairly and impartially, and the confidence that the community has in the Commission to resolve difficult issues.
- An independent review was conducted during 2020-21, as required under the *Human Rights Commission Act*, regarding changes that were made to the Human Rights Commission in 2016, including the bringing together of a range of complaints handling roles under one Commissioner. The final review report and the Governmetn response to the review was tabled in the Legislative Assembly in June 2021.
- The final report did not include recommendations that propose significant legislative reform of the Commission.
- The Government will continue to monitor the resourcing needs of the Human Rights Commission to ensure that it is well placed to perform its important functions.

Cleared as complete and accurate:	13/09/2021	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Jennifer McNeill	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-002	

QUESTION TIME BRIEF

Background Information

- The protection of rights services reforms made changes that came into effect on 1 April 2016. These reforms consolidated all complaints handling under one Commissioner (the Discrimination, Health Services and Disability and Community Services Commissioner), with a view improving efficiencies and consistency.
- The effectiveness of these reforms is one of the matters that was considered by an independent review conducted by Insight Consulting Australia. The review sought the views of a range of stakeholders.
    - A separate Question Time Brief on the Progress of the Protection of Rights Services Review has been provided at JACS2021/48-001-014.
- From 1 July 2019 the Commission was given additional jurisdiction to conciliate complaints about retirement villages.
- From 14 May 2020 the Commission was given additional jurisdiction to consider complaints about the abuse and neglect of vulnerable people, as part of the response to the COVID-19 pandemic. These measures are temporary, expiring 12 months after the end of the emergency declaration, but will be reviewed by the Government before that date to determine whether the measures should be extended or made permanent.
- From 1 January 2021, the Commission has had jurisdiction to consider complaints about victims rights.
- From 4 March 2021, the Commission has had jurisdiction to consider complaints about occupancy agreements and prohibited conversion practices.
- The extent to which these new roles create additional work for the Commisison will be monitored, and any need for additional resources will be considered in the Government's normal budget processes.

Cleared as complete and accurate:	13/09/2021	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Jennifer McNeill	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-002	

QUESTION TIME BRIEF

JACS2021/48-001-009

Portfolio/s: Human Rights

Disability complaints to the Discrimination Health Services Disability and Community Services Commissioner

Talking points:

- A person can make a complaint to the Human Rights Commission (HRC) about matters relating to disability. Complaints related to disability can be made in a number of areas including discrimination, disability services, and vulnerable people complaints related to abuse, negect or exploitation of people with a disability.
- A complaint made on the basis of discrimination covers areas of public life including housing, employment, education, access to goods, services and facilities, health services, ACT Government services, accommodation and vilification on the grounds of disability.
- The HRC promotes the complaint handling service to people with a disability through community organisations and networks, disability advocacy and community legal services, the Official Visitors, and community and workplace information sessions.
- The number of disability related complaints received the HRC is consistent with our jurisdiction's size, and I've been advised that there has been a notable increase in the use of the complaint process by parties to a complaint as a way of informally resolving matters through conciliation, such as through the increased number of disacrimination and vilification complaints received over the last four years.

Key Information

Complaints	**2017**	**2018**	**2019**	**2020**	**1/1/21-30/6/21**
Disability service	27	21	13	8	5
Disability discrimination and vilification	47	65	100	89	57
Vulnerable people (disability)	N/A	N/A	N/A	13	9

Cleared as complete and accurate:	30/07/2021	
Cleared for public release by:	Commissioner	
Contact Officer name:	Karen Toohey	Ext: 6207 1045
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-009	

QUESTION TIME BRIEF

TOTAL	**74**	**86**	**113**	**110**	**71**

- The NDIS Quality & Safeguards Commission commenced operation in the ACT on 1 July 2019 and handles complaints about NDIS services and supports
- The ACT Human Services Registrar can handle complaints about disability service providers in the ACT, the Office of the Senior Practitioner can deal with complaints about restrictive practices and people with a disability, and the Australian Human Rights Commission can also accept complaints about alleged disability discrimination in the ACT.
- The HRC continues to receive complaints about NDIS and non-NDIS disability services and supports and we endeavour to resolve complaints through conciliation where appropriate.

Background Information

- The NDIS Quality & Safety Commission commenced operation on 1 July 2019 and is the primary agency dealing with complaints regarding NDIS supprts and services in the ACT.
- While there has been an expected decline in disability service complaints received by the HRC since the commencement of the operation of the NDIS Quality and Safeguards Commission we note an increase in disability discrimination complaints has been received over the last four years.
- The commencement of the vulnerable people jurisdiction was in May 2020 and is not retrospective.

QUESTION TIME BRIEF

JACS2021/48-001-003

Portfolio/s: Human Rights

RIGHT TO A HEALTHY ENVIRONMENT

Talking points:

- The Parliamentary and Governing Agreement for the 10th Assembly commits the ACT Government to giving consideration to the inclusion of a 'right to a healthy environment' in the *Human Rights Act 2004*.

Key Information

- There is no standalone right to a healthy environment in the international human rights treaties to which Australia is a party (including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).
- The right to a healthy environment may be seen as an aspect of the right to health under the International Covenant on Economic, Social and Cultural Rights. In particular, the right to health includes the right to live in conditions that promote a healthy life (such as access to safe drinking water, adequate sanitation, healthy occupational and environmental conditions).
- The right to a healthy environment may also be seen as an aspect of the right to life, which is already protected under section 9 the *Human Rights Act*. This is because the right to life includes an obligation to address the general conditions in society that may give rise to threats to the right to life (including conditions such as environmental pollution).
- Similarly, the degradation of the environment may adversely affect the well-being of individuals and have direct repercussions on a person's private and family life and the home and may therefore be relevant to the right to privacy in section 12 of the *Human Rights Act.*
- Where the right to a healthy environment has been recognised, the content of that right has been expressed in different ways, including as entailing a procedural obligation (such as the right to access environmental information held by authorities), a substantive obligation (such as an obligation to protect against environmental harm), or a combination of both.
- In jurisdictions where a right to a healthy environment is recognised, it has been relevant in challenging administrative decisions that have environmental impacts.

Cleared as complete and accurate:	10/09/2021	
Cleared for public release by:	Executive Group Manager	Ext: 50501
Contact Officer name:	Caroline McGregor/Gabrielle McKinnon	Ext: 78956
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-003	

QUESTION TIME BRIEF

Background Information

- In the statutory review of the Human Rights Act after its first 12 months of operation, it was noted that at the time the Act was introduced the government did not support incorporating a free-standing environmental right directly into law. It considered that many of the civil and political rights protected in the Human Rights Act would apply to environmental matters.[1] The recommendation from that report was that the Government should not consider specific mechanisms to protect environment-related rights before other recommendations were addressed.
- However, since that time a number of reforms have occurred to strengthen the Act and other rights have been added to the Human Rights Act, including cultural rights of Aboriginal and Torres Strait Islander Peoples, the right to education and the right to work.
- The Parliamentary and Governing Agreement for the 10th Assembly foreshadows consideration of the inclusion of a 'right to a healthy environment' in the *Human Rights Act 2004*.
- Government and increasingly companies are the targets of strategic litigation aimed at forcing policy changes on emissions to protect the environment and populations from the effects of climate change. A recent landmark Federal Court judgement (Sharma by her litigation representative *Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560) found the Minister owed a duty of care to the children of Australia not to cause harm to them arising from coal extraction and consequent climate change effects. In recent climate litigation filed by Greenpeace, a Dutch court in the Hague in May 2021 ordered Royal Dutch Shell to reduce its C02 emissions.

[1] ACT Department of Justice and Community Safety, *Human Rights Act 2004, Twelve-Month Review Report* (2006).

Cleared as complete and accurate:	10/09/2021	
Cleared for public release by:	Executive Group Manager	Ext: 50501
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Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-003	

QUESTION TIME BRIEF

JACS2021/48-001-004

Portfolio/s: Human Rights

RIGHT TO HOUSING

Talking points:

- The *Human Rights Act 2004* (HRA) does not contain a specific right to housing.
- A number of stakeholders have called for the HRA to be amended to include a human right to housing.
- There is already some protection of housing related rights in the HRA:
    - Section 12 of the HRA provides for the right not to have one's home interfered with unlawfully or arbitrarily. This protects a person's home from trespass, harassment, nuisance, searches or surveillance.
    - Other human rights in the HRA such as the rights of children and families to protection and the right to equality will also be relevant considerations in decision-making by public authorities regarding public or community housing.
- The ACT Government has also taken practical steps to provide for more secure housing in the ACT. Amendments to the *Residential Tenancies Act 1997* which commenced on 3 March this year, for example, providing increased rights and standards for occupants. The ACT Government has also committed to progressing reforms to end no cause evictions from residential tenancies.
    - The ACT Government is currently seeking community views on the best way to implement this commitment. For more information or to provide feedback on the implementation of this commitment, go to the YouSay website: https://yoursayconversations.act.gov.au/expanding-rights-renters
    - The consulation period has been extended and closes on 15 October 2021.

- The Government has recetly introduced measures in response to the COVID-19 pandemic to alleviate the impact of the public health emergency on access to adequate and appropriate housing. This includes:

- a 12 week moratorium on evictions for non-payment of rent where tenants are a COVID-19 impacted household;
- protection for households subject to a public health direction to quarantine or self-isolate from being required to leave their home during the quarantine period;
- a relaxation on the time period for non-urgent repairs;
- a rental increase freeze for COVID-19 impacted households;
- restrictions on physically accessing rental premises and alterations to the way inspections should be performed;
- restrictions on COVID-19 impacted tenants and impacted households being added to tenancy databases;
- the ability for impacted households to end a fixed term tenancy early and without penalty by providing 3 weeks' notice and evidence that they are so impacted;
- allowing tenants from impacted households who have had a termination and possession order made against them or a warrant for eviction issued, but who are still in their rental premises, to apply for the orders to be suspended during the moratorium period;
- allowing tenants from impacted households who had a termination and possession order suspended or warrant stayed during the moratorium period to apply to the ACT Civil and Administrative Tribunal (ACAT) to reconsider those orders at the end of the moratorium period in certain circumstances;
- a 12 week transitional period following the moratorium period which prevents evictions on the basis of debt accrued during the moratorium where rent is being paid when it falls due during the transition period;
- the ability for landlords, tenants, grantors and occupants to negotiate reduced rent or occupancy fees or a deferral of rent payments;
- a requirement for ACAT to consider making a payment order (a type of repayment plan) instead of an eviction order where a termination order is sought against an impacted household where they are not still protected by the eviction moratorium.

- To encourage lanldords to assist tenants by providing rent reductions, the ACT Government is also providing landlords who provide impacted tenants with a rent recution fo at least 25% and for at least 1 month with a land tax rebate for 50% of the rent reduction up to $100 per week.

- ○ The Government has committed to an incremental approach to the inclusion of Economic, Social and Cultural rights in the HRA, to ensure that the implications of new rights are properly understood by both public authorities and the community, to allow proper implementation and to build a genuine culture of human rights.
- In recent years the HRA has been expanded to protect the right to education, the cultural rights of Aboriginal and Torres Strait Islander peoples and the rights of workers.
- In the 10th Parliamentary and Governing Agreement, the Government has committed to considering the inclusion of the right to a healthy environment in the HRA.
- Over time other important Economic social and cultural rights such as the right to housing and the right to healthcare are likely to be considered.

Key Information

- Other jurisdictions in Australia with human rights legislation do not yet have a freestanding right to housing in their respective human rights Acts.
- The right to housing is established in international law by article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* and recognises the 'right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.
- The right to housing is not merely a right to have shelter, it encompasses adequate privacy, space, security, lighting, ventilation, basic infrastructure, and location – all at a reasonable cost.[1]

[1] UN Committee on Economic, Social and Cultural Rights, *General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant),* 13 December 1991, E/1992/23.

- The right to housing applies to everyone. Individuals as well as families are entitled to adequate housing regardless of age, economic status, group or other affiliation or status. Enjoyment of the right must not be subject to any form of discrimination.[2]

Background Information

- In 2010 an Australian Research Council linkage project between the Australian National University and the Justice and Community Safety Directorate examined the feasibility of introducing economic, social and cultural rights into the HRA. The report from that project was published in 2010 and recommended that the HRA be amended to include economic, social and cultural rights in the HRA, including the right to housing. [3]
- The Government response to that report noted that an incremental approach to the adoption of economic, social and cultural rights was preferred, with the right to education being the initial focus but with the potential for further economic, social and cultural rights to be considered over time.
- In 2014, the Government undertook a statutory review into the operation of the Human Rights Act focusing on the including of economic, social and cultural rights in the HRA. This report was tabled by the Attorney-General in the Legislative Assembly on 27 November 2014.
- The review concluded that the right to housing was substantially satisfied by existing policy, initiatives and services and given effect by laws including *Residential Tenancies Act 1997* (ACT), the *Housing Assistance Act 1997* (ACT), the *Discrimination Act 1991* (ACT) and the *Utilities Act 2000* (ACT).
- In September 2020 the ACT Council of Social Services (ACTCOSS), supported by Canberra Community Law and the Women's Legal Centre, called for the ACT Government to enshrine the right to housing in the HRA.[4]

[2] UN Committee on Economic, Social and Cultural Rights, *General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant),* 13 December 1991, E/1992/23, [6].
[3] Australian Capital Territory Economic Social and Cultural Rights Research Project, Australian Research Council Linkage Project LP0989167 Report September 2010.
[4] https://www.canberratimes.com.au/story/6918107/social-services-call-for-more-act-human-rights-protections/

QUESTION TIME BRIEF

JACS2021/48-001-005

Portfolio/s: Human Rights

ISSUE: Victims Rights Legislation Amendment Act 2020

Talking points:

- The *Victims Rights Legislation Amendment Act 2020* commenced on 1 January 2021, meeting the ACT Government's commitment to establish a Charter of Rights for Victims of Crime.
- The Charter was developed in close consultation with key stakeholders including the Victims Advisory Board, the Victims of Crime Commissioner, justice agencies and most importantly, victims of crime themselves.
- The Charter builds on the ACT's strong history of supporting victims and upholding human rights.
- The ACT led Australian jurisdictions with the introduction of legislated governing principles for the treatment of victims of crime in the administration of justice in 1994; the establishment of the *Human Rights Act 2004*; and the introduction of the statutory Victims of Crime Commissioner role in 2010, and the subsequent integration of that position into the Human Rights Commission in 2016.
- The ACT's Charter of Rights for Victims of Crime now acknowledges the important role of victims in the justice system, ensures that victims are treated with respect, and that the risk of their further trauma is minimised.
- The Charter details victim rights in areas including protection of privacy and safety; access to support services and assistance; provision of information and case updates; and opportunities to participate in the justice process.
- An accountability framework for the Charter will ensure that justice agencies uphold victims' rights.
- The accountability framework for the Charter enables victims to approach a justice agency directly, the Victims of Crime Commissioner (VOCC) or the ACT Human Rights Commission (HRC) with a complaint about a victims rights.

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If asked about how the independence of justice agencies is protected under the Charter:

- The Charter builds on the commitment of justice agencies to victims of crime. The independence of justice agencies is protected in the Charter through a range of measures
- The DPP need not comply with the HRC complaint process when participation would impact on a prosecution or their independence.
- Courts and tribunals are only obliged to uphold the Charter in an administrative capacity, not when exercising judicial functions. Judges and Magistrates are excluded from compliance with obligations.
- The Charter does not create legal rights that could give rise to civil action, it does not affect the interpretation or operation of other territory laws, and it does not affect the validity, or provide grounds for review, of any judicial or administrative act or omission.
- Justice agencies do not commit an offence if a requirement of the Human Rights Commission Act 2005 is not upheld in relation to the victim rights complaints consideration process for example to provide a document or attend conciliation.

If asked about the implementation of the Charter:

- The implementation of the Charter is underway to support victims to access rights set out in the Charter and to support justice agencies to uphold rights, including through the development of new information materials.
- Three key issues identified during Charter consultations warrant further consideration and policy solutions are being further explored. These are: ways to strengthen the delivery of Victim Impact Statements; whether to expand the categories of victims who can receive information from the adult victims register; and how to protect victim privacy when personal information such as counselling records are subpoenaed.

QUESTION TIME BRIEF

Background Information

- A Question Time Brief on Implementation of the Charter of Rights for Victims of Crime has been separately provided at JACS2021/48-001-016.
- The Parliamentary Agreement to the 9th Legislative Assembly committed to the introduction of an ACT Rights of Victims Charter. All other states and territories in Australia have introduced victim rights as principles or guidelines.
- During the public consultation period from 22 June to 27 August 2018, over 440 community members were reached including feedback from over 100 direct victims of crime.
- Common feedback from victims of crime during consultations included that they wanted information and support in a timely manner so they could choose how to interact with the justice system, and opportunities to participate in processes and be consulted about key decisions. Having a voice in the justice system is particularly important for diverse and marginalised community members.
- Providing opportunities for victims of crime to be informed and have a voice in the justice process leads to improved outcomes for the community and justice system more broadly, including increased confidence in reporting crimes, better evidence provision, reduced re-traumatisation, and a more efficient and transparent justice process.

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QUESTION TIME BRIEF

JACS2021/48-001-006

Portfolio: Human Rights

ISSUE: DISCRIMINATION ACT REVIEW

Talking points:

Discrimination Act

- The ACT's Discrimination Act makes it unlawful for someone to discriminate against another person on the basis of a protected attribute, in areas of public life. These areas include education, employment and in receiving goods and services.
- The Discrimination Act identifies a wide range of protected attributes, including race, sex, disability, sexual orientation, religious conviction, and gender identity. More recently added attributes are accommodation status, employment status and immigration status.
- Under the Parliamentary and Governing Agreement for the 10th Assembly, this Government agreed to review the Discrimination Act as part of the implementation of the Capital of Equality Strategy.
- The First Action Plan under the Capital of Equality Strategy commits to "Progress consultations on reforms to the *Discrimination Act 1991*, including reforming exceptions that have a discriminatory effect on the LGBTIQ+ community, drawing on recommendations of the Law Reform Advisory Council."
- The Government has already given effect to a number of the ACT Law Reform Advisory Council Council's recommendations, including through:
    - the *Discrimination Amendment Act 2016*, which refined the objects of the Discrimination Act, broadened its coverage by introducing new protected attributes, refined existing protected attributes, simplified the complaints procedure to promote access to justice, strengthened the law on victimisation so complainants are protected from the threat of detriment for exercising their rights, and expanding protections against vilification to apply to people with disability;
    - the *Discrimination Amendment Act 2018*, which made targeted reforms to prevent discrimination against LGBTIQ+ students and staff in religious educational institutions;

- the *Justice Legislation Amendment Act 2020*, which changed the definition of 'intersex status' to 'sex characteristics' and included 'gender expression' within the definition of 'gender identity'.

- I intend to release a discussion paper for public consultation focusing on reform proposals in relation to the range of exceptions in the Discrimination Act (there are currently over 50 exceptions) as well as the scope of application of the Act to different areas of public life and positive duties to prevent discrimination.
- Public consultations will take place with government stakeholders and affected groups, including LGBTIQ+ advocacy groups, clubs, employer and employee groups, and the ACT Law Society and ACT Bar Association.
- Former Attorney-General Mr Ramsay, as a special adviser, has also undertaken preliminary high level conversations with key stakeholders in the community. The results of these coversations will feed into the consultation process.

QUESTION TIME BRIEF

JACS2021/48-001-007

Portfolio/s: Human Rights

ISSUE: Progress of PAVER Review

Talking points:

- Victims need access to therapeutic support services and financial assistance to aid in their recovery and encourage crime to be reported.
- The PAVER (Project Assisting Victims' Experience of Recovery) Review of the:
    - Victims of Crime Financial Assistance Scheme - in the *Victims of Crime (Financial Assistance) Act 2016*
    - Victim Services Scheme - established in the *Victims of Crime Regulation 2000,* and
    - victim levies - in Part 5 of the *Victims of Crime Act 1994* and Part 7 the *Victims of Crime (Financial Assistance) Act 2016*)

  will ensure the ACT is well positioned to meet the recovery needs of victims, and that ACT's schemes are administratively efficient and appropriately offset by victim levies.
- $120,000 was allocated for the Review which was conducted by an independent consortium led by the Australian National University (ANU).
- An independent Review team consulted with justice and legal stakeholders, people who have experience of crime and accessing the relevant victim support schemes, as well as vulnerable groups including Aboriginal and Torres Strait Islander community members.
- I would like to thank these groups for their valuable contributions to the Review, so that victim schemes continue to be trauma-informed, accessible and flexible.

If asked about the current status of the Review

- The Review was tabled in the Legislative Assembly on 24 June 2021.
- The Review report makes recommendations intended to ensure the schemes are operating together efficiently, and in a way that supports recovery and acknowledges the harmful effects of crime on victims.

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Some of these have cost and legislative implications which need to be further considered.

- The Government Response to the Review is under consideration with the support and expertise of the Victims of Crime Commissioner, ACT Courts and Tribunal, and ACT Policing.
- The tabling of this Review is the start of the current process, and more work lies ahead to understand how the Review recommendations can be meaningfully implemented to achieve strong outcomes for victims.

Background Information

- On 9 March 2021 the final report of the Review of the Victims of Crime Financial Assistance Scheme, Victims Services Scheme and the Victim levies was provided to JACS and included 17 overarching recommendations for Government to consider with 81 recommendations in total (ie including sub-recommendations).
- The methodology for the Review included considering feedback from written submissions, interviews, focus groups and surveys, as well as analysis of relevant data. Key stakeholders were invited to participate including justice and victim support agencies, people who have experienced crime as a victim, and therapeutic service providers who are brokered to provide services under the VSS:
    - The first phase of the Review gathered data from relevant justice agencies.
    - The second phase gathered data from people who have experienced violent crime in the ACT and have accessed Victim Support ACT (VSACT).
    - The Review also collaborated with Aboriginal and Torres Strait Islander stakeholders and VSACT staff to co-design services that best meet client needs and utilise resources.

What is the Financial Assistance Scheme?

- The Financial Assistance Scheme (FAS) set out in the *Victims of Crime (Financial Assistance) Act 2016* (VOCFA Act) provides payments to victims, including their families and carers, to assist them to recover from acts of violence, including in relation to immediate needs, economic loss and recognition of the harm and trauma caused by violence. The review was required because:
    - The operation of VOCFA Act was required to be reviewed as soon as practicable after the end of its third year of operation (expired section 98(2), VOCFA Act).

- The introduction of the VOCFA Act on 1 July 2016 reformed the statutory scheme for financial assistance for victims of crime in the ACT, transitioning from a Court-based process to an administrative scheme where applications are determined by the Victims of Crime Commissioner (VOCC), and a timely review of those arrangements was appropriate as part of the overarching FAS review.

What is the Victim Services Scheme?

- The Victim Services Scheme (VSS) outlines the eligibility criteria, levels of service provision and functions of the VOCC in relation to administering the scheme. This includes counselling and other therapeutic services, case coordination, and advocacy and assistance to victims as they navigate the criminal justice system.
    - Reviewing the VSS at the same time as the FAS presented an opportunity to ensure the Schemes are operating effectively and in alignment.

What are the victim levies?

- The victims levies offset the delivery of services to victims of crime. They include the victims' services levy (Part 5 of the VOC Act) and the victims' financial assistance levy (Part 7 of the VOCFA Act).
    - Reviewing the amount and administration of the victim levies will assist in ensuring that they are administratively streamlined and that services available to victims of crime under the FAS and VSS are appropriately offset.

QUESTION TIME BRIEF

JACS2021/48-001-15

Portfolio/s: Human Rights

Claims to Victims of Crime Financial Assistance Scheme and Victims Services Scheme

Talking points:

- Victim Support ACT (VSACT) provides services to victims of crime in the ACT to promote their recovery and continued participation in the social, economic and cultural life of their community.
- Victims of crime in the ACT have approached VSACT in unprecedented numbers recently and VSACT is helping more community members than ever before, with 2020-21 being the service's busiest year in VSACT's history.
- VSACT administers two key schemes for the benefit of victims of crime, the Victim Services Scheme and the Victims of Crime Financial Assistance Scheme.
- In 2020-21, the Victim Services Scheme registered 853 new clients for case coordination, a 24% increase on 2019-20. In the same year, the Scheme helped over 2,600 clients with case coordination, advice and information, counselling, court support and justice advocacy.
- Under the Victim Services Scheme, eligible community members receive therapeutic supports from approved brokered providers, drawn from a panel of over 132 small businesses with a range of skills including counsellors, clinical psychologists, massage therapists and mental health social workers.
- The Victims Financial Assistance Scheme received 498 applications in 2019-20, a 361% increase in comparison to the scheme's first year of operation (2016-17). The Scheme paid victims a total of just over $2.4 million in financial assistance in 2020-21.
- Further, VSACT's Aboriginal and Torres Strait Islander program provides crucial outreach services to community. The program assisted 134 Aboriginal and Torres Strait Islander clients in 2020-21.

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QUESTION TIME BRIEF

Key Information

- The Victims Services Scheme provides therapeutic care and advocacy to victims. This includes access to free therapeutic supports using a brokerage model that relies on over 100 approved small business providers who deliver counselling, massage and other services to clients.
- It also includes in-house case coordination, safety planning and justice advocacy (including ensuring victims rights are protected in line with the new Charter of Victims Rights); and
- Finally, it includes a court support program provided by trained, highly skilled volunteers.
- The Financial Assistance Scheme acknowledges the harmful effect of crime and assists victim to recover through three types of payments:
    - immediate needs payments which assist with urgent medical and safety expenses;
    - payments to cover economic loss; and
    - recognition payments which acknowledge the trauma experienced by victims.
- Both schemes have experienced a significant increase in demand over the past 3 years.
- In the last 16 months, additional safety and financial pressures reported by clients in the context of COVID-19, and community need arising from current community discussion about sexual assault, have further driven demand for victim services.
- VSACT has worked intensively to respond to this increased demand, prioritising clients with urgent safety concerns whilst maximising access to long-term, intensive support for clients with complex needs.

Background Information

- The Victims of Crime Commissioner is the head of agency for VSACT which became part of the Human Rights Commission in 2016.
- Government is finalising its response to a review of VSACT's frontline services. The review explored whether both schemes represent best practice in the delivery of support, assistance and advocacy to victims. The review also included a legislative review of the first three years of operation of the *Victims of Crime Financial Assistance Act ACT* (2016).
- Other functions undertaken by the Victims of Crime Commissioner include:
    - The resolution of victims rights concerns brought under the new Charter of Rights for Victims of Crime that commenced on 1 January 2021.

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QUESTION TIME BRIEF

- Administration of the ACT's groundbreaking Witness Intermediary Program, which involves independent communication experts assisting vulnerable witnesses to communicate their best evidence to police and at court.
- Administration of the ACT's new 'Family Violence Safety Action Pilot', a project facilitated by the ACT Government via the Commonwealth's National Partnership Agreement on Family Violence. The Pilot, which was evaluated in August 2021, provides coordinated risk identification, assessment and response for high-risk family violence matters that present outside of the criminal justice system.

QUESTION TIME BRIEF

JACS2021/48-001-011

Portfolio/s: Human Rights

ISSUE: Protecting Vulnerable people (covering matters from the Hearing QON)

Talking points:

- As part of the COVID-19 emergency measures, the ACT Government has provided an enhanced jurisdiction to the ACT Human Rights Commission to consider complaints about the abuse, neglect or exploitation of vulnerable people, including older people with a disability.
- This new measure complements other reforms progressed by the Government to address elder abuse and support vulnerable people.
- The Human Rights Commission has already dealt with a number of matters under this new power and has been able to provide assistance to vulnerable people to address a range of concerns, to resolve issues with family members or others and to ensure that they are receiving appropriate support.
- We will consider these powers before they are due to expire (which is a year after the last emergency declaration ceases) with a view to continuing this jurisdiction on a permanent basis.

Background Information

- A number of protections for vulnerable people were introduced in response to the COVID-19 emergency. The new complaint handling jurisdiction for vulernable persons for the ACT Human Rights Commission was introduced by the *COVID-19 Emergency Response Legislation Amendment Act 2020*.
- Some measures, including safeguards relating to the risk of misused powers of attorney, have already been made permanent, and others will be reviewed prior to expiry to consider whether they should be continued on a permanent basis.
- The Operational Efficiencies (COVID-19) Legislation Amendment Bill will make the vulnerable complaints mechanisms permanent.
- Other measures taken in this space include the establishment of a criminal offence in relation to the abuse and neglect of vulnerable persons. The HRC powers complement this offence as the HRC can undertake and initial consideration of

matters and refer particularly serious cases to the police for consideration of prosecution.

QUESTION TIME BRIEF

JACS2021/48-001-016

Portfolio/s: Human Rights

Implementation of the Charter of Rights for Victims of Crime

Talking points:

- The *Victims Rights Legislation Amendment Act 2020* commenced on 1 January 2021, meeting the ACT Government's commitment to establish a Charter of Rights for Victims of Crime.
- The Charter is being underpinned and implemented by a range of practical initiatives to ensure that victims can access their rights.

If asked about key implementation initiatives:

- The Victims of Crime Commissioner (VOCC) has been allocated $45,000 for the development of community education and information resources about the Charter and justice processes.
- The adult, youth and affected persons registers are relocating to Victim Support ACT (VSACT) to improve information flow and provide wrap-around support and advocacy for victims when engaging with the justice system.
- Justice agencies are developing guidelines about how they will support victims' rights, which must be published on their website by 1 January 2022.
- Key justice agencies have been given extra ongoing staff resources to assist with victim engagement, including communicating with victims and providing information to other agencies.
- The Victims Advisory Board, a statutory body tasked with providing advice to me on policy and the interests of victims of crime, is monitoring the implementation and impact of the Charter.
- A two year VOCC flexible fund pilot is being trialled, to ascertain how flexible funds can assist to meet diverse and individually identified victim needs to support access to victim rights in practice, filling gaps where other provisions are not available (with funding of $25,000 per year for two years from July 2021).

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QUESTION TIME BRIEF

Background Information

- The Parliamentary Agreement to the 9th Legislative Assembly committed to the introduction of an ACT Rights of Victims Charter. All other states and territories in Australia have introduced victim rights as principles or guidelines.
- The Charter details victim rights in areas including protection of privacy and safety; access to support services and assistance; provision of information and case updates; and opportunities to participate in the justice process.
- The accountability framework for the Charter enables victims to approach a justice agency directly, the VOCC or the ACT Human Rights Commission (HRC) with a complaint about a victim right.

If asked about the purpose of the victims registers:

- The adult, youth justice and affected persons registers provide information to victims about an offender's sentence and treatment so victims can make decisions about their safety and participate in justice processes.

If asked about the flexible pilot fund:

- A flexible pilot fund is being trialled to respond to public consultation feedback that victims most want and value a justice system that is responsive to their individual needs. While the ACT has multiple avenues for victim support, there are often gaps. As the ACT is a small jurisdiction, it is not viable to establish entirely new services to meet these individualised needs, which are often varied and difficult to predict.
- This pilot is based on a South Australian model. Examples of where funds may be used to support victim participation in the justice process include providing transport, childcare, or interpreting costs for a victim to watch a court proceeding.

If asked about FTE for justice agencies:

- Justice agencies have been provided with the following additional resources (some of which are currently being recruited):
    - VOCC & HRC: 1.2 FTE (in addition to relocation of ASO6 FTE from Corrections to VSACT when the adult victims register is relocated)
    - DPP 1 x FTE
    - ACT Policing 1 x FTE
    - Courts 1 x FTE
    - Corrections 0.5 x FTE

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QUESTION TIME BRIEF

JACS2021/48-001-017

Portfolio/s: Human Rights

Victims Rights Concerns and Complaints under the Charter of Rights for Victims of Crime

Talking points:

- The ACT Charter of Victims Rights commenced in January 2021 and is legislated in the *Victims of Crime Act 1994* (ACT). The Charter aims to protect and promote the rights of victims of crime in the ACT when they engage with criminal justice agencies, including ACT Policing, the DPP, ACT Corrective Services, the Sentence Administration Board and the administrative arm of the courts.
- The Charter is a crucial opportunity to strengthen the ACT's human rights framework and better uphold the rights and interests of those affected by crime. All citizens in the ACT are rights holders under the *Human Rights Act 2004* and the Charter assists to detail how human rights apply in situations where a citizen is the victim of a crime.
- The Charter is the most comprehensive, legislated set of victims rights in Australia. It contains specific rights for victims of crime in relation to; respect, privacy and safety; access to support services and other forms of assistance; provision of information about the criminal justice system and its processes; provision of updates and information about the police investigation, court proceedings and decisions made throughout the criminal justice process; and participation and the right to be heard as a victim wherever possible throughout criminal justice proceedings, for example the right to provide views on key decisions made by prosecution.
- The Charter has an accountability framework that ensures victims' concerns are heard, acknowledged and addressed and that provides victims with choices about how they wish to raise concerns or complaints regarding a breach of their rights.
- Under the Charter victims may choose to either raise a concern about a breach of rights with the Victims of Crime Commissioner; make a complaint to the Disability and Community Services Commissioner at the Human Rights Commission; make a complaint directly to the justice agency involved

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or make a complaint to any other relevant complaints body, for example the Ombudsman or Integrity Commission.

- A victim is not required to have made a complaint to a justice agency before raising a concern with the Victims of Crime Commissioner, or making a complaint to the Disability and Community Services Commissioner or any other complaints body.
- The Victims of Crime Commissioner has broad information gathering powers to assist in rapid resolution of victim rights concerns.
- The Disability and Community Services Commissioner can offer victims an independent conciliation process that is restorative in nature and provides a safe environment for the victim to express their concerns about the justice agency's conduct and its impact on their life. This is a new option for victims seeking to resolve their concerns about justice agencies.
- The accountability framework also aims to drive systemic improvements in the way that justice agencies engage with victims.
- Each year, the Victims of Crime Commissioner must include a statement of how many victim rights concerns were received in her annual report. For each concern raised, the Victims of Crime Commissioner must also include information concerning the right in relation to which the concern was raised and whether the concern was resolved.
- More information about the Charter of Victims Rights can be found at the Victim Support ACT website. Victim Support ACT provides a range of free and confidential services to assist victims of crime with their recovery and to access their rights and entitlements. Victims of crime may raise a concern about a breach of rights with the Victims of Crime Commissioner by contacting Victim Support ACT via email at VictimSupportIntake@act.gov.au or by phone on 02 6205 2222. Victims of crime may inquire about making a victims right complaint to the Disability and Community Services Commissioner via email at HRCIntake@act.gov.au or by phone on 02 6205 2222.

QUESTION TIME BRIEF

Key Information

- Since 1 January 2021, the Victims of Crime Commissioner has received and recorded 50 victims rights concerns under the Charter of Rights.
- To date, the most common agency about whom concerns have been raised is ACT Policing.
- To date, the most common rights which victims have raised concerns about with the Victims of Crime Commissioner have been about a justice agency not engaging with a victim respectfully and with appropriate regard to the victim's personal situation, needs, concerns, rights and dignity (s 14C) and the police not updating victims about the status of investigations as required (s 16A).

Background Information

- Prior to 1 January 2021, the Victims of Crime Commissioner had an obligation under the *Victims of Crime Act 1994* (ACT) to monitor and promote compliance with the 'Governing Principles'.
- The Governing Principles were a set of statements that established a framework for how criminal justice agencies should engage with victims. The Victims of Crime Commissioner was required to try to resolve any concern raised by a victim about a justice agency's non-compliance with the Governing Principles.

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QUESTION TIME BRIEF

JACS2021/48-001-008

Portfolio/s: Human Rights

Work to further Voluntary Assisted Dying and territory rights

Talking points:

- The ACT is not able to legislate in relation to voluntary assisted dying due to restrictions imposed by the Commonwealth under the *Australian Capital Territory (Self-Government) Act 1988* (Self Government Act).
- This is a limitation on the rights of people in the ACT to participate in public life and decision-making as part of a democratic process, and also limits equality rights as these restrictions do not apply to residents of other States.
- In the first half of 2021, all States in Australia will have either passed legislation for voluntary assisted dying or will likely have a Bill before their parliament. This starkly demonstrates the inequitable position of the ACT and the Northern Territory - which is subject to similar restrictions.
- On 3 March 2021 the Northern Territory Attorney General the Hon Selena Uibo and I wrote to the Commonwealth Attorney-General, Deputy Prime Minister and Assistant Minister for Regional Development and Territories raising our concerns about the impact of the Commonwealth legislative impediment on Territory rights.
- On 31 March, members from the ACT Legislative Assembly across the three parties called on the federal Parliament to bring forward a bill to remove the law by the end of the year.
- On 23 April 2021, Minister Uibo and I wrote to the incoming Commonwealth Attorney-General Michaelia Cash, drawing her attention to our original letter and requesting a response.
- On 24 May the Federal Labor member for Fenner, Andrew Leigh introduced a motion in the Commonwealth Parliament calling for the restoration of Territory rights to legislate on voluntary assisted dying.
- The ACT Government will continue to advocate for change until this unfair Commonwealth law is removed to allow people in this Territory to exercise democratic rights and decide the laws that govern them on such an important issue.

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QUESTION TIME BRIEF

Key Information

- Voluntary assisted dying engages the right to life and the right to privacy and autonomy. It also engages the freedom of thought, conscience, religion and belief where health practitioners conscientiously object to participating in voluntary assisted dying.
- The right to life is generally not interpreted as conferring a 'right to die', but it also does not require an absolute prohibition on assistance in dying.
- The United Nations Human Rights Committee has expressly considered the issue of voluntary assisted dying and its interaction and consistency with the right to life under certain circumstances, noting:

  > "States parties that allow medical professionals to provide medical treatment or the medical means to facilitate the termination of life of afflicted adults, such as the terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity, must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and unambiguous decision of their patients, with a view to protecting patients from pressure and abuse." (Human Rights Committee, General Comment No. 36: Article 6: Right to life (2019), [9]).

- A balance must be struck between the protection of human life and the protection of a person's right to respect for their privacy and personal autonomy.
- If the ACT were to legislate a voluntary assisted dying regime, strong safeguards would need to be in place to prevent abuse. This would include strong safeguards around eligibility criteria, as well as provisions allowing for conscientious objection by health practitioners.
- Amendments introduced into the ACT's Self Government Act by the Federal Parliament in 1997 prohibit the ACT from legislating on euthanasia or assisted suicide.
- It has been the Government's longstanding view that Commonwealth laws that preclude the ACT from legislating in this area should be amended.
- By prohibiting the citizens of the ACT from deciding for themselves, through their elected representatives, whether to legislate in the area of voluntary assisted dying, the legislative restrictions on the ACT imposed by the Federal Parliament limit the right to take part in public life.
- Citizens of the ACT are also entitled to enjoy their human rights without distinction or discrimination of any kind. Citizens of the ACT are denied their right to participate in public life on questions relating to voluntary assisted dying on the basis of their residence in a Territory; their counterparts in neighbouring States are able to decide such questions for themselves (through electing representatives).

- Regardless of one's views on voluntary assisted dying, there should not be any controversy in allowing the ACT to decide for itself whether to introduce such legislation, and to allow citizens of the ACT an equal opportunity to legislate on this matter if the community desires.
- Other states in Australia have taken action on this:
    - Victoria introduced voluntary assisted dying legislation in 2017 - with significant focus on human rights issues.
    - Voluntary assisted dying became an end of life option available to eligible adults in Western Australia in mid-2021.
    - In March 2021, the Tasmanian parliament passed the *End of Life Choices (Voluntary Assisted Dying) Bill 2020*.
    - On 10 June 2021 the South Australia's lower house passed the *Voluntary Assisted Dying Bill 2021*.
    - The Queensland Law Reform Commission has considered a legal framework for voluntary assisted dying, and its final report, including its draft Voluntary Assisted Dying Bill 2021 were tabled in Queensland's parliament .
    - A private member's bill will be introduced in New South Wales in 2021.
- In the first half of 2021, *all* states in Australia will have either passed legislation for voluntary assisted dying or will likely have a Bill before their parliament. This starkly demonstrates the inequitable position of the ACT.

Background Information

- The effect of the *Euthanasia Laws Act 1997* (Cth) was to amend the *Australian Capital Territory (Self-Government) Act 1988* (Cth) so that the ACT is prohibited from legislating on euthanasia or assisted suicide.
- The issues surrounding legislating voluntary assisted dying in the ACT are considered in some detail in the Report of the ACT Legislative Assembly Select Committee into End of Life Choices in March 2019.

Media attention

- Rita Joseph's Letter to the Editor (Legal duty to protect life) was published in the Canberra Times on 19 July 2021.
- The letter focuses on the right to life under the International Covenant on Civil and Political Rights (ICCPR), and the duty therein to protect individuals from the arbitrary deprivation of life, as well as the obligation of the Federal Government to strike down any State or Territory law inconsistent with Commonwealth law. Joseph argues that the Commonwealth's ratification of the ICCPR empowers the Commonwealth to override State or Territory law inconsistent with the rights included in that Covenant, including the right to life.

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QUESTION TIME BRIEF

- Joseph submits that legislation providing for voluntary assisted dying would be inconsistent with the right to life.
- For the reasons set out briefly above, Joseph's argument is not a correct interpretation of the status of voluntary assisted dying legislation and the right to life under international human rights law (IHRL).
- Another letter to the Editor from Steve Ellis of Hackett ('Argument flawed') was published in the Canberra Times on 20 July also noting the flaws in Joseph's argument. While not engaging specifically with IHRL arguments, Ellis notes Joseph's lack of focus on a key element of the right to life – namely the right to protect against arbitrary deprivations of life.
- Joseph has made similar submissions to previous mechanisms considering voluntary assisted dying or end of life choices legislation in both the ACT and other jurisdictions.

QUESTION TIME BRIEF

JACS2021/48-001-013

Portfolio/s: Human Rights

ISSUE: Progress of the Aboriginal and Torres Strait Islander Children's Commissioner

Talking points:

- The Government is fully committed to implementing all the recommendations of the Our Booris Our Way (OBOW) review - including the recommendation to establish an Aboriginal and Torres Strait Islander Children's Commissioner. That's why we've included this commitment in the 10th Parliamentary and Governing Agreement.
- The Protection of Rights Services Review also supported the establishment of this new Commissioner role and the Government has formally agreed to this recommendation in its response to that Review.
- There is a desire in the community to have the Commissioner established as soon as possible. This is a priority I share as the Minister responsible for this reform.
- However, it is essential that the Commissioner have the confidence of the Aboriginal and Torres Strait Islander community, and that the policy and legislative framework should be developed through an authentic and representative co-design process. Project timeframes need to accommodate the considered, significant and time-intensive nature of such a process.
- JACS has been working with the Our Booris Our Way Implementation Oversight Committee to develop a co-design process to develop and refine the proposed Commissioner's scope, functions, governance arrangements and recruitment process.
- The ACT Government has engaged Jumbunna Institute for Indigenous Education and Research (Jumbunna) at University Technology Sydney, to lead the co-design process to establish an Aboriginal and Torres Strait Islander Children's Commissioner. Professor Larissa Behrendt will lead the project team.
- Work on the co-design process commenced in June 2021 and a timeline to establish the new Commissioner will be made public.

Cleared as complete and accurate:	13/09/2021	
Cleared for public release by:	Executive Branch Manager	Ext: 76192
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Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/48-001-013	

- The co-design process will involve the release of a discussion paper and a number of community consultation sessions, to develop a model for the Commissioner.
- JACS is working with Jumbunna to develop a consultation model which takes into account the developing and ongoing Covid-19 emergency in the ACT and NSW to ensure all activities associated with the co-design process for this role can take place with the safety of community as the highest priority.

Key Background Information

- The Our Booris, Our Way review was announced in large part to address the over-representation of Aboriginal children in the care and protection, and juvenile detention, systems.
- In December 2019, the OBOW Review issued 28 recommendations to Government. However as early as 2018, the Government was informed of the recommendation that an Aboriginal Children's Commissioner be established.
- The establishment of the proposed Commissioner sits within your portfolio as Minister for Human Rights, but many of the OBOW recommendations will be actioned and implemented by the Minister for Aboriginal and Torres Strait Islander Affairs.
- The Protection of Rights Services Review also considered the OBOW recommendation to establish a Commissioner. The PoRS Review final report and Government Response to the review was tabled in the Legislative Assembly on 22 June 2021. The PoRS review underpins the broad community and stakeholder support for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT. The Government Response to the PoRS Review Report agreed to establish the new Commissioner role.

Further Background Information

- On 12 February you received a redirected Question on Notice regarding the progress the Government is making toward appointing and Aboriginal and Torres Strait Islander Children's Commissioner.
- You replied [MIN:2021/000379] that the Government did not have a specific timeframe and that preliminary work on this recommendation has been underway for some time.

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

QTON No. JACS 9

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
JEREMY HANSON CSC MLA (CHAIR), MARISA PATERSON MLA (DEPUTY CHAIR), JO CLAY MLA

Inquiry into referred 2019–20 Annual and Financial Reports and Budget Estimates 2020-21
ANSWER TO QUESTION TAKEN ON NOTICE
19 February 2021

Asked by Mr Jeremy Hanson MLA:

In relation to: Review of the Discrimination Act and engagement of former Minister Gordon Ramsay

> "I have got a follow up for you on Mr Ramsay. I just want to clarify, is he on a contract or has he been employed in the Chief Minister's office? Do you know?
> Who commissioned—I thought you would commission that body of work.
> Right. Who did execute the contract?
> Could you take that on notice? Is that possible?
> If you could provide just some information on who executed the contract and was it put to tender or information you get around that would be viable without a breach of privacy. Who employed him, for what duration, was there any tender process for a contract and so on."

Minister Cheyne: The answer to the Member's question is as follows:

> Mr Ramsay is a Legislative Assembly Members Staff (LAMS) member working within the Chief Minister's Office.
>
> Mr Ramsay has been engaged by the ACT Executive on a LAMS temporary contract.
>
> The standard LAMS executive staff appointment process was followed.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature: Tara Cheyne Date: 26/2/21

By the Minister for Human Rights, Tara Cheyne MLA

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