



ACT HUMAN RIGHTS COMMISSION

Australian Capital Territory

Ms Sandra Lambert AM
Chair
ACT Remuneration Tribunal
Via email to: remtrib@act.gov.au

Dear Ms Lambert,

Thank you for the opportunity to provide a submission to the ACT Remuneration Tribunal in support of its 2022 Autumn Review.

The ACT Human Rights Commission (the Commission) is an independent agency established in 2006 under the *Human Rights Commission Act 2005* (HRC Act).

On 1 April 2016, the Commission was expanded to include the Public Advocate and the Victims of Crime Commissioner. The Commission now hosts eight independent statutory roles held by four individuals, as follows:

- President – Dr Helen Watchirs
- Human Rights Commissioner – Dr Helen Watchirs
- Public Advocate – Jodie Griffiths-Cook
- Children and Young People Commissioner – Jodie Griffiths-Cook
- Discrimination Commissioner – Karen Toohey
- Health Services Commissioner – Karen Toohey
- Disability and Community Services Commissioner – Karen Toohey
- Victims of Crime Commissioner – Heidi Yates

The Commission operates on a collegiate basis under s13 of the HRC Act, with each Commissioner's independence being respected under s16 of the HRC Act. The Commission is led by the President who is responsible for the Commission's administration and governance; providing information and promoting discussion about the Commission, human rights, and related matters; and coordinating and providing advice about the operation of relevant legislation and about systemic reports, including to Ministers and the Legislative Assembly.

In June 2021, an independent review of the Commission by Insight Consulting (mandated under s105A of the HRC Act) was tabled in the Legislative Assembly. The Review examined the effectiveness of the 2016 merger with the Public Advocate and Victims of Crime Commissioner. It found the Commission to be operating with effective governance, leadership, and trust of stakeholders. Implementation of the review's recommendations to further enhance the Commission's performance is underway.

The Commissioners are currently remunerated as follows:

- President and Human Rights Commissioner – SES level 2.2 (\$235,706 per annum)
- Public Advocate and Children and Young People Commissioner – SES level 2.1 (\$205,749 per annum)
- Discrimination, Health Services, Disability and Community Services Commissioner – SES level 2.1 (\$205,749 per annum)
- Victims of Crime Commissioner – SES level 2.1 (\$205,749 per annum)

Commissioner responsibilities

Jointly, the four Commissioners are responsible for promoting the human rights and welfare of people living in the ACT. The Commission's role under the HRC Act is to:

- promote understanding of human rights in the ACT
- identify and examine issues affecting the human rights and welfare of vulnerable groups in the ACT
- independently handle complaints about discrimination, and complaints between users and providers of prescribed services
- encourage service improvement and increase awareness of the rights and responsibilities of service users and providers
- provide advice to government and others about their human rights obligations
- provide advocacy for children, young people and adults experiencing vulnerability
- deliver services to victims of crime and advocate for them.

The HRC Act also provides the Commission with the power to review the effect of ACT laws, including the common law, on human rights and make recommendations to the Minister for Human Rights and the Attorney-General about systemic human rights issues.

In addition to the HRC Act, Commissioners are charged with additional responsibilities under numerous other legislation and associated instruments. Some of the more substantive functions/responsibilities for the Commission (outside those in the HRC Act) are as follows:

- Oversight of adult detention under the *Corrections Management Act 2008*
- Oversight of care and protection services, including oversight of Bimberi Youth Justice Centre (*Children and Young People Act 2008*)
- Oversight of mental health and forensic mental services, including secure inpatient facilities (*Mental Health Act 2015* and *Mental Health Secure Facilities Act 2016*)
- Oversight of preventative detention for persons with impaired decision-making ability under the *Terrorism (Extraordinary Temporary Powers) Act 2006*
- Oversight of long-term treatment and research participation for protected persons (*Guardianship and Management of Property Act 1991*)
- Performance of the duties of the Domestic Violence Project Coordinator under the direction of the Domestic Violence Prevention Council (*Domestic Violence Agencies Act 1986*)
- Administration of the Victims Services Scheme and the Victims of Crime Financial Assistance Scheme (*Victims of Crime Act 1994*)
- Resolution of victim concerns about justice agencies under the Charter of Rights for Victims of Crime (*Victims of Crime Act 1994*)
- Administration of the Intermediary Program (*Evidence (Miscellaneous Provisions) Act 1991*)
- Administration of the Adult Offenders Victims Register and the Youth Justice Victims Register (*Crimes (Sentence Administration) Act 2005*) and the Affected Persons Register (*Mental Health Act 2015*)
- Joint consideration of complaint matters referred by the Australian Health Practitioner Regulation Agency (AHPRA) (*Health Practitioner Regulation National Law 2009*).

Over the six years since the current Commission was established, the Commission has been charged with responsibility for numerous additional functions and services including:

- Establishment and administration of the 24/7 [witness intermediary program](#), which, to date, has assisted over 500 witnesses with disabilities or communication difficulties to communicate their best evidence to police and at court.
- Oversight of restrictive practice use for children and young people (*Senior Practitioner Act 2018*).

- Oversight of processes supporting applications by young people for leave to change their given name or sex under the *Births Deaths and Marriages Registration Act 1997*.
- Designation as part of the ACT National Preventive Mechanism (NPM) under the United Nations Optional Protocol Against Torture which Australia ratified and came into force in January 2022 – jointly with the ACT Ombudsman and ACT Inspector of Correctional Services. This includes inspection and oversight of places of detention including the AMC, Bimberi, Dhulwa and the Adult Mental Health Unit.
- Operation of the three Victims Registers, which provide victims with crucial information and support to manage their safety, and that of their children, when an offender is serving a custodial or community sentence.
- Operation of the [Family Violence Safety Action Pilot](#), which enables the ACT Government and non-government sectors to collaboratively identify, assess and respond to risk-of-lethality family and domestic violence matters.
- Administration of additional complaint and investigation jurisdictions including neglect, abuse and exploitation of older people and people with a disability, Victims of Crime Charter of Rights complaints, occupancy disputes, sexuality & gender identity conversion matters, retirement village complaints, and an expanded discrimination jurisdiction.

Further, there are a number of functions that the ACT Government has forecasted it will allocate to the HRC over the course of the next year, as follows:

- Implementation of the ACT Child Safe Standards scheme
- Consultation on and oversight of covid-related directions and guidelines under amendments to the *Public Health Act 1997*
- Implementation of the National Code for Health Workers
- Oversight of general treatment plans, and of review processes associated with individual applications, in respect of variations in sex characteristics
- Oversight of the [\\$3.4 million review of the 84% of Sexual Offence matters](#) that have been reported to Police since June 2020 but have not progressed to charge.
- Administration of the ACT's first restorative design pilot to deliver restorative coronial reform.

In addition to these specific powers and functions, Commissioners are regularly sought out by Government and non-Government stakeholders for advice on a broad range of matters either relevant to human rights generally, or in respect of individual and systemic issues involving specific (and often highly sensitive) matters of policy and/or service delivery.

Commissioners also undertake important leadership and coordination roles focused on ensuring government and non-government agencies work together to uphold human rights across the Territory.

Further, while the Commission's jurisdiction is limited to the ACT, Commissioners are frequently called upon to provide advice/comments on national strategies and policy directions that will impact on ACT citizens. The regard that is held for Commissioners' expertise and standing is also demonstrated through the range of community engagements, both locally and nationally, through which Commissioners are asked to raise awareness and educate others about issues that relate to the Commission's work.

Budget, establishment, and performance

Over the six years since the Commission was expanded in 2016, the Commission's responsibilities have expanded substantially, as evidenced above. In addition to increased functions/responsibilities, the Commission has also grown considerably in size and budget and has experienced increasing levels of demand for its services.

The Commission commenced its first full year of operation (2016-17) with an operating budget of \$8.892 million. In 2020-21, this had increased to \$14.294 million with individual Commissioner budgets range from \$1.652 million to \$6.933 million.

Since coming together in 2016, the Commission has substantially increased its staffing complement from 47 staff (42.6 FTEs) in 2016 to 78 staff at end 2020-21 (71.8 FTEs), with growth in each of the Commissioner's business units. This growth has continued into 2021-22 with the Commission now having an establishment of 92 staff (80.5 FTEs).

The Commission has also seen a significant growth in demand for its services across all business units since coming together in 2016.

In 2016-17, the Commission:

- handled 1,207 enquiries and 507 complaints
- supported 1,843 victims of crime
- received 108 applications for victim financial assistance and paid \$212,000 to eligible victims
- provided public advocacy services for 773 children, young people, and adults, and reviewed over 5,000 compliance documents
- delivered more than 30 submissions
- held 55 community engagement events.

By comparison, in 2020-21, the Commission:

- handled 1,819 enquiries and 922 complaints
- supported 3,083 victims of crime
- received 498 applications for victim financial assistance and paid \$2.43 million to eligible victims
- provided witness intermediaries in over 250 police and court referrals and worked intensively with 129 complex risk-of-lethality family violence cases (involving 180 children)
- provided public advocacy services for 938 children, young people, and adults, and reviewed over 7,000 compliance documents
- delivered more than 60 submissions
- held 75 community engagement events
- intervened in two Supreme Court human rights matters.

Proposed remuneration and comparative jurisdictions

As Commissioners, we are of the view that the substantial increase in legislative responsibilities and services delivered to the ACT community since the Commission's expansion in 2016 should result in the remuneration levels for all four Commissioners being increased by at least one increment, bringing the President and Human Rights Commissioner to SES level 2.3 (\$257,463 per annum) and the other three Commissioners to SES level 2.2 (\$238,749 per annum).

Below are a number of local and interstate examples by way of comparison.

Local comparative examples

Equivalent ACT Government executive roles

The current remuneration levels of Commissioners equate to slightly above those of Executive Branch Manager roles in the ACT Government. Such roles, while having some degree of decision-making autonomy within agreed parameters, sit within a structure that typically hosts 2-3 higher levels of hierarchy within the agency/Directorate. In contrast, each Commissioner is directly and publicly accountable to community, including through the Legislative Assembly and media, for the jurisdiction/s they have responsibility for.

ACT Commissioner for Sustainability and the Environment

The ACT Commissioner for Sustainability and the Environment is remunerated at the SES 2.3 level (currently \$249,963 per annum). Drawing on the 2020-21 Annual Report, it is the Commission's understanding that, in the last reporting period, the ACT Commissioner for Sustainability and the Environment:

- managed a budget of \$1.552 million
- managed an establishment of six staff (4.8 FTEs), not including the Commissioner herself
- monitored the ACT Government Response to the ACT State of the Environment Report 2019
- initiated two new Ministerially directed special reports and one background report
- undertook no Commissioner Initiated Investigations
- responded to one formal complaint
- delivered four submissions
- held 23 community engagements.

ACT Integrity Commissioner

The ACT Integrity Commissioner is remunerated at the SES 3.1 level (currently \$288,126 per annum). Drawing on the 2020-21 Annual Report, it is the Commission's understanding that, in the last reporting period, the ACT Integrity Commissioner:

- managed a budget of \$4.287 million
- managed an establishment of 18 staff (13.4 FTEs), not including the Commissioner himself
- conducted nine corruption investigations and three other investigations
- carried out 12 preliminary inquiries
- held 11 private examinations
- issued 21 confidentiality notices, 27 examination summonses and 15 preliminary inquiry notices
- received 125 corruption reports (84 of which were dismissed) and five disclosures of disclosable conduct
- conducted 22 information sessions and two community of practice meetings.

Interstate comparative examples

It should be noted that no other state/territory Commission of similar nature hosts the broad range of functions and responsibilities that the ACT Human Rights Commission does. The below therefore reflects Commissioner roles that have narrower jurisdictions than any of the four Commissioners in the ACT Human Rights Commission.

Queensland Human Rights Commissioner

The Queensland Human Rights Commissioner is remunerated at a level equivalent to SES 2.4 (\$265,000 per annum). Drawing on the 2020-21 Annual Report, it is the Commission's understanding that, in the last reporting period, the Queensland Human Rights Commission:

- managed a budget of \$7.705 million
- managed an establishment of 50 staff (42.76 FTEs)
- responded to 5,849 enquiries
- handled 1,490 complaints
- commenced two major reviews
- participated in 19 community engagements
- made nine public submissions.

Victorian Equal Opportunity and Human Rights Commissioner

The Victorian Equal Opportunity and Human Rights Commissioner is remunerated at a level equivalent to SES 4.3 (\$360,000-\$369,999 per annum). Drawing on the 2020-21 Annual Report, it is the Commission's understanding that, in the last reporting period, the Victorian Equal Opportunity and Human Rights Commission:

- managed a budget of \$10.198 million
- managed an establishment of 58 staff (54.59 FTEs)
- responded to 8,578 enquiries
- handled 1,303 complaints
- prepared four policy submissions and witness statements, and two legal interventions and investigation updates.

Australian Human Rights Commission

Similar to the HRC, the Australian Human Rights Commission comprises a President who works alongside seven other Commissioners with designated roles and functions, as follows:

- Aboriginal and Torres Strait Islander Social Justice Commissioner
- Age Discrimination Commissioner
- Disability Discrimination Commissioner
- Human Rights Commissioner
- National Children's Commissioner
- Race Discrimination Commissioner
- Sex Discrimination Commissioner

The President is currently remunerated at \$443,390 and each of the seven other Commissioners are remunerated at \$360,250.

The AHRC's 2021-22 budget is \$26.591 million and has 127 staff, both of which are expected to be cut significantly in the next financial year.

Impact on ACT community

The Commission has proven itself to be an important contributor to the development and reform of policies and legislation in seeking to ensure the rights, interests, and wellbeing of all Canberrans are promoted and protected.

Further, the consolidated model the Commission offers provides a single source of advocacy, complaint handling, and service delivery for many people in the Canberra community. Canberrans look to the Commission for assistance when their employment is at risk because of alleged discrimination; when they are a victim of sexual harassment, or a victim of crime; when they have had an adverse outcome at a health service such as the death of a baby or parent; when their home is at risk because of an unlawful eviction or occupancy dispute; when a parent is the victim of abuse or financial exploitation by a family member; and when they are the subject of involuntary treatment or care decisions and require assistance to navigate associated services and systems.

The Commission is recognised as a reputable advocate and arbiter both in respect of individual matters as well as systemically and has been proven to deliver improved outcomes for the children, young people, and adults whose situations and circumstances are brought to the Commission's attention. The increased demand for services provided by the Commission demonstrates the trust and respect the community holds for the Commission's ability to facilitate these outcomes.

Closing comments

It is our view that the Commission's responsibilities and performance as a cohesive multi-portfolio commission warrant remuneration at a level that is commensurate with its increased performance.

Should you wish to discuss any of the matters canvassed in our submission, please contact Dr Helen Watchirs via email to helen.watchirs@act.gov.au or by phone on 02 6205 2222.

Yours sincerely,



Dr Helen Watchirs

President and Human
Rights Commissioner



Jodie Griffiths-Cook

Public Advocate and
Children and Young
People Commissioner



Karen Toohey

Discrimination, Health
Services, and Disability
and Community Services
Commissioner



Heidi Yates

Victims of Crime
Commissioner