

ACT AUDITOR–GENERAL’S REPORT
RECOGNITION AND IMPLEMENTATION
OF OBLIGATIONS UNDER THE
HUMAN RIGHTS ACT 2004

REPORT NO. 2 / 2019

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PA 18/07

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled '*Recognition and implementation of obligations under the Human Rights Act 2004*' for tabling in the ACT Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely



Auditor-General
22 February 2019

The ACT Audit Office acknowledges the Ngunnawal people as traditional custodians of the ACT and pays respect to the elders; past, present and future. The Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.

CONTENTS

Summary	1
Conclusions.....	1
Key findings	2
Recommendations.....	7
Agency responses	9
1 Introduction	11
Human rights in the ACT.....	11
Roles and responsibilities	13
Human rights culture	17
Audit objective and scope	20
Audit criteria, approach and method	21
2 Support for ACT Government agencies	23
Summary.....	23
Human Rights Unit.....	25
ACT Government public sector bodies' reporting on human rights	32
3 Development of a human rights culture	39
Summary.....	39
Justice and Community Safety Directorate	41
Community Services Directorate.....	46
4 Operational practice and professional development	53
Summary.....	53
Operational policies and procedures	56
Risk management and human rights.....	70
Complaints management	73
Staff training and professional development.....	77
Appendix A: Public Authority Decision-making Flowchart	83
Appendix B: Additional Community Services Directorate response to draft proposed report	85

SUMMARY

The ACT was the first Australian jurisdiction to legislate for human rights, through the *Human Rights Act 2004*. Amendments to the *Human Rights Act 2004*, in force from 1 January 2009, impose an obligation on public authorities, including ACT Government agencies, to act in a way that is consistent with human rights.

The audit considered how Community Corrections, within the Justice and Community Safety Directorate, and the Bimberi Youth Justice Centre, within the Community Services Directorate, recognised human rights and the requirements of the *Human Rights Act 2004*. The audit also considered the activities of the Human Rights Unit, within the Justice and Community Safety Directorate, in providing support to ACT Government agencies in relation to human rights.

Conclusions

SUPPORT FOR ACT GOVERNMENT AGENCIES

The Human Rights Unit (Justice and Community Safety Directorate) provides effective advice and support to ACT Government agencies to consider and recognise their obligations as public authorities under the *Human Rights Act 2004* by reviewing all proposed government bills and providing advice to agencies on the bills' compatibility with the *Human Rights Act 2004*.

However, there is an opportunity for the Human Rights Unit to improve its support for ACT Government agencies with respect to the provision of information and guidance material on human rights and the requirements of the *Human Rights Act 2004*, particularly with respect to day-to-day administration and decision-making. Information and guidance material made available to ACT Government agencies through the Justice and Community Safety Directorate website is old and outdated and does not provide practical guidance to ACT Government agencies, and ACT public servants, on how to meet their obligations as public authorities. A Human Rights Toolkit that was being developed by the Human Rights Unit, which was identified as a key information resource by the ACT Government in its response to previous reviews of the *Human Rights Act 2004*, has not been progressed and is not available to ACT Government agencies and staff.

ACT Government agencies are required, through Annual Report Directions, to report on human rights activities in their annual reports. The quality and comprehensiveness of this reporting are varied. This results in difficulty in assessing what progress, if any, is being achieved by ACT Government agencies in meeting their human rights obligations and in the development of a human rights culture in ACT Government agencies.

DEVELOPMENT OF A HUMAN RIGHTS CULTURE

The Justice and Community Safety Directorate and Community Services Directorate have taken steps to build a human rights culture through whole-of-directorate strategic and organisational

policies and documents. Various policies and documents in each Directorate implicitly, and in some instances explicitly, recognise and articulate the importance of human rights to the activities of the Directorate.

OPERATIONAL PRACTICE AND PROFESSIONAL DEVELOPMENT

The Community Services Directorate and Justice and Community Safety Directorate have implemented practices to support staff to comply with their obligations as public authorities under the *Human Rights Act 2004*, but these vary in their quality and comprehensiveness.

The activities of staff at the Bimberi Youth Justice Centre (Community Services Directorate) are supported by a comprehensive set of operational policies and administrative documents, which directly reference human rights and the *Human Rights Act 2004* and the obligations of public authorities. The *Charter of Rights for Young People in Bimberi Youth Justice Centre* and *A Young Person's Guide to Bimberi Youth Justice Centre* are also key documents that provide information and guidance on the importance of young people's rights. Collectively, the documents provide a sound framework for operational and administrative decision-making to comply with the *Human Rights Act 2004*.

Operational policies and administrative documents referenced by Community Corrections staff (Justice and Community Safety Directorate) implicitly recognise the importance of human rights, but do not provide practical guidance on human rights and their specific application to operational activities and administrative decision-making. There is also an opportunity to improve the documentation of human rights considerations for key decision-making processes in both directorates.

Key findings

SUPPORT FOR ACT GOVERNMENT AGENCIES

Paragraph

In order to complete the *Human Rights Scrutiny Assessment* pro forma for each bill the Human Rights Unit works together with the agency responsible, to ensure that the final bill achieves its policy objectives in a manner that is compatible with human rights. This process assists in building a human rights culture as staff in agencies develop an increased awareness of the *Human Rights Act 2004* and their associated obligations as public authorities.

2.9

The Human Rights Unit provides effective support and advice to ACT Government agencies in the assessment of proposed bills for compliance with the *Human Rights Act 2004*. Justice and Community Safety Directorate annual reports (2015-16 to 2017-18) have shown that 100 percent of 'new Government laws are compatible with human rights legislation at the time of introduction'. This measure, while consistently achieving 100 percent, does not provide information as to the nature or depth of the work required by the Human Rights Unit to achieve compatibility. Reporting on compatibility when legislation is first submitted for approval by the

2.14

Human Rights Unit could provide a measure of the development of a human rights culture across ACT Government agencies. This would be one indicator of the level of understanding and application of human rights obligations by ACT Government agencies developing legislation.

A review of the administrative guidance and explanatory material made available on the Justice and Community Safety Directorate website shows some useful guidance on the *Human Rights Act 2004* has been developed and made available to ACT Government agencies. However:

2.17

- the guidance is dated (ranging from 2010 to 2013), meaning that some references to ACT Government administrative units and processes are incorrect. These documents also pre-date the amendment to the Act to include cultural rights of Aboriginal and Torres Strait Islanders from February 2016; and
- procedural guidance is primarily focused on the recognition of human rights in the legislative scrutiny of proposed bills. There is no practical guidance to ACT Government agencies, and ACT public servants, as to how to meet their obligations as public authorities.

Between 2010 and 2012 the Justice and Community Safety Directorate undertook a project for the development of a Human Rights Toolkit to provide support and guidance to ACT Government agencies in recognising and implementing the requirements of the *Human Rights Act 2004*. The Human Rights Toolkit was repeatedly acknowledged in the March 2012 Government Response to the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009) as being a key resource that would be available for ACT Government agencies. The Human Rights Toolkit has not been developed or made available to ACT Government agencies to assist them in recognising and implementing the requirements of the *Human Rights Act 2004*.

2.33

ACT public sector bodies are required to report on 'implementation strategies and progress in incorporating human rights standards into their operations' in accordance with the requirements of the *Annual Reports (Government Agencies) Notice 2017* (the 2017-18 Annual Report Directions). Reporting on human rights is primarily achieved by annual reporting through the Justice and Community Safety Directorate; eleven public sector bodies provided information to the Justice and Community Safety Directorate for inclusion in its report, in accordance with the requirements of the 2017-18 Annual Report Directions. Seven public sector bodies separately reported on human rights in their own stand alone annual reports. The nature and detail of the information reported varied across the public sector bodies. Analysis of the information reported shows that there is a number of omissions in public sector bodies' reporting and some information does not relate to that requested.

2.49

The *Human Rights Act 2004 (ACT): the First Five Years of Operation* report (May 2009) recommended ACT Government agencies' reporting on their human rights practices be strengthened to include a range of additional information that would provide more meaningful examples of agencies' efforts to implement, and comply with, the *Human Rights Act 2004*. These suggestions have not been

2.54

recognised and implemented in subsequent Annual Report Directions. Accordingly, there is a lack of meaningful information and reporting by ACT Government agencies on their human rights activities and it is difficult to measure ACT Government agencies' progress in this area.

DEVELOPMENT OF A HUMAN RIGHTS CULTURE

Paragraph

The Justice and Community Safety Directorate does not have a human rights-specific policy or action plan. Whole-of-directorate strategic and organisational policies and documents in the Justice and Community Safety Directorate inconsistently reference human rights and the relevance of human rights. Whilst the *JACS Strategic Plan 2017-2019* identifies an 'accessible justice system' as a strategic priority and, against this priority, identifies 'embed human rights in the legal system, executive and community' as an action, there is no further information on what this means or how it is to be achieved. Other documents also reference the *Human Rights Act 2004* as one of a list of relevant Acts, but provide no further guidance on the relevance of human rights to the Directorate's activities. Notwithstanding the lack of specific recognition and articulation of human rights in the Directorate's strategic and organisational policies and documents, the documents are not incompatible with a human rights culture.

3.13

The ACT Corrective Services *Strategic Plan 2017-2019 'Resetting the Foundations'* and the *Code of Ethical Conduct* (May 2008) for ACT Corrective Services reference human rights and identify human dignity as a key focus. In doing so these documents recognise and promote a human rights culture.

3.32

The *Corrections Management (Human Rights) Policy 2010* assists in promoting a human rights culture in ACT Corrective Services (Justice and Community Safety Directorate) by articulating a philosophy for the recognition of human rights in the management of detainees. However, the policy has not been updated since 2010 and specifically applies to 'persons accommodated and working in a correctional centre' thereby excluding staff and persons associated with Community Corrections.

3.33

The *Community Services Directorate - Human Rights Policy* was released on 22 July 2010 and revised on 6 September 2011. It provides a strong endorsement of the importance of human rights and its application to the Directorate. It also notes that some of its 'community partners will be public authorities under the Act' and 'encourages all its community partners to act and make decisions consistent with human rights'.

3.46

Strategic and organisational policies and other Community Services Directorate documents reviewed showed varying levels of support for the development of a human rights culture. The *Blueprint for Youth Justice in the ACT 2012-22* refers to human rights and the *Human Rights Act 2004*, and notes that it was 'influenced by the recommendations of the *ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the ACT Human Rights Commission*'. *Empowering People: Community Services Directorate Strategic Plan 2018-2028* is a comprehensive, ten-year strategic plan that brings together the Directorate's 'strategic, organisational and division level planning to support the achievement of the core outcomes'. The

3.58

Strategic Plan, and additional supporting statements for each of the Plan's identified outcomes, do not directly reference human rights. However, it should be noted that there is a strong, albeit implicit, alignment with human rights in the plan and its identified outcomes for the community.

OPERATIONAL PRACTICE AND PROFESSIONAL DEVELOPMENT

Paragraph

Key operational policies and administrative documents for Community Corrections include the *Community Corrections and Release Planning Operational Plan 2018-19* and *Corrective Services Rehabilitation Framework* (November 2018). The *Community Corrections and Release Planning Operational Plan 2018-19* makes no direct reference to human rights, but does include measures to improve the way Community Corrections meets the needs of Aboriginal and Torres Strait Islander people and clients from non-English speaking backgrounds. The Human Rights Act 2004 is identified in the *Corrective Services Rehabilitation Framework* (November 2018) in the list of Acts which provide context for the Framework and the Framework refers to treating detainees with 'respect for their human dignity'. Neither document directly refers to, or provides further information on, the obligations of public authorities under the *Human Rights Act 2004*.

4.8

There is a range of administrative policy and procedural documents in use in ACT Corrective Services that provides guidance and instruction to Community Corrections officers and their decision-making. There is inconsistent reference to, and acknowledgement of, human rights and the *Human Rights Act 2004* in these documents. Many documents make no reference to human rights and the *Human Rights Act 2004*, while some documents make passing reference, with little additional information or guidance. As these documents provide guidance for Community Corrections' officers and their operational activities it would be appropriate for this guidance to reference human rights and the *Human Rights Act 2004*, and the associated obligations of public authorities.

4.15

Pro formas for various assessment reports prepared by Community Corrections officers do not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit, documented consideration of human rights in the assessment reports, which are an input into decision-making processes that have serious human rights-related implications for individuals. Notwithstanding the lack of direct reference and explicit consideration of human rights, there is no evidence that the recommendations contained in the reports were not compatible with the *Human Rights Act 2004*.

4.16

The *Charter of Rights for Young People in Bimberi Youth Justice Centre* and *A Young Person's Guide to Bimberi Youth Justice Centre* are key documents that provide information and guidance on the importance of young people's rights in the Bimberi Youth Justice Centre. These documents align with human rights and the *Human Rights Act 2004*. The *Charter of Rights for Young People in Bimberi Youth Justice Centre* specifically 'requires Bimberi staff, police and other workers, including health and education staff, to act in line with these rights and to consider human rights when developing policies, delivering services and making decisions'.

4.26

Policy and Procedures developed for the operation of the Bimberi Youth Justice Centre include a direct reference to the relevant sections of the <i>Human Rights Act 2004</i> that are impacted by, or otherwise relevant to, the activities covered by the document. The explicit connection between the activities covered by the Policy and Procedures and the human rights relevant to the activities is an effective way of reminding staff of the importance of human rights in their activities and decision-making.	4.30
Practice Guidelines for the Bimberi Youth Justice Centre have been developed to convert Policy and Procedures into operational level documents. There is a specific Practice Guideline addressing human rights, <i>Practice Guideline: Human rights compliance and limitation – youth justice</i> , which discusses the limitations on human rights for young people in a youth justice context. It ‘guides staff when a decision or action that limits human rights may need to be considered’ and explains how Bimberi ensures human rights and the circumstances where rights may be limited to ensure the security and good order of the centre.	4.39
Pro formas for Bimberi Youth Justice Centre staff administrative decision-making do not include a reference to human rights or the <i>Human Rights Act 2004</i> . This means that there is no explicit and documented consideration of human rights in the decision-making documents, which represent an administrative decision that is likely to have human rights implications. Notwithstanding the lack of direct reference and explicit consideration of human rights, there is no evidence that the administrative decisions were not compatible with the <i>Human Rights Act 2004</i> .	4.46
The Justice and Community Safety Directorate and Community Services Directorate risk management plans and risk registers do not directly identify or articulate a risk of non-compliance with the <i>Human Rights Act 2004</i> .	4.69
Complaints processes at Community Corrections are provided for by: JACS Complaints Management Policy (October 2017); JACS Complaints Management Standard Operational Procedure (2017); and ACT Corrective Services Client Feedback – Information Sheet. There is no reference to human rights or the Human Rights Act 2004 in any of these documents. As records of verbal complaints are not maintained, Community Corrections is not in a position to monitor and report on them or use this information to assess any systemic concerns regarding human rights.	4.77
The Community Services Directorate’s <i>Complaints Handling Charter</i> and <i>Complaints Handling and Management Policy</i> identify the <i>Human Rights Act 2004</i> as a relevant Act, but do not provide any further guidance on its application to complaints management processes or the obligations of the Community Services Directorate as a public authority under the Act. The <i>Complaints Handling and Management Platform Policy</i> does reference the <i>Human Rights Act 2004</i> and the obligations of public authorities and that individuals have a right of direct action to the Supreme Court.	4.84
There is a range of policy and procedural documents in place for the management of complaints at the Bimberi Youth Justice Centre, including the <i>Children and Young</i>	4.92

People (Complaints Management) Policy and Procedures and relevant Practice Guidelines. Additionally, the *Charter of Rights for Young People in Bimberi* and the *Young Person's Guide to Bimberi Youth Justice Centre* (provided to new arrivals), explain the complaint mechanisms and specifically refer to the ACT Human Rights Commission as an avenue for complaints.

Human rights training is mandatory for all ACT Corrective Services staff; staff are required to attend at least once, generally within the first six months of their employment. Training is provided by the ACT Human Rights Commission and is tailored to ACT Corrective Services staff and their responsibilities as officers in a public authority. A total of 251 staff have attended the training since 2010-11. Feedback from ACT Corrective Services participants at the December 2017 human rights training provided by the ACT Human Rights Commission was positive. 4.99

New staff commencing at the Bimberi Youth Justice Centre participate in an induction program, which includes a mandatory session provided jointly by the Children and Young People Commissioner and the Public Advocate, the intent of which is to provide an overview of the roles of the Children and Young People Commissioner and the Public Advocate. Human rights-specific training is provided through a Human Rights Act Introduction: e-Learning module, which was developed by the ACT Human Rights Commission in 2015. (Other training modules relate to specific Policy and Procedures and, in some instances, reference human rights and the *Human Rights Act 2004*). The Human Rights Act Introduction: e-Learning module is not specific nor targeted to the Bimberi Youth Justice Centre and does not refer to specific conditions encountered by staff working in a youth justice environment. 4.112

Thirty-five Bimberi Youth Justice Centre staff (42 percent of the current Centre staff) have completed the e-Learning human rights course (or attended face-to-face training on human rights delivered prior to 2015) while employed at the Centre. Of the 84 staff currently employed at the Centre: 4.113

- 15 of the 22 staff that commenced in the ACT Public Service after 1 July 2017 (68 percent) have undertaken human rights training; and
- 20 of the 62 staff who commenced in the ACT Public Service prior to 1 July 2017 (32 percent) have undertaken human rights training.

Recommendations

RECOMMENDATION 1 GUIDANCE AND SUPPORT FOR ACT GOVERNMENT AGENCIES

In order to more effectively support public authorities to comply with their obligations under the *Human Rights Act 2004* and contribute to the development of a human rights culture in ACT Government agencies, the Justice and Community Safety Directorate should develop administrative guidance for ACT Government agencies in relation to their obligations as public authorities under the *Human Rights Act 2004*. This could involve the progression and completion of the Human Rights Toolkit or an updated version of it.

RECOMMENDATION 2 ANNUAL REPORTING ON HUMAN RIGHTS

In order to improve the quality and comprehensiveness of ACT Government agencies' reporting under the *Human Rights Act 2004*, the Chief Minister, Treasury and Economic Development Directorate, in consultation with the Justice and Community Safety Directorate, should amend the Annual Report Directions to:

- a) specify minimum standards and formats for human rights activities to be reported by ACT Government agencies; and
- b) identify additional, meaningful information required to be reported by agencies that allows for an assessment of the development of a human rights culture in each agency.

RECOMMENDATION 3 COMMUNITY CORRECTIONS OPERATIONAL POLICIES AND PROCEDURES

In order to promote administrative decision-making in accordance with the *Human Rights Act 2004*, the Justice and Community Safety Directorate should review Community Corrections' existing administrative policy and procedural documents and include in these documents relevant references to human rights considerations under the *Human Rights Act 2004*.

RECOMMENDATION 4 HUMAN RIGHTS CONSIDERATIONS IN DECISION-MAKING

In order to demonstrate consideration of human rights in administrative decision-making processes for which there are significant human rights implications, the Justice and Community Safety Directorate and Community Services Directorate should include, in key decision-making documents, a section for the explicit consideration and documentation of human rights in the decision.

RECOMMENDATION 5 TRAINING AND PROFESSIONAL DEVELOPMENT FOR HUMAN RIGHTS

In order to improve staff knowledge and awareness of their obligations under the *Human Rights Act 2004* the Community Services Directorate should develop an ongoing program to ensure all staff undertake human rights training specifically targeted to working in a youth justice environment.

Agency responses

In accordance with the requirements of the *Auditor-General Act 1996*, the Community Services Directorate and Justice and Community Safety Directorate were provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment. As part of this process, recipients were offered the opportunity to provide a statement for inclusion in the final report in the Summary Chapter.

No comments were provided for inclusion in this Summary chapter.

Other ACT Government public sector bodies were also provided with extracts of the draft proposed report and final proposed report for comment (relating to public sector bodies' reporting on human rights, refer to Chapter 2). All comments were considered and required changes were reflected in the final report.

1 INTRODUCTION

Human rights in the ACT

- 1.1 The ACT was the first Australian jurisdiction to legislate for human rights, through the *Human Rights Act 2004*. The Bill of Rights Consultative Committee, appointed by the then ACT Chief Minister in April 2002 ‘to inquire into a possible bill of rights for the ACT’¹, considered that:

Some form of bill of rights is appropriate and desirable in the ACT. While highly visible abuses of human rights are not commonplace in the ACT, rights are currently protected in a partial and piecemeal manner under Commonwealth and ACT law. A bill of rights would improve the protection of rights and also provide an accessible statement of the rights that are fundamental to a life of dignity and value.²

The ACT *Human Rights Act 2004*

- 1.2 The Explanatory Statement for the *Human Rights Bill 2003* states:

The main purpose of this Bill is to recognise fundamental civil and political rights in Territory law. In particular, the Bill ensures that, to the maximum extent possible, all Territory statutes and statutory instruments are interpreted in a way that respects and protects the human rights set out in Part 3 of the Bill.

The Bill also promotes respect for and protection of human rights in the development of new law and increases transparency about the consideration of human rights in parliamentary procedures.³

- 1.3 Amendments to the *Human Rights Act 2004* were introduced in 2008, commencing on 1 January 2009, which impose an obligation on public authorities to act in a way that is consistent with human rights. Subsection 40B(1) of the *Human Rights Act 2004* states:

It is unlawful for a public authority –

- a) to act in a way that is incompatible with a human right; or
- b) in making a decision, to fail to give proper consideration to a relevant human right.

- 1.4 Subsection 40(1) of the *Human Rights Act 2004* provides guidance on the meaning of a public authority:

Each of the following is a **public authority**:

- (a) an administrative unit;
- (b) a territory authority;
- (c) a territory instrumentality;
- (d) a Minister;

¹ *Towards an ACT Human Rights Act*, Report of the ACT Bill of Rights Consultative Committee, May 2003, p 11.

² *Towards an ACT Human Rights Act*, Report of the ACT Bill of Rights Consultative Committee, May 2003, p 2.

³ Explanatory Statement, *Human Rights Bill 2003*, p 2.

- (e) a police officer, when exercising a function under a Territory law;
- (f) a public employee;
- (g) an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).

1.5 Section 40A of the *Human Rights Act 2004* provides guidance on the meaning of a function of a public nature and functions 'connected to or generally identified with functions of government' and includes (but is not limited to) public health services, public transport and public housing. Human rights protected by the *Human Rights Act 2004* are outlined in Part 3 and Part 3A of the Act and are shown in Table 1-1.

Table 1-1 Rights protected under the ACT *Human Rights Act 2004*

Civil and Political Rights (Part 3)
Recognition and equality before the law
Right to life
Protection from torture and cruel, inhuman or degrading treatment etc
Protection of the family and children
Privacy and reputation
Freedom of movement
Freedom of thought, conscience, religion and belief
Peaceful assembly and freedom of association
Freedom of expression
Taking part in public life
Right to liberty and security of person
Humane treatment when deprived of liberty
Children in the criminal process
Fair trial
Rights in criminal proceedings
Compensation for wrongful conviction
Right not to be tried or punished more than once
Retrospective criminal laws
Freedom from forced work
Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities
Economic, social and cultural rights (Part 3A)
Right to education

Source: *Human Rights Act 2004*

Reviews of the *Human Rights Act 2004*

- 1.6 There has been a number of reviews of the *Human Rights Act 2004* since its implementation. These are shown in Table 1-2. The twelve-month review and five-year review were provided for by legislation.

Table 1-2 Reviews of the *ACT Human Rights Act 2004* and responses to the reviews

Date	Review	Reviewer
June 2006	<i>Human Rights Act 2004</i> , Twelve-Month Review	Department of Justice and Community Safety
May 2009	The <i>Human Rights Act 2004</i> (ACT): the First five Years of Operation	ACT Human Rights Act Research Project, Australian National University
September 2010	Australian Capital Territory Economic, Social and Cultural Rights Research Project	Australian Research Council Project, Australian National University and University of New South Wales
2014	Look who's talking, A snapshot of ten years of dialogue under the <i>Human Rights Act 2004</i>	ACT Human Rights and Discrimination Commissioner
Date	Response	
March 2012	Government Response: Australian National University Human Rights Research Project Report: The <i>Human Rights Act 2004</i> (ACT): the First five Years of Operation	Justice and Community Safety Directorate
March 2012	Government Response: Australian Capital Territory Economic, Social and Cultural Rights Research Project	Justice and Community Safety Directorate

Source: Audit Office analysis of publically available material

Roles and responsibilities

ACT Human Rights Commission

- 1.7 The ACT Human Rights Commission was established in accordance with the *Human Rights Commission Act 2005*. According to the Commission's *Strategic Plan 2017-2020* it seeks to achieve its vision of 'an inclusive community that respects and realises everyone's rights' by:
- 'leading positive systemic change';
 - 'engaging and educating the community';
 - 'delivering accessible services that empower and support people'; and
 - 'providing effective oversight'.
- 1.8 The activities of the ACT Human Rights Commission are included in the Justice and Community Safety Budget Statements. Strategic Objective 5 in the *Justice and Community Safety 2018-19 Budget Statements* 'promotion and protection of rights and interests'

identifies that ‘the Commission provides community engagement, information, support and/or advice in relation to the roles and functions of their Commissioners, including how members of the community can access and protect their rights’.

1.9 According to the ACT Government Directory, the activities of the ACT Human Rights Commission include:

- training on human rights and discrimination;
- community education and outreach activities;
- advice and recommendations on legislation, policies and services affecting vulnerable groups in the community;
- facilitating service improvement; and
- promoting community awareness of human rights.⁴

Justice and Community Safety Directorate

1.10 The purpose of the Justice and Community Safety Directorate is, according to the *Justice and Community Safety 2018-19 Budget Statements*:

... to seek to maintain a fair, safe and peaceful community in the ACT where people’s rights and interests are respected and protected. This is achieved through the objectives of:

- maintaining the rule of law and the Westminster style of democratic government;
- promoting the protection of human rights in the Territory;
- providing effective offender management and opportunities for rehabilitation;
- protecting and preserving life, property and the environment; and
- providing for effective and cohesive emergency response and management.

Human Rights Unit

1.11 Within the Justice and Community Safety Directorate, the Legislation, Policy and Programs Branch ‘provides high quality policy, legislation, ministerial support and advice to portfolio Ministers, Cabinet and other agencies on justice and community safety matters’.⁵ The Legislation, Policy and Programs Branch includes the Human Rights and Social Policy area, which functions as the Human Rights Unit.

1.12 The Human Rights Unit is responsible for:

- assessing proposed bills for human rights compatibility;
- providing human rights policy advice on new policy proposals to ensure that policy takes into account human rights principles;
- providing human rights comment on matters of interest to the Government;

⁴ ACT Government Directory: http://actdirectory/webdir/cgi-bin/webdua.cgi?ea1_.&organizationalUnit&670562f2-1837-4418-87d2-1fad6b29c1ae Accessed 22 August 2018.

⁵ *Justice and Community Safety Directorate Annual Report 2017-18* p 33.

- overseeing the Territory's human rights legislative regime to ensure that it remains relevant and up to date with developments in human rights; and
- providing advice through the Privacy Clearinghouse.⁶

1.13 The audit included consideration of the activities of the Human Rights Unit in providing support to ACT Government agencies in relation to human rights.

Corrective Services

1.14 ACT Corrective Services, within the Justice and Community Safety Directorate, delivers adult correctional and detention services. According to the Justice and Community Safety Directorate website, these services encourage and promote the rehabilitation, reintegration and throughcare of offenders in the ACT. The aim is to provide for the safe, humane and secure management of offenders and detainees.⁷

1.15 ACT Corrective Services encompasses:

- community based correctional programs;
- rehabilitation programs;
- sentence administration; and
- custodial operations (including remandee court transport, periodic detention and the Alexander Maconochie Centre (AMC)).

1.16 Community Corrections, within ACT Corrective Services, includes the:

- Probation and Parole Unit. This Unit provides advice to Courts and releasing authorities on the background and attitudes of offenders on Community Based Orders (e.g. bail supervision, probation, and parole) and refers offenders to appropriate community based or residential services to assist with addressing a variety of issues (e.g. drug and alcohol abuse, grief and loss issues and relationship issues). The Unit aims to reduce offending by the use of empirically sound risk assessment tools and a brokerage case management model, which targets criminogenic needs; and
- Rehabilitation Programs Unit. This Unit facilitates programs and services in the community, the Periodic Detention Centre and Alexander Maconochie Centre. The services of the Unit are consistent with a focus on specific programs for offenders that address identified risks and criminogenic needs.

⁶ High-level advice about compliance with the Territory Privacy Principles (TPPs) under the *Information Privacy Act 2014*. The Human Rights Unit also assists ACT public sector agencies in responding to unauthorised or inadvertent disclosures of personal information by providing resources and informal guidance (including under Part 3 of the Office of the Australian Information Commissioner's guide to data breach preparation and response); http://actdirectory/webdir/cgi-bin/webdua.cgi?ea0_&organizationalUnit&b6e2cb2d-7a5b-43b9-a734-210e4a28f79e

⁷ <http://www.justice.act.gov.au/page/view/48> Accessed 28 August 2018.

- 1.17 This audit includes consideration of the activities of Community Corrections in relation to human rights.

Community Services Directorate

- 1.18 The primary purpose of the Community Services Directorate is, according to the *Community Services 2018-19 Budget Statements*:

... to empower people to meet their full potential within an inclusive and equitable community by:

- **Intervening early to support people** to be safe, to ensure basic needs are met to enable active community participation, and to support positive life outcomes.
- **Delivering services** that are human centred, holistic, tailored and integrated with a focus on ensuring the right supports are provided to those most in need, proactively identifying risks, and enabling people to work towards self-sufficiency as much as possible.
- **Building strong communities** with a focus on using evidence to inform services and programs, community development approaches that connect people to local communities, and maximising inclusion through targeted community-based programs. This includes alignment of government priorities and legislation to address community identified needs.
- **Enabling inclusive participation** by supporting Canberrans to participate in decision making, to form community connections, and to live fulfilling lives, fostering cohesion, equity and inclusion for all.
- **Driving collaboration and partnerships** within and external to the Directorate, working collaboratively with other government agencies, and building effective relationships with non-government community partners. This includes embedding the cultural change needed to intervene early and improve life trajectories as part of an integrated and holistic services system.

Bimberi Youth Justice Centre

- 1.19 Within the Community Services Directorate the Children, Youth and Families Division provides a range of services including 'child protection and youth justice services to children, young people, their families and their carers' working with 'key stakeholders in government and the community sector'.⁸
- 1.20 The Bimberi Youth Justice Centre is within the operational area of the Children, Youth and Families Division and Child, Youth Protection Services. The Bimberi Youth Justice Centre is described in the *Community Services Directorate 2017-18 Annual Report* as part of the Directorate' work in '[s]upporting young people in the youth justice system'.⁹
- 1.21 This audit includes consideration of the activities of the Bimberi Youth Justice Centre in relation to human rights.

⁸ Community Services Directorate, Government Directory: http://actdirectory/webdir/cgi-bin/webdua.cgi?ea0_&organizationalUnit&34d6dd03-11a7-44e1-8c80-e3c1eecb52b4, Accessed 22 October 2018.

⁹ *Community Services Directorate Annual Report 2017-18*, p 81-83.

Areas selected for this audit

- 1.22 Government agencies such as the Justice and Community Safety Directorate and the Community Services Directorate are public authorities under Part 5A of the *Human Rights Act 2004* and interact in varied ways with the community. These interactions include those with people who are vulnerable members of the community (vulnerable children, homeless people and people with disability and people involved with the justice system) for whom significant and life-impacting decisions, with significant human rights considerations, may be made by government agencies.

Human rights culture

- 1.23 According to the *Creating a human rights culture within the ACT government: Report on interview research assessing the impact of the Human Rights Act 2004 on the ACT Public Service* (October 2008) prepared by the ACT Human Rights Research Project ANU:

When the [*Human Rights Act 2004*] was introduced, it was envisaged that it would have a significant impact on the ACT public service and would foster the development of a human rights culture within the ACT government. The Bill of Rights Consultative Committee, which recommended the enactment of the [*Human Rights Act 2004*], noted that:

While a bill of rights has legal significance, its primary purpose should be to encourage the development of a human rights-respecting culture in ACT public life and in the community generally.¹⁰

- 1.24 It is also noted in the report that ‘while the creation of a ‘culture of human rights’ in government is often seen as an important outcome of a bill of rights such as the [*Human Rights Act 2004*], the content of such a culture is not usually explicitly defined’.¹¹ The report offers a potential definition of a human rights culture as:

A pattern of assumptions shared by government officers, and taught to new officers; that human rights must be considered and respected in carrying out all government functions and in developing new law and policy.^{12,13}

¹⁰ ACT Human Rights Act Research Project ANU: *Creating a human rights culture within the ACT government: Report on interview research assessing the impact of the Human Rights Act 2004 on the ACT Public Service* (October 2008), p 5.

¹¹ ACT Human Rights Act Research Project ANU: *Creating a human rights culture within the ACT government: Report on interview research assessing the impact of the Human Rights Act 2004 on the ACT Public Service* (October 2008), p 5.

¹² ACT Human Rights Act Research Project ANU: *Creating a human rights culture within the ACT government: Report on interview research assessing the impact of the Human Rights Act 2004 on the ACT Public Service* (October 2008), p 5

¹³ Gabrielle McKinnon: *Giving Meaning to a ‘Culture of Human Rights’ Working Paper No 3*. September 2006, RegNet, ANU.

- 1.25 The Victorian Equal Opportunity and Human Rights Commission, in its *2017 report on the operation of the Charter of Human Rights and Responsibilities*, provides further guidance on the concept of a human rights culture, noting that:

Human rights cultural change involves more than simply making practices more compliant with human rights standards. It requires changing the underlying attitudes and values that influence behaviour in an organisation, and moving to a culture where the human rights of Victorians are thoughtfully considered and prioritised in everyday business.

Growing a human rights culture is an ongoing and incremental process that requires a sustained commitment. Public authorities should reflect on how they operate and govern, and then consider what improvement can be made to best protect and promote the human rights of the people they serve.¹⁴

- 1.26 Identified in the Victorian report are ‘three cultural influences that can help grow a human rights culture and that are currently underused by [the Victorian] government’:

- senior leadership and organisational vision;
- building staff capability and practice; and
- external participation and accountability.¹⁵

- 1.27 A range of activities, which may be undertaken to grow a human rights culture, were listed in the Victorian report under the three identified cultural influences. These are shown in Table 1-3.

¹⁴ Victorian Equal Opportunity and Human Rights Commission: *2017 report on the operation of the Charter of Human Rights and Responsibilities*, p 43.

¹⁵ Victorian Equal Opportunity and Human Rights Commission, *2017 report on the operation of the Charter of Human Rights and Responsibilities*, p 43.

Table 1-3 Activities to grow a human rights culture

Senior leadership and organisational vision	Building staff capability and practice	External participation and accountability
Incorporating human rights in vision and values statements	Incorporating human rights obligations in policies and procedures	Community participation to identify human rights issues and problem solving in public sector decision-making
Internal and external commitment to building human rights culture	Designing tailored decision making tools and resources	Information exchange with community organisations and other stakeholders
Setting minimum expectations on staff to uphold human rights	Building the human rights knowledge and skills of management and staff	Seeking external research and guidance to develop evidence base on how best to uphold human rights in the specific organisational context
Role modelling public sector values and human rights practices	Ensuring complaints handling includes consideration of human rights obligations	Implementing service improvements that stem from complaints or investigations undertaken by external review agencies
Developing human rights action plans	Evaluation and continuous learning on embedding human rights culture	
Incorporating human rights in business planning	Identifying opportunities for professional development for human rights expertise	
Human and financial resources allocated to human rights initiatives	Team meetings to raise human rights issues and challenges	
	Human rights values incorporated in performance reviews	
	Recruitment and promotion practises are aligned with human rights principles	

Source: Victorian Equal Opportunity and Human Rights Commission 2017 *Report on the operation of the Charter of Human Rights and Responsibilities*, p 52.

1.28 The cultural influences and activities identified by the Victorian Equal Opportunity and Human Rights Commission have been used as a reference point for the conduct of the audit. In doing so, it is noted that:

- ‘senior leadership and organisational vision’ generally equates to activities taken at a whole-of-directorate level and are primarily dealt with in Chapter 3 of this report; and
- ‘building staff capability and practice’ generally equates to activities taken at an operational level and are primarily dealt with in Chapter 4 of this report.

- 1.29 Activities associated with the third cultural influence, ‘external participation and accountability’, were not directly considered as part of this audit.

Human Rights Commission 2014 report

- 1.30 The 2014 report ‘*Look who’s talking: A snapshot of ten years of dialogue under the Human Rights Act 2004*’ the ACT Human Rights and Discrimination Commissioner discussed the challenges associated with assessing the impacts of the *Human Rights Act 2004* on ACT Government agencies’ practices and culture:

The Act’s impact on departmental practices and culture, however, is more difficult to assess, due in part to the absence of any ongoing or systematic initiative by the Government to measure the HR Act’s influence in this area. Directorates have also for the most part continued to provide only perfunctory accounts of their efforts to implement the HR Act in their annual reports, despite the promulgation of directions requiring more detailed information.¹⁶

Audit objective and scope

Audit objective

- 1.31 The objective of this audit is to provide an independent opinion to the ACT Legislative Assembly on the effectiveness of selected ACT Government agencies’ recognition and implementation of their obligations under the *ACT Human Rights Act 2004*.

Audit scope

- 1.32 The scope of the audit included consideration of two directorates’ recognition and implementation of the requirements of the *Human Rights Act 2004* for public authorities to act consistently with human rights. The Community Services Directorate (the Bimberi Youth Justice Centre) and the Justice and Community Safety Directorate (Community Corrections and the Human Rights Unit) were those audited by examining:
- strategic/organisational mechanisms in place to support the Directorate to comply with its obligations as a public authority to act consistently with human rights, including consideration of:
 - strategic and business plans, operational plans and action plans;
 - risk assessment and management plans; and
 - policies and procedures and their articulation of the requirements of the agency to act consistently with human rights;
 - operational mechanisms to determine if they support the agency to comply with its obligations as a public authority to act consistently with human rights, including consideration of:
 - standard operating procedures and templates;

¹⁶ *Look who’s talking: A snapshot of ten years of dialogue under the Human Rights Act 2004* by the ACT Human Rights and Discrimination Commissioner, p 16.

- training (including induction) on the obligations of public authorities to act consistently with human rights; and
- evaluation/feedback processes (including monitoring, complaints and reporting); and
- the Human Rights Unit, within the Legislation, Policy and Programs Branch in the Justice and Community Safety Directorate and its support for public authorities.

Out of Scope

1.33 The audit did not consider:

- agencies' governance and administrative arrangements that are not related to the application of the *Human Rights Act 2004*; and
- assessments as to the compliance by agencies with the *Human Rights Act 2004* in relation to specific decision-making.

Audit criteria, approach and method

Audit criteria

1.34 To form a conclusion against the objective, the following criteria were used:

- 1) strategic/organisational mechanisms support the Directorate to comply with its obligations as a public authority to act consistently with human rights;
- 2) operational and administrative arrangements support the Directorate to comply with its obligations as a public authority to act consistently with human rights; and
- 3) the Human Rights Unit, within the Legislation, Policy and Programs Branch in the Justice and Community Safety Directorate, provides effective support to public authorities to promote compliance with obligations under the *Human Rights Act 2004*.

1.35 The audit was performed in accordance with *ASAE 3500 – Performance Engagements*. The audit adopted the policy and practice statements outlined in the Audit Office's *Performance Audit Methods and Practices (PAMPr)* which is designed to comply with the requirements of the *Auditor-General Act 1996* and *ASAE 3500 – Performance Engagements*.

1.36 In the conduct of this performance audit the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements.

Audit approach and method

1.37 The audit approach and method consisted of:

- reviewing relevant literature, practices and work undertaken on public authorities' consideration of human rights by other jurisdictions to identify better practices, particularly the Victorian Equal Opportunity and Human Rights Commission;
- identifying and reviewing relevant information and documentation including the Directorates' governance and accountability frameworks and related policy and procedures, research documents, and relevant reports;
- interviews and discussions with ACT Government officers in the Directorates and business units audited; and
- interviews and discussions with key stakeholders including the ACT Human Rights Commission, a human rights academic and community organisation representatives.

1.38 Auditing Standard ASAE 3500 requires that an audit consider events up to the date of the report. To achieve this, the audit team will, when seeking comments on the draft report, ask the agency to inform the team of any significant events affecting audit findings since fieldwork ceased.

2 SUPPORT FOR ACT GOVERNMENT AGENCIES

- 2.1 This chapter examines the role of the Human Rights Unit, within the Legislation, Policy and Programs Branch in the Justice and Community Safety Directorate, with respect to the support it provides to ACT Government agencies to promote consideration and recognition of their obligations under the *Human Rights Act 2004*. This in turn assists in the development of a human rights culture within ACT Government.

Summary

Conclusions

The Human Rights Unit (Justice and Community Safety Directorate) provides effective advice and support to ACT Government agencies to consider and recognise their obligations as public authorities under the *Human Rights Act 2004* by reviewing all proposed government bills and providing advice to agencies on the bills' compatibility with the *Human Rights Act 2004*.

However, there is an opportunity for the Human Rights Unit to improve its support for ACT Government agencies with respect to the provision of information and guidance material on human rights and the requirements of the *Human Rights Act 2004*, particularly with respect to day-to-day administration and decision-making. Information and guidance material made available to ACT Government agencies through the Justice and Community Safety Directorate website is old and outdated and does not provide practical guidance to ACT Government agencies, and ACT public servants, on how to meet their obligations as public authorities. A Human Rights Toolkit that was being developed by the Human Rights Unit, which was identified as a key information resource by the ACT Government in its response to previous reviews of the *Human Rights Act 2004*, has not been progressed and is not available to ACT Government agencies and staff.

ACT Government agencies are required, through Annual Report Directions, to report on human rights activities in their annual reports. The quality and comprehensiveness of this reporting are varied. This results in difficulty in assessing what progress, if any, is being achieved by ACT Government agencies in meeting their human rights obligations and in the development of a human rights culture in ACT Government agencies.

Key findings

In order to complete the *Human Rights Scrutiny Assessment* pro forma for each bill the Human Rights Unit works together with the agency responsible, to ensure that the final bill achieves its policy objectives in a manner that is compatible with human rights. This process assists in building a human rights culture as staff in agencies

Paragraph

2.9

develop an increased awareness of the *Human Rights Act 2004* and their associated obligations as public authorities.

The Human Rights Unit provides effective support and advice to ACT Government agencies in the assessment of proposed bills for compliance with the *Human Rights Act 2004*. Justice and Community Safety Directorate annual reports (2015-16 to 2017-18) have shown that 100 percent of ‘new Government laws are compatible with human rights legislation at the time of introduction’. This measure, while consistently achieving 100 percent, does not provide information as to the nature or depth of the work required by the Human Rights Unit to achieve compatibility. Reporting on compatibility when legislation is first submitted for approval by the Human Rights Unit could provide a measure of the development of a human rights culture across ACT Government agencies. This would be one indicator of the level of understanding and application of human rights obligations by ACT Government agencies developing legislation.

2.14

A review of the administrative guidance and explanatory material made available on the Justice and Community Safety Directorate website shows some useful guidance on the *Human Rights Act 2004* has been developed and made available to ACT Government agencies. However:

2.17

- the guidance is dated (ranging from 2010 to 2013), meaning that some references to ACT Government administrative units and processes are incorrect. These documents also pre-date the amendment to the Act to include cultural rights of Aboriginal and Torres Strait Islanders from February 2016; and
- procedural guidance is primarily focused on the recognition of human rights in the legislative scrutiny of proposed bills. There is no practical guidance to ACT Government agencies, and ACT public servants, as to how to meet their obligations as public authorities.

Between 2010 and 2012 the Justice and Community Safety Directorate undertook a project for the development of a Human Rights Toolkit to provide support and guidance to ACT Government agencies in recognising and implementing the requirements of the *Human Rights Act 2004*. The Human Rights Toolkit was repeatedly acknowledged in the March 2012 Government Response to the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009) as being a key resource that would be available for ACT Government agencies. The Human Rights Toolkit has not been developed or made available to ACT Government agencies to assist them in recognising and implementing the requirements of the *Human Rights Act 2004*.

2.33

ACT public sector bodies are required to report on ‘implementation strategies and progress in incorporating human rights standards into their operations’ in accordance with the requirements of the *Annual Reports (Government Agencies) Notice 2017* (the 2017-18 Annual Report Directions). Reporting on human rights is primarily achieved by annual reporting through the Justice and Community Safety Directorate; eleven public sector bodies provided information to the Justice and Community Safety Directorate for inclusion in its report, in accordance with the requirements of the 2017-18 Annual Report Directions. Seven public sector bodies

2.49

separately reported on human rights in their own stand alone annual reports. The nature and detail of the information reported varied across the public sector bodies. Analysis of the information reported shows that there is a number of omissions in public sector bodies' reporting and some information does not relate to that requested.

The *Human Rights Act 2004 (ACT): the First Five Years of Operation* report (May 2009) recommended ACT Government agencies' reporting on their human rights practices be strengthened to include a range of additional information that would provide more meaningful examples of agencies' efforts to implement, and comply with, the *Human Rights Act 2004*. These suggestions have not been recognised and implemented in subsequent Annual Report Directions. Accordingly, there is a lack of meaningful information and reporting by ACT Government agencies on their human rights activities and it is difficult to measure ACT Government agencies' progress in this area. 2.54

Human Rights Unit

- 2.2 The Human Rights Unit, within the Legislation, Policy and Programs Branch, seeks to promote human rights, and a human rights culture, in the ACT through engagement with government agencies progressing legislative reform and supporting those agencies in designing and implementing policies and bills that are compatible with human rights. The Human Rights Unit is comprised of three staff (two Senior Policy Officers and one ACT Public Service Graduate) overseen by the Director, Civil Law.
- 2.3 A Human Rights Advisor is listed as a service provided by the Legislation, Policy and Programs Branch in the ACT Government Directory.¹⁷ This responsibility is currently undertaken by the Director, Civil Law.

Legislative scrutiny

- 2.4 The Human Rights Unit's provision of support for public authorities includes advice on human rights implications for: cabinet submissions; policies under development; and proposed schemes e.g. mandatory pre-commitment scheme for electronic gaming machines.

Assessment of proposed bills for human rights compatibility

- 2.5 Section 37 of the *Human Rights Act 2004* requires the Attorney-General to prepare a compatibility statement for each Government bill presented to the ACT Legislative Assembly. A key role of the Human Rights Unit is to assess proposed bills for human rights compatibility and provide advice to the Attorney-General, including advice on the obligations of public authorities to act consistently with human rights.

¹⁷ ACT Government Directory, http://actdirectory/webdir/cgi-bin/webdua.cgi?ea0_&organizationalUnit&fc682d32-70fc-426b-82f1-7f9c3f2914bb Accessed 26 September 2018.

- 2.6 The Human Rights Unit's October 2018 work plan identified 54 activities; the assessment of proposed bills for human rights compatibility accounted for more than any other aspect of the Human Rights Unit's workload.
- 2.7 The Human Rights Unit references international, national and local legislation and agreements/covenants in assessing human rights implications; additionally, international and domestic case law is considered in interpreting human rights.
- 2.8 The Human Rights Unit uses a *Human Rights Scrutiny Assessment* pro forma to assess each bill; this pro forma is also available to agencies to commence this process. The pro forma includes sections which give consideration to:
- whether the bill engages rights in the *Human Rights Act 2004*;
 - which rights are supported or limited by the bill;
 - key factors provided in the Explanatory Statement and associated analysis:
 - nature of the right affected;
 - importance of the purpose of the limitation;
 - nature and extent of the limitation;
 - relationship between the limitation and its purpose; and
 - less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve; and
 - any Human Rights Commission comments available;
 - additional general safeguards/scrutiny comments/observations that support an assessment of compatibility; and
 - an assessment of whether limitations to human rights proposed by the bill are reasonable and demonstrably justifiable, posing the question: Are the limitations imposed by this bill compatible with the *Human Rights Act 2004*?
- 2.9 In order to complete the *Human Rights Scrutiny Assessment* pro forma for each bill the Human Rights Unit works together with the agency responsible, to ensure that the final bill achieves its policy objectives in a manner that is compatible with human rights. This process assists in building a human rights culture as staff in agencies develop an increased awareness of the *Human Rights Act 2004* and their associated obligations as public authorities.

Designated position response and sign off

- 2.10 The final section of the *Human Rights Scrutiny Assessment* pro forma is for sign-off by the officer(s) undertaking the scrutiny and clearing the assessment for the Human Rights Advisor. There is a check box for: 'In the opinion of the Human Rights Unit this Bill is consistent with human rights' and the date. There is no longer a position titled 'Human Rights Advisor'. The Director, Civil Law provides the final approval to the consideration of the bill.

Reporting

- 2.11 The Justice and Community Safety Directorate has, as one of its strategic objectives, *Strategic Objective 5 – Promotion and Protection of Rights and Interests*. In support of this strategic objective is *Strategic Indicator 5: Awareness and Compliance with Human Rights and Interests*. The Justice and Community Safety Directorate's achievements against this strategic objective between 2015-16 and 2017-18 are shown in Table 2-1.

Table 2-1 Awareness and compliance with human rights and interests

Success	Strategic Indicator	2015-16 Result	2016-17 Result	2017-18 Result
New Government laws are compatible with human rights legislation at time of introduction	Percentage of new Government laws that are compatible with human rights legislation at the time of introduction	100% (71)	100% (28) ¹	100% (54)

Source: Justice and Community Safety Directorate Annual Reports 2016-17 and 2017-18.

Note 1: Due to an election year and less ACT Legislative Assembly sittings, the number of bills introduced is lower than previous years.

- 2.12 Amendments to bills that occur, and are accepted, in the course of Legislative Assembly debate, are not subject to Human Rights Unit oversight. While it is appropriate that 100 percent of 'new Government laws are compatible with human rights legislation at the time of introduction', this measure does not provide information on:
- the level of work involved in achieving this outcome;
 - whether or not amendments resulted in a lack of compatibility; or
 - if all legislation was assessed by the Human Rights Unit.

Timeframes

- 2.13 As discussed at paragraph 2.5 the Human Rights Unit assesses proposed bills for human rights compatibility and provides advice to the Attorney-General. From 1 July 2017 to 30 June 2018 the Human Rights Unit provided human rights compatibility advice on 54 bills. This advice was provided by the Human Rights Unit from between one day and 65 days prior to the date the bill was presented to the Legislative Assembly, with an average of 14 days prior.
- 2.14 The Human Rights Unit provides effective support and advice to ACT Government agencies in the assessment of proposed bills for compliance with the *Human Rights Act 2004*. Justice and Community Safety Directorate annual reports (2015-16 to 2017-18) have shown that 100 percent of 'new Government laws are compatible with human rights legislation at the time of introduction'. This measure, while consistently achieving 100 percent, does not provide information as to the nature or depth of the work required by the Human Rights Unit to achieve compatibility. Reporting on compatibility when legislation is first submitted for approval by the Human Rights Unit could provide a measure of the development of a human rights culture across ACT Government agencies. This would be one indicator of the

level of understanding and application of human rights obligations by ACT Government agencies developing legislation.

Provision of support and resources for public authorities

Justice and Community Safety Directorate website

2.15 There is a number of documents and resources available on the Justice and Community Safety Directorate website to support public authorities to comply with their obligations under the *Human Rights Act 2004*. These include:

- links to the *Human Rights Act 2004*, the Explanatory Statement and speeches associated with its presentation to the ACT Legislative Assembly;
- links to a range of other human rights-related material from other Australian jurisdictions and other countries;
- reviews that have been conducted of the *Human Rights Act 2004*, e.g. a twelve month review and five year review of the operation of the legislation were conducted in 2005 and 2009 (as required by legislation) and a review was conducted into whether social and cultural rights should be included in the legislation in 2012;
- a section on the 'new' right to education that was recognised in the *Human Rights Act 2004* from 1 January 2013; and
- administrative guidance and explanatory material for ACT Government agencies on the legislation.

2.16 Table 2-2 shows the administrative guidance and explanatory material for ACT Government agencies available on the Justice and Community Safety Directorate website at the time of audit fieldwork in November 2018.

Table 2-2 Administrative guidance and explanatory material available on the Justice and Community Safety Directorate website

Document	Date	Description
Human Rights Act 2004: A Plain English Guide	4 February 2010	Provides an overview of the act and its features and guidance on the types of human rights protected under the act. (27 pages)
Overview of the Human Rights Act 2004	4 February 2010	Provides a brief overview of the act and a summary of its key features. (7 pages)
The Human Rights Act 2004: Guidelines for ACT Departments: Developing Legislation and Policy	4 February 2010	Provides guidance on considerations for the recognition of human rights in policy development and legislation development process. Provides specific guidance on each of the human rights and consideration associated with each right. (107 pages)
Human Rights Act 2004 Fact Sheet: Addressing human rights in explanatory statements of bills	19 July 2012	Provides specific guidance on how to address human rights in explanatory statements of bills. (4 pages)

Document	Date	Description
Guide to ACT Departments on Pre Introduction Scrutiny: The Attorney General's Compatibility Statement under the Human Rights Act 2004	4 February 2010	Provides specific guidance on the compatibility statement process for proposed bills. (5 pages)

Source: http://www.justice.act.gov.au/protection_of_rights/human_rights_act

2.17 A review of the administrative guidance and explanatory material made available on the Justice and Community Safety Directorate website shows some useful guidance on the *Human Rights Act 2004* has been developed and made available to ACT Government agencies. However:

- the guidance is dated (ranging from 2010 to 2013), meaning that some references to ACT Government administrative units and processes are incorrect. These documents also pre-date the amendment to the Act to include cultural rights of Aboriginal and Torres Strait Islanders from February 2016; and
- procedural guidance is primarily focused on the recognition of human rights in the legislative scrutiny of proposed bills. There is no practical guidance to ACT Government agencies, and ACT public servants, as to how to meet their obligations as public authorities.

Human Rights Toolkit

2.18 The *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009) identified:

There is limited awareness of the [*Human Rights Act 2004*] amongst frontline decision-makers and some officers who administer legislation have not appeared to appreciate the requirements ... to interpret legislation consistently with human rights. In part, this is because of a lack of training, information and accessible resources for public servants.

...

It will take time for a human rights culture to permeate all levels of government, but it will also require an ongoing commitment of resources for human rights training and dissemination of information. The amendments to the [*Human Rights Act 2004*] are likely to increase the perceived relevance of human rights considerations for a broader range of public officials, and to deepen the fledgling culture of human rights developing in the Territory.

2.19 Accordingly, the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009) recommended:

... that an accessible and up to date resource would be created to assist public servants to understand human rights principles and developments. This resource could complement formal training sessions. This could build upon existing materials available on the JACS website, and should be intelligible to those without formal legal training. This resource could also provide a guide to research and links to other sources of more detailed information and human rights cases from Australia and overseas ...

- 2.20 In the March 2012 Government Response to the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009), the development of a Human Rights Toolkit was repeatedly acknowledged as being a resource that would be available for ACT Government agencies. The Government Response stated:

The [Human Rights Unit] is currently developing a web-based plain-English Human Rights Toolkit to assist ACT public authorities to comply with their obligations under the [*Human Rights Act 2004*], incorporate human rights into public policy at an earlier stage and reduce the risks associated with non-compliance such as legal action and reputational damage. The Toolkit will include information about each right protected under the [*Human Rights Act 2004*], the scope of protected rights and good practice approaches to assist agencies to develop human rights compatible legislation and policies. It will also address the obligations of public authorities under the [*Human Rights Act 2004*].

The Toolkit will enhance the range of available human rights information maintained by [the Human Rights Unit], serving as a first point of reference for policy and decision-makers in ACT public authorities to assist them to recognise when a policy or decision may engage a protected right. The [Human Rights Unit] will promote awareness of this new resource across the ACT Government.

- 2.21 The Government Response further stated:

[The Justice and Community Safety Directorate] is developing a plain English web-based Human Rights Toolkit for public servants which is intended to assist public authorities to understand their obligations under the [*Human Rights Act 2004*], assist public servants to develop human rights compatible legislation, policies and decisions and raise awareness and understanding of the rights protected under the [*Human Rights Act 2004*].

The Toolkit will include a fact sheet on each protected right under the HRA, outlining the scope of each right including 'good practice' tips and general policy triggers where human rights are likely to be engaged.

The Toolkit will complement formal training sessions already conducted by the HRC and existing human rights materials on the HRA, such as the information sheet addressing the statutory obligations of public authorities available on the HRC's website.

- 2.22 The importance of the Human Rights Toolkit was also emphasised in the March 2012 Government Response where a recommendation associated with the provision of 'intensive and ongoing training on the [*Human Rights Act 2004*] ... across all levels of government' was supported in-principle noting:

Once the Human Resource Toolkit is completed, [the Justice and Community Safety Directorate] will explore opportunities for publicising the Toolkit, including incorporating information into induction and staff development programs.

Human Rights Toolkit Project

- 2.23 A project was conducted by the Human Rights Unit between October 2010 and 31 January 2011 to develop a *Human rights toolkit for public authorities*. Once completed, the toolkit was to replace the existing *The Human Rights Act 2004: Guidelines for ACT Departments: Developing Legislation and Policy* (February 2010).¹⁸

¹⁸ The Guidelines were accessed on the Justice and Community Safety Directorate website on 11 October 2018, notated revised in February 2010 <http://justice.act.gov.au/publication/view/95> (Accessed 11 October 2018).

2.24 The two main objectives of the project were to:

Develop content for a Web-based, plain English toolkit for ACT public authorities. The five completed sections [were to] form the templates for remaining sections; and

Make recommendations about actions required for the publication and promotion of the toolkit.

2.25 At the time of the project report in March 2011, the draft toolkit was written and was 'awaiting approval for distribution' with 'calling for comments', which were to be incorporated into the final Toolkit, identified as the next step. According to the project report, 'stakeholders [had] confirmed that they were previously unaware of their obligations under the HRA' and of the Human Rights Unit and that 'increased awareness [had] already resulted in an increased flow of information' between directorates and the Human Rights Unit.

2.26 The March 2011 project report identified the principle outcomes of the project to that date as:

Development of nominated sections of the toolkit, to the stage of consultation on the draft ...

Increased awareness of the *Human Rights Act 2004* amongst public authorities consulted, obligations under the *Human Rights Act 2004*, and the risks of not complying with human rights; and

Increased awareness of the Human Rights Unit as a resource.

2.27 Additionally, the March 2011 project report noted that:

Early feedback confirms the toolkit's strategic alignment and potential to add public value to the operation of public authorities ... the toolkit will demonstrate the Government's commitment to supporting a human rights culture in the ACT, including responding to feedback from the five year review.

2.28 Eight recommendations were included in the project report:

Complete toolkit contents ... needs to be completed by 30 June 2011 for a proposed launch date of September 2011;

Prepare the toolkit as a Web-based resource ...;

Develop promotional strategy; and

Launch toolkit – a public launch of the toolkit will raise the toolkit's profile (agreement to a September 2011 launch to be sought from the (then) Attorney-General).

2.29 The project was not completed.

2.30 In April 2012 a project plan was drafted for the development of the *Human Rights Act 2004* Toolkit. This draft project plan identified the target outcomes as assisting in 'fostering a human rights-respecting culture in the ACT'.

2.31 This project was, according to the draft project plan, expected to be completed (other than ongoing review and revision) by June/July 2012 with a staged publication of the Toolkit. The draft project plan was not finalised or formally approved.

- 2.32 The Human Rights Unit advised that, in the meantime, resources have, instead, been invested in providing tailored information and assistance to agencies as they develop legislative proposals. Furthermore, while the Human Rights Toolkit was not disseminated to ACT Government agencies and is not available outside the Human Rights Unit, the Human Rights Unit uses materials prepared for the Toolkit when responding to inquiries regarding the application of human rights by public authorities. It is noted that the Human Rights Unit could explore options in the future, other than the Human Rights Toolkit, for the dissemination of the materials already developed in order to support ACT Government agencies in developing a human rights culture.
- 2.33 Between 2010 and 2012 the Justice and Community Safety Directorate undertook a project for the development of a Human Rights Toolkit to provide support and guidance to ACT Government agencies in recognising and implementing the requirements of the *Human Rights Act 2004*. The Human Rights Toolkit was repeatedly acknowledged in the March 2012 Government Response to the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009) as being a key resource that would be available for ACT Government agencies. The Human Rights Toolkit has not been developed or made available to ACT Government agencies to assist them in recognising and implementing the requirements of the *Human Rights Act 2004*.

RECOMMENDATION 1**GUIDANCE AND SUPPORT FOR ACT GOVERNMENT AGENCIES**

In order to more effectively support public authorities to comply with their obligations under the *Human Rights Act 2004* and contribute to the development of a human rights culture in ACT Government agencies, the Justice and Community Safety Directorate should develop administrative guidance for ACT Government agencies in relation to their obligations as public authorities under the *Human Rights Act 2004*. This could involve the progression and completion of the Human Rights Toolkit or an updated version of it.

ACT Government public sector bodies' reporting on human rights

- 2.34 ACT Government public sector bodies are required to report on 'implementation strategies and progress in incorporating human rights standards into their operations' in accordance with the requirements of the *Annual Reports (Government Agencies) Notice 2017* (the 2017-18 Annual Report Directions). The 2017-18 Annual Report Directions state:

Directorates and public sector bodies must report on implementation strategies and progress in incorporating human rights standards into their operations, with reference to the following:

- **education and training of staff on human rights principles:** number of training sessions; training provider, number and policy cohorts that attended (e.g. legal staff, policy staff);

- **internal dissemination of information to staff on the legislative scrutiny process:** distribution of Human Rights Commission brochures, JACSD publications and documentation developed by the directorate/public sector body;
- **liaison with the Human Rights Advisors on human rights principles or the legislative scrutiny process:** the number of cabinet submissions prepared and the human rights issues identified as part of these processes (without breaching confidentiality); the number of compatibility statements issued in relation to new legislative proposals developed; and a description of any issues that had to be resolved after consultation with the Human Rights Advisor;
- **reviews or preparations for reviews of existing legislation for compatibility with the Human Rights Act:** human rights issues raised by the existing legislative framework in which they operate; the process for identifying any necessary legislative amendments; and, if no reviews have been undertaken, the reasons for not reviewing legislation and a timetable for future review; and
- **litigation:** a summary of cases before courts or tribunals which have involved arguments concerning the Human Rights Act, along with responses to relevant decisions.¹⁹

2.35 Requirements for how the information is to be reported are articulated in the 2017-18 Annual Report Directions, which state:

It is the responsibility of the coordinating directorate [Justice and Community Safety] to organise the collection of whole of government information and provide guidance to other directorates and public sector bodies on the information and mechanisms for collecting that information. The coordinating directorate will present the information in their report. All other directorates and public sector bodies are not required to repeat this information in their own annual reports, provided that it is presented in a whole of government annual report.

2.36 The 2017-18 Annual Report Directions identify the contact for further information on this requirement as the Human Rights Advisor, Legislation, Policy and Program Branch in the Justice and Community Safety Directorate.

Public sector bodies' reporting on human rights

2.37 In considering ACT Government public sector bodies' reporting on human rights, the Audit Office notes the distinction drawn in the 2017-18 Annual Report Directions between:

- directorates;
- 'public sector bodies with stand alone annual reports';
- 'public sector bodies with annual reports annexed to the affiliated Directorate's annual report'; and
- 'public sector bodies with annual report information subsumed within the affiliated Directorate's annual report'.

2.38 Analysis was performed on directorates and 'public sector bodies with stand alone annual reports'. The 2017-18 Annual Report Directions (issued in May 2017) identified a total of twenty directorates and public sector bodies identified by these classifications. The

¹⁹ Annual Reports (Government Agencies) Notice 2017, NI2017-280, Attachment A, Annual Report Directions, page 46.

Suburban Land Agency and City Renewal Authority were not identified in the 2017-18 Annual Report Directions (although it is noted that the Land Development Agency was identified). The Suburban Land Agency provided information for inclusion in the Justice and Community Safety Directorate's *2017-18 Annual Report*. The Canberra Institute of Technology was also not identified in the 2017-18 Annual Report Directions, but it provided information for inclusion in the Justice and Community Safety Directorate's *2017-18 Annual Report*.

2.39 In relation to ACT public sector bodies' reporting on human rights:

- information from eleven ACT public sector bodies was reported in Section O.3 of the Justice and Community Safety Directorate *2017-18 Annual Report*: the ACT Insurance Authority; ACT Health Directorate; Canberra Institute of Technology; Chief Minister, Treasury and Economic Development Directorate; Community Services Directorate; Cultural Facilities Corporation; Education Directorate; Environment, Planning and Sustainable Development Directorate; Justice and Community Safety Directorate; Suburban Land Agency; and Transport Canberra and City Services Directorate;
- seven ACT public sector bodies reported on human rights in their own stand alone annual reports: ACT Human Rights Commission; Building and Construction Industry Training Fund Authority; Icon Water; Independent Competition and Regulatory Commission; Legal Aid Commission; Long Service Leave Authority; and Public Trustee and Guardian;
- the Commissioner for Sustainability and the Environment advised that its reporting obligations were covered by the Environment, Planning and Sustainable Development Directorate's reporting;
- the Gambling and Racing Commission advised that it 'did not report to [the Justice and Community Safety Directorate] against these provisions given that the provisions either do not apply to the [Gambling and Racing Commission] or the [Gambling and Racing Commission] had nil information to report'. The Gambling and Racing Commission noted that:
 - it does not have any staff members;
 - any information on the training and education of staff and dissemination of information to staff is covered by Access Canberra (through the Chief Minister, Treasury and Economic Development Directorate); and
 - it does not have any policy responsibilities and would therefore have nothing to report regarding human rights principles and the legislative scrutiny process;
- the City Renewal Authority, in its *2017-18 Annual Report*, stated:

Consistent with the Directions, the information satisfying these requirements is reported in the one place for all ACT Public Services Directorates, as follows:

...

O. Justice and Community Safety, including all subsections O.1-O.4, see the annual report of the Justice and Community Safety Directorate.²⁰

- There is no specific reference to the City Renewal Authority in Section O.3 of the Justice and Community Safety Directorate's *2017-18 Annual Report*.
Environment, Planning and Sustainable Development Directorate staff advised a 'nil response' was provided to the Justice and Community Safety Directorate in relation to Section O.3; and
 - there is no evidence of direct reporting on human rights, against the requirements of Section O.3 of the 2017-18 Annual Report Directions, by the Director of Public Prosecutions.
- 2.40 The nature and detail of the human rights information included by the eighteen public sector bodies in annual reports varied considerably; this was irrespective of whether the information was included in the Justice and Community Safety Annual Report or individual bodies' reports.
- 2.41 In relation to public sector bodies' reporting on 'education and training of staff on human rights principles' twelve bodies specifically reported against this requirement, including: ACT Health Directorate; Canberra Institute of Technology, Chief Minister, Treasury and Economic Development Directorate; ACT Insurance Authority; Community Services Directorate; Cultural Facilities Corporation; Education Directorate; Environment, Planning and Sustainable Development Directorate; Justice and Community Safety Directorate; Long Service Leave Authority; Suburban Land Agency; and Transport Canberra and City Services Directorate.
- 2.42 Some bodies (including the ACT Health Directorate, Canberra Institute of Technology, Community Services Directorate and Justice and Community Safety Directorate) reported specifically on human-rights related training courses or e-learning programs that were implemented, including the number of attendees. A number of bodies reported on training other than training specifically on human rights principles (including respect, equity and diversity (RED) training and cultural awareness training) and some bodies reported support of international days such as days for women and for people with a disability, NAIDOC week, Youth Week and Reconciliation Week and the provision of, or support for, staff awards.
- 2.43 Specific reporting on 'internal dissemination of information to staff on the legislative scrutiny process' was completed by six public sector bodies including: ACT Health Directorate; Canberra Institute of Technology; Chief Minister, Treasury and Economic Development Directorate; Community Services Directorate; Cultural Facilities Corporation; and Justice and Community Safety Directorate.
- 2.44 Four of the six bodies that reported against this requirement reported that 'Government messages in relation to human rights (HR) are made available to all staff, including notices of HR training opportunities' or a minor variation of this. Two bodies (the Justice and

²⁰ *City Renewal Authority Annual Report 2017-18*, p 9.

Community Safety Directorate and Chief Minister, Treasury and Economic Development Directorate) reported on directorate-specific activities. (In its response to the draft proposed report the Environment, Planning and Sustainable Development Directorate asserted that information that addressed the requirement 'internal dissemination of information to staff on the legislative scrutiny process' was covered by its response to the first requirement 'education and training of staff on human rights principles').

- 2.45 In relation to public sector bodies' reporting on 'liaison with the Human Rights Advisors on human rights principles or the legislative scrutiny process' ten bodies specifically reported against this requirement, including: ACT Health Directorate; Chief Minister, Treasury and Economic Development Directorate; ACT Insurance Authority; Community Services Directorate; Cultural Facilities Corporation; Education Directorate; Environment, Planning and Sustainable Development Directorate; Justice and Community Safety Directorate; Suburban Land Agency; and Transport Canberra and City Services Directorate.
- 2.46 In relation to public sector bodies' reporting on 'reviews or preparations for reviews of existing legislation for compatibility with the *Human Rights Act*' eleven bodies reported against this requirement, including: ACT Health Directorate; Canberra Institute of Technology; Chief Minister, Treasury and Economic Development Directorate; ACT Insurance Authority; Community Services Directorate; Cultural Facilities Corporation; Environment, Planning and Sustainable Development Directorate; Justice and Community Safety Directorate; Legal Aid Commission; Suburban Land Agency; and Transport Canberra and City Services Directorate.
- 2.47 A number of bodies reported on their interaction with the Human Rights Unit within the Justice and Community Safety Directorate for the review of bills for compatibility with the *Human Rights Act 2004* (including the number of bills reviewed for compatibility). This is a duplication of the preceding reporting requirement. Some bodies reported that no reviews of legislation had been undertaken or were planned. There was very little useful information in any of the bodies' reporting that addressed the requirements of 'human rights issues raised by the existing legislative framework in which they operate; the process for identifying any necessary legislative amendments; and, if no reviews have been undertaken, the reasons for not reviewing legislation and a timetable for future review'.
- 2.48 With respect to 'Litigation', of the three bodies that reported that they had been involved in litigation that related to the *Human Rights Act 2004* (Canberra Institute of Technology, Community Services Directorate and the Education Directorate), none reported their responses to the decisions. The Legal Aid Commission reported that 'one litigation case involved notification to the Human Rights advisor'.
- 2.49 ACT public sector bodies are required to report on 'implementation strategies and progress in incorporating human rights standards into their operations' in accordance with the requirements of the *Annual Reports (Government Agencies) Notice 2017* (the 2017-18 Annual Report Directions). Reporting on human rights is primarily achieved by annual reporting through the Justice and Community Safety Directorate; eleven public sector bodies provided information to the Justice and Community Safety Directorate for inclusion

in its report, in accordance with the requirements of the 2017-18 Annual Report Directions. Seven public sector bodies separately reported on human rights in their own stand alone annual reports. The nature and detail of the information reported varied across the public sector bodies. Analysis of the information reported shows that there is a number of omissions in public sector bodies' reporting and some information does not relate to that requested.

Usefulness of reporting

2.50 ACT Government agencies' annual reporting was discussed in the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009), which stated:

We recommend that agencies should also be required to report on:

- reviews of procedures and policies for compliance;
- whether and how they have managed their HRA obligations when outsourcing services, for example, whether contracts and tenders include a requirement for HRA compliance;
- whether they have developed guidelines and checklists for incorporating the [*Human Rights Act 2004*] in decision-making;
- whether they have disseminated information about their human rights obligations to their client groups; and
- whether they have developed a rights framework for complaints handling.

2.51 The *Human Rights Act 2004 (ACT): the First Five Years of Operation* report (May 2009) also recommended that agencies:

... should be strongly encouraged to use the annual reporting framework to initiate a process for benchmarking their performance and setting progressive goals with the view to continuous improvement.²¹

2.52 The March 2012 Government Response to the *Human Rights Act 2004 (ACT): The First Five Years of Operation* report (May 2009) 'noted' this recommendation and stated:

The Government will consider the possibility of developing further meaningful indicators/ measurable goals to report on within the Annual Report framework as part of an ongoing evaluation process of annual reports. The development and review of meaningful indicators may encourage agencies to adopt a more rigorous approach to addressing human rights compliance in service delivery. The Government supports in-principle continuous improvement against all performance indicators, including human rights.

²¹ ACT Human Rights Act Research Project, *The Australian National University: The Human Rights Act 2004 (ACT): The First Five Years of Operation, A Report to the ACT Department of Justice and Community Safety*, May 2009, p 46.

- 2.53 In *Look who's talking, A snapshot of ten years of dialogue under the Human Rights Act 2004* (2014), the ACT Human Rights and Discrimination Commissioner commented:

The Act's impact on departmental practices and culture, however, is more difficult to assess, due in part to the absence of any ongoing or systematic initiative by the Government to measure the [Human Rights] Act's influence in this area. Directorates have also for most part continued to provide only perfunctory accounts of their efforts to implement the [Human Rights] Act in their respective annual reports, despite the promulgation of directions requiring more detailed information.²²

- 2.54 The *Human Rights Act 2004 (ACT): the First Five Years of Operation* report (May 2009) recommended ACT Government agencies' reporting on their human rights practices be strengthened to include a range of additional information that would provide more meaningful examples of agencies' efforts to implement, and comply with, the *Human Rights Act 2004*. These suggestions have not been recognised and implemented in subsequent Annual Report Directions. Accordingly, there is a lack of meaningful information and reporting by ACT Government agencies on their human rights activities and it is difficult to measure ACT Government agencies' progress in this area.

RECOMMENDATION 2 ANNUAL REPORTING ON HUMAN RIGHTS

In order to improve the quality and comprehensiveness of ACT Government agencies' reporting under the *Human Rights Act 2004*, the Chief Minister, Treasury and Economic Development Directorate, in consultation with the Justice and Community Safety Directorate, should amend the Annual Report Directions to:

- a) specify minimum standards and formats for human rights activities to be reported by ACT Government agencies; and
- b) identify additional, meaningful information required to be reported by agencies that allows for an assessment of the development of a human rights culture in each agency.

²² ACT Human Rights and Discrimination Commissioner, *Look who's talking: A Snapshot of ten years of dialogue under the Human Rights Act 2004*, 2014, p 17. This quote reference the Chief Minister's Annual Report Directions since 2007.

3 DEVELOPMENT OF A HUMAN RIGHTS CULTURE

- 3.1 This chapter examines the strategic and organisational mechanisms within the Justice and Community Safety Directorate and the Community Services Directorate to support the development of a human rights culture.

Summary

Conclusion

The Justice and Community Safety Directorate and Community Services Directorate have taken steps to build a human rights culture through whole-of-directorate strategic and organisational policies and documents. Various policies and documents in each Directorate implicitly, and in some instances explicitly, recognise and articulate the importance of human rights to the activities of the Directorate.

Key findings

	Paragraph
The Justice and Community Safety Directorate does not have a human rights-specific policy or action plan. Whole-of-directorate strategic and organisational policies and documents in the Justice and Community Safety Directorate inconsistently reference human rights and the relevance of human rights. Whilst the <i>JACS Strategic Plan 2017-2019</i> identifies an 'accessible justice system' as a strategic priority and, against this priority, identifies 'embed human rights in the legal system, executive and community' as an action, there is no further information on what this means or how it is to be achieved. Other documents also reference the <i>Human Rights Act 2004</i> as one of a list of relevant Acts, but provide no further guidance on the relevance of human rights to the Directorate's activities. Notwithstanding the lack of specific recognition and articulation of human rights in the Directorate's strategic and organisational policies and documents, the documents are not incompatible with a human rights culture.	3.13
The ACT Corrective Services <i>Strategic Plan 2017-2019 'Resetting the Foundations'</i> and the <i>Code of Ethical Conduct</i> (May 2008) for ACT Corrective Services reference human rights and identify human dignity as a key focus. In doing so these documents recognise and promote a human rights culture.	3.32
The <i>Corrections Management (Human Rights) Policy 2010</i> assists in promoting a human rights culture in ACT Corrective Services (Justice and Community Safety Directorate) by articulating a philosophy for the recognition of human rights in the management of detainees. However, the policy has not been updated since 2010	3.33

and specifically applies to 'persons accommodated and working in a correctional centre' thereby excluding staff and persons associated with Community Corrections.

The *Community Services Directorate - Human Rights Policy* was released on 22 July 2010 and revised on 6 September 2011. It provides a strong endorsement of the importance of human rights and its application to the Directorate. It also notes that some of its 'community partners will be public authorities under the Act' and 'encourages all its community partners to act and make decisions consistent with human rights'.

3.46

Strategic and organisational policies and other Community Services Directorate documents reviewed showed varying levels of support for the development of a human rights culture. The *Blueprint for Youth Justice in the ACT 2012–22* refers to human rights and the *Human Rights Act 2004*, and notes that it was 'influenced by the recommendations of the *ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the ACT Human Rights Commission*'. *Empowering People: Community Services Directorate Strategic Plan 2018-2028* is a comprehensive, ten-year strategic plan that brings together the Directorate's 'strategic, organisational and division level planning to support the achievement of the core outcomes'. The Strategic Plan, and additional supporting statements for each of the Plan's identified outcomes, do not directly reference human rights. However, it should be noted that there is a strong, albeit implicit, alignment with human rights in the plan and its identified outcomes for the community.

3.58

Senior leadership and organisational vision

3.2 *Senior leadership and organisational vision* has been identified by the Victorian Equal Opportunity and Human Rights Commission as a cultural influence that can help grow a human rights culture within an organisation. The Victorian Equal Opportunity and Human Rights Commission's *2017 report on the operation of the Charter of Human Rights and Responsibilities* identified a range of activities that may be undertaken to promote human rights through senior leadership and organisational vision, including:

- incorporating human rights in vision and values statements;
- internal and external commitment to building human rights culture;
- setting minimum expectations on staff to uphold human rights;
- role modelling public sector values and human rights practices;
- developing human rights action plans;
- incorporating human rights in business planning; and
- human and financial resources allocated to human rights initiatives.

3.3 The Audit Office considered the activities of the Justice and Community Safety Directorate and Community Services Directorate in promoting a human rights culture by reviewing whole-of-directorate strategic and organisational documents.

Justice and Community Safety Directorate

Whole-of-directorate strategic and organisational policies and documents

- 3.4 The importance of human rights is recognised explicitly or implicitly in a range of whole-of-directorate documents including:
- *JACS Strategic Plan 2017-2019*;
 - *Justice and Community Safety Service Charter (2017)*;
 - *JACS Strategic Plan 2017-2019 Workforce Strategy*;
 - *Strategic Workforce Planning Guideline (2017-2019)*;
 - *Aboriginal and Torres Strait Islander Employment Action Plan 2016-2019*;
 - *Employment Action Plan for People with Disability*;
 - *Stretch Reconciliation Action Plan 2016-2019*;
 - *Inclusion Statement 2016-2019*;
 - *Priorities for Social Inclusion 2017-2019 Plan*; and
 - *Privacy Policy (2018-2020)*.
- 3.5 This is in addition to the recognition of the Justice and Community Safety Directorate's role in 'promoting the protection of human rights in the Territory', as described in the *Justice and Community Safety 2018-19 Budget Statements*. There is, however, no human rights-specific policy or action plan for the Directorate.
- 3.6 As part of the audit, these strategic and organisational policies and other documents were examined. This analysis shows variability in their:
- identification and articulation of the concept and importance of human rights; and
 - support for building a culture of human rights.
- 3.7 The *JACS Strategic Plan 2017-2019* identifies an 'accessible justice system' as a strategic priority and, against this priority, identifies 'embed human rights in the legal system, executive and community'. However, there is no further information on what this means or how it is to be achieved.
- 3.8 The *Justice and Community Safety Service Charter (2017)* does not explicitly discuss human rights, but implicitly acknowledges the Directorate's role in promoting the protection of human rights by identifying one of its objectives as to 'promote and protect rights and interests' and, as a service standard, that 'we treat all clients, customers and stakeholders with courtesy and sensitivity to their rights, duties and aspirations'. There are no further references to human rights in the *Justice and Community Safety Service Charter (2017)* and no further information on what this means or how it is to be achieved.

- 3.9 A number of the documents restate the Justice and Community Safety Directorate's vision of 'a safe and just community for all', but do not explicitly recognise human rights or their place in the Justice and Community Safety Directorate's vision. These include the:
- *JACS Strategic Plan 2017-2019 Workforce Strategy*;
 - *Inclusion Statement 2016-2019*;
 - *Priorities for Social Inclusion 2017-2019 Plan*; and
 - *Stretch Reconciliation Action Plan 2016-2019*. This references the *Human Rights Act 2004* under 'Recognition of Aboriginal and Torres Strait Islander Cultural Rights' where it states that in '2016 the *Human Rights Act 2004* was amended to expressly recognise Aboriginal and Torres Strait Islander cultural rights'.
- 3.10 A number of the documents reference legislation relevant to the subject and, in some instances, this also includes the *Human Rights Act 2004*, for example:
- *Aboriginal and Torres Strait Islander Employment Action Plan 2016-2019*; and
 - *Employment Action Plan for People with Disability 2016-2019*.
- 3.11 Some documents make no reference to human rights, including the *2014-2018 Evaluation Plan*. In relation to the *2014-2018 Evaluation Plan* there is no evidence that meeting obligations under the *Human Rights Act 2004* is considered in any part of the plan. This includes, for example, the design and implementation of evaluations of programs and services which are likely to impact or engage human rights.
- 3.12 Notwithstanding that the right to privacy is a human right under the *Human Rights Act 2004*, the *Privacy Policy (2018-2020)* does not include the Act in legislation referenced in developing the policy; the Act is referenced once in the policy in a list of legislation to which the Directorate is subject that 'may affect how it handles your personal information'.
- 3.13 The Justice and Community Safety Directorate does not have a human rights-specific policy or action plan. Whole-of-directorate strategic and organisational policies and documents in the Justice and Community Safety Directorate inconsistently reference human rights and the relevance of human rights. Whilst the *JACS Strategic Plan 2017-2019* identifies an 'accessible justice system' as a strategic priority and, against this priority, identifies 'embed human rights in the legal system, executive and community' as an action, there is no further information on what this means or how it is to be achieved. Other documents also reference the *Human Rights Act 2004* as one of a list of relevant Acts, but provide no further guidance on the relevance of human rights to the Directorate's activities. Notwithstanding the lack of specific recognition and articulation of human rights in the Directorate's strategic and organisational policies and documents, the documents are not incompatible with a human rights culture.

Corrective Services strategic and organisational policies and documents

- 3.14 The Justice and Community Safety Directorate strategic and organisational policies and documents apply to ACT Corrective Services. ACT Corrective Services also has documentation which the Audit Office examined to assess what ACT Corrective Services has developed and implemented with respect to the recognition and promotion of human rights and promotion of a human rights culture.

ACT Correctives Services Strategic Plan 2017-2019 'Resetting the Foundations'

- 3.15 The ACT Corrective Services *Strategic Plan 2017-2019 'Resetting the Foundations'*, identifies the mission of ACT Corrective Services to:

... contribute to a safer community through:

- The safe, secure, decent and humane management of offenders both in custody and the community.
- The provision of sustainable opportunities for offenders to lead law abiding and productive lives in the community through rehabilitation and reintegration.

- 3.16 Also stated in the ACT Corrective Services *Strategic Plan 2017-2019 'Resetting the Foundations'* is that a key focus for ACT Corrective Services will also be on 'dignity':

- We maintain high standards of conduct, courtesy and respect at all times
- We treat people in the manner we would wish to be treated
- We ensure that people are supported to maintain a clean, hygienic and decent standard of living while in our care.

- 3.17 A key focus on dignity aligns with the Preamble of the *Human Rights Act 2004*, which states that '(h)uman rights are necessary for individuals to live lives of dignity and value'.²³ Under the heading of *Strong Governance*, as one of six strategic pillars, the ACT Corrective Services *Strategic Plan 2017-2019 'Resetting the Foundations'* states that ACT Corrective Services will, as part of building credibility within the community and within government '... (d)etermine 'human rights' deliverables and communicate to all stakeholders'.

Corrections Management (Human Rights) Policy 2010

- 3.18 Subsection 14(1) of the *Corrections Management Act 2007* states:

The director-general may make corrections policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of correctional services.

- 3.19 Subsection 14(1) of the *Corrections Management Act 2007* provides that any policies made by virtue of this authority are notifiable instruments.

²³ *Human Rights Act 2004*, Preamble.

3.20 In accordance with this section, in May 2010 the Justice and Community Safety Directorate developed its *Corrections Management (Human Rights) Policy 2010* (Notifiable Instrument NI2010-281). The purpose of the *Corrections Management (Human Rights) Policy 2010* is:

To ensure observance of the human rights of persons accommodated and working in a correctional centre, consistent with the *Human Rights Act 2004* as amended by the *Human Rights Act 2008*.

3.21 The *Corrections Management (Human Rights) Policy 2010* outlines:

- the 'operating philosophy' of ACT Corrective Services;
- the rights protected under the *Human Rights Act 2004*; and
- considerations for the limitations of human rights of detainees, noting that 'human rights may be limited if it is demonstrably justified'.

3.22 The *Corrections Management (Human Rights) Policy 2010* is a high-level policy that articulates a philosophy for the recognition of human rights in the management of detainees. It is explicitly identified as applying to 'persons accommodated and working in a correctional centre' and thereby excludes staff and persons associated with Community Corrections.

3.23 The *Corrections Management (Human Rights) Policy 2010* followed two earlier documents that were produced shortly after the commencement of the *Human Rights Act 2004*:

- the *ACT Corrective Services Human Rights Policy Statement* (June 2005); and
- the *ACT Corrective Services Human Rights Implementation Framework* (2005).

3.24 These documents applied to ACT Corrective Services as a whole and were not specific to 'persons accommodated and working in a correctional centre', i.e. the Alexander Maconochie Centre.

3.25 The *ACT Corrective Services Human Rights Policy Statement* (June 2005) provided a comprehensive statement of commitment to human rights. It stated:

ACT CS is committed to working proactively to develop, maintain and continuously improve an operational and service delivery framework within which:

- ACT CS managers, staff and stakeholders value themselves as possessors of human rights.
- ACT CS managers and staff recognise that they are uniquely placed to enhance the human rights of others and to provide a model of action and response for others.
- ACT CS managers, staff and stakeholders are encouraged, guided and supported to exercise their human rights.

3.26 It also provided a comprehensive statement of specific objectives for ACT Corrective Services in implementing a human rights framework.

- 3.27 The *ACT Corrective Services Human Rights Implementation Framework* (2005) 'establishe[d] how ACT Corrective Services (ACT CS) will implement the Human Rights Policy Statement'. It provided a comprehensive and detailed statement of activities that it intended to undertake, including:
- reviewing current legislation, regulations, policy and procedures 'to determine any areas in which human rights observance could be improved';
 - incorporating 'human rights education into existing training modules';
 - incorporating 'human rights considerations into all future planning and development processes'; and
 - incorporating 'the promotion and observance of human rights by managers and staff, into internal performance appraisal and recruitment mechanisms'.
- 3.28 Neither the *ACT Corrective Services Human Rights Policy Statement* (June 2005) or *ACT Corrective Services Human Rights Implementation Framework* (2005) was in circulation in 2018.
- 3.29 The Justice and Community Safety Directorate has developed *Human Rights Principles for ACT Correctional Centres*, which were released on 30 January 2019 by the Minister for Corrections and Justice Health. The document shows a clear recognition and commitment to recognising human rights in ACT correctional centres. This document identifies: the importance of human rights principles; the circumstances under which detainees' rights can be limited; and specific human rights considerations in the management of adult detainees at ACT correctional centres. However, it makes no reference, and does not apply, to Community Corrections activities.

Code of Ethical Conduct

- 3.30 The *Code of Ethical Conduct* (May 2008) for ACT Corrective Services was developed after notification of the *Human Rights Amendment Act 2008* (17 March 2008), which introduced obligations on public authorities to comply with human rights, and prior to their commencement on 1 January 2009. The Code identifies a series of values which 'place a duty on all [ACT Corrective Services] staff to conduct themselves in a manner that will maintain public confidence in the efficiency and integrity of the agency, including:

Respect, protect and promote the rights of all individuals

Recognise the inherent dignity and worth of every human being and ensure human rights and civil liberties are safeguarded.

- 3.31 Additionally, in a section dealing with conduct towards offenders and detainees the *Code of Ethical Conduct* (May 2008) notes the obligation on public authorities to comply with human rights:

[ACT Corrective Services] takes human rights issues seriously and all employees are bound by the *Human Rights Act 2004*. The human rights of each individual include the rights to feel and be safe and secure, the right not to be subject to discrimination, harassment and bullying and the right to fair and equitable treatment.

The *Corrections Management Act 2007* and all policies and procedures have been developed in consideration of the human rights of each person managed by [ACT Corrective Services] staff.

- 3.32 The ACT Corrective Services *Strategic Plan 2017-2019 'Resetting the Foundations'* and the *Code of Ethical Conduct* (May 2008) for ACT Corrective Services reference human rights and identify human dignity as a key focus. In doing so these documents recognise and promote a human rights culture.
- 3.33 The *Corrections Management (Human Rights) Policy 2010* assists in promoting a human rights culture in ACT Corrective Services (Justice and Community Safety Directorate) by articulating a philosophy for the recognition of human rights in the management of detainees. However, the policy has not been updated since 2010 and specifically applies to 'persons accommodated and working in a correctional centre' thereby excluding staff and persons associated with Community Corrections.

Community Services Directorate

Whole-of-directorate strategic and organisational policies and documents

- 3.34 The importance of human rights is recognised explicitly or implicitly in a range of whole-of-directorate documents such as:
- *Community Services Directorate - Human Rights Policy (2011)*;
 - *Empowering People: Community Services Directorate Strategic Plan 2018 – 2028*; and
 - *Reconciliation Action Plan 2014-17*.

Community Services Directorate - Human Rights Policy

- 3.35 The *Community Services Directorate - Human Rights Policy* was released on 22 July 2010 and revised on 6 September 2011. The purpose of the policy is to:

... [describe] the approach of the Community Services Directorate to human rights with respect to Directorate staff, community partners, business partners, clients and members of the public. The *Human Rights Policy* provides guidelines for Directorate practice, training and policy review. The stated aim of the *Human Rights Policy* is to promote human rights compliance in the Directorate.

3.36 The *Community Services Directorate - Human Rights Policy* (2011) states:

Human rights are central to the Directorate. The Directorate is committed to upholding the human rights of all people, through its own policies, programs and practices, and through those of the community organisations and business with whom it partners.

3.37 Included in the *Community Services Directorate - Human Rights Policy* (2011) is a statement that 'a human rights approach should inform all activity conducted by or on behalf of the Directorate, such as policy writing, building design or service delivery' and that 'the policy is intended for use as a reference point for policy and program design, and as an educational tool for staff development and training'.

3.38 The *Community Services Directorate - Human Rights Policy* (2011) explains that the '*Human Rights Amendment Act 2008* requires public authorities in the ACT to comply with human rights principles in their decision making, programs and services'²⁴ and that 'Directorate staff members, when acting in their capacity as employees, are public authorities'.²⁵

3.39 Additionally, the *Community Services Directorate - Human Rights Policy* (2011) provides guidance with respect to its community partners and notes that:

Some community partners will be public authorities under the Act. The Directorate encourages all its community partners to act and make decisions consistent with human rights, although it does not currently make formal compliance with the Act a condition of funding.

3.40 The ACT Human Rights Commission's *Human Rights Act Compliance Checklist* is included as an Appendix to the *Community Services Directorate - Human Rights Policy* (2011). Another attachment is the Directorate's own Checklist for Human Rights Compliance. These compliance tools have been adapted from the ACT Human Rights Commission checklist to assist staff compliance with the *Human Rights Act 2004*.²⁶

Human Rights Advisory Committee

3.41 The *Community Services Directorate - Human Rights Policy* (2011) refers to the Directorate's Human Rights Advisory Committee:

The Directorate's Human Rights Advisory Committee (the Committee) supports the implementation of the Policy. The Committee advises on complex service delivery matters that engage human rights, reviews decisions referred to it and provides whole of Directorate strategic advice. The Committee is chaired by the Senior Director, Governance, Advocacy and Community Policy. Its other members include a Director or above from Disability ACT, Housing and Community Services ACT and the Office of Children, Youth and Family Support. Secretariat support is provided by Strategic Policy. The Committee meets every two months and reports to the Deputy Director-General.²⁷

²⁴ *Community Services Directorate's Human Rights Policy*, p 3.

²⁵ *Community Services Directorate's Human Rights Policy*, p 4.

²⁶ *Community Services Directorate's Human Rights Policy*, p 6 and Appendix D and Attachment E.

²⁷ *Community Services Directorate's Human Rights Policy*, p 8.

3.42 According to the *Community Services Directorate - Human Rights Policy* (2011) the Human Rights Advisory Committee supports the implementation of the policy, provides advice and reviews decisions. The Human Rights Advisory Committee met on 20 October 2010. At the meeting it was agreed to:

- revise a number of the terms of reference;
- develop training in the Human Rights Policy as a priority;
- revise the process for referring matters to the Committee; and
- continue the development of the Human Rights Advisory Committee's draft Communications Strategy.

3.43 The Committee was scheduled to meet again on 1 December 2010. There is no documentation associated with this meeting and no evidence that this meeting, or any other, took place.

3.44 The Community Services Directorate advised that:

- the Human Rights Advisory Committee was designed to support embedding a human rights approach across the Directorate; and
- it ceased functioning approximately a year after the first meeting when the matters it dealt with were considered to be business as usual.

3.45 In response to the draft proposed report, the Community Services Directorate advised:

The purpose of this time limited committee was to support the implementation of the (then) Department's Human Rights Policy. It is the Community Services Directorate's current understanding that the committee was not intended to be an ongoing committee.

3.46 The *Community Services Directorate - Human Rights Policy* was released on 22 July 2010 and revised on 6 September 2011. It provides a strong endorsement of the importance of human rights and its application to the Directorate. It also notes that some of its 'community partners will be public authorities under the Act' and 'encourages all its community partners to act and make decisions consistent with human rights'.

Empowering People: Community Services Directorate Strategic Plan 2018-2028

3.47 *Empowering People: Community Services Directorate Strategic Plan 2018-2028*²⁸ (the Strategic Plan) is the central pillar of the Community Services Directorate's Integrated Planning Framework. The framework brings together the Directorate's 'strategic, organisational and division level planning to support the achievement of the core outcomes'.

²⁸ http://www.communityservices.act.gov.au/home/about_us/strategic-plan-2018-2028. Accessed 29 October 2018.

3.48 *Empowering People: Community Services Directorate Strategic Plan 2018-2028* does not directly reference human rights, but sets out seven outcomes that ‘will drive our business in the years ahead’. Five outcomes sought for the community are:

- Aboriginal and Torres Strait Islander leadership;
 - ‘Aboriginal and Torres Strait Islander people have a strong voice and are decision makers on issues that impact them, and lead in the achievement of positive life outcomes’
- independence and dignity;
 - ‘individuals are empowered to make informed decisions and undertake valued leadership opportunities in their communities’
- a secure place to call home;
 - ‘people have equitable access to secure homes that are appropriate, affordable and meet their needs and circumstances, in order to support whole of life outcomes’
- safe from harm;
 - ‘people feel safe in their homes, community, and when accessing services’ ; and
- inclusive communities;
 - ‘people feel a sense of belonging in their communities. They are valued, respected, have a voice and are able to access local services and networks’.²⁹

3.49 There is strong, albeit implicit, alignment with human rights in the five outcomes sought for the community. Further information on each of these outcomes, including targets and priority actions, are identified in additional, supporting statements.

3.50 In response to the draft proposed report, the Community Services Directorate advised:

The *Human Rights Act 2004* provides the statutory basis for respecting, protecting and promoting civil and political rights in the ACT. This means that the Community Services Directorate embeds the principles and rights of the *Human Rights Act 2004* in the development and implementation of all strategic and organisational policies and documents.

...

The Community Services Directorate has further invested in ensuring human rights practice is at the forefront of our operations through the development of the *CSD Strategic Plan 2018-2028*. Each of the seven outcomes under the plan map directly to the *Human Rights Act 2004* to embed dignity and fairness to all people across the Canberra community.

Cultural Integrity Statement

3.51 The Community Services Directorate’s Cultural Integrity Statement is included at page 2 of the *Empowering People: Community Services Directorate Strategic Plan 2018-2028*. It states that the Community Services Directorate is ‘committed to reconciliation and will develop a Reconciliation Commitment to replace the Reconciliation Action Plan. The commitment will outline practical actions that will drive this commitment both internally and in the

²⁹ Community Services Directorate’s *Empowering People: Community Services Directorate Strategic Plan 2018-2028* p 6.

communities that we support'.³⁰ The following principles are to guide efforts to ensure cultural integrity: commitment to cultural proficiency;

- authentic engagement and self determination;
- building on designation positions;
- celebrating cultural identity;
- delivering culturally-specific and accessible services; and
- partnering with Aboriginal service providers.³¹

3.52 In response to the draft proposed report the Community Services Directorate advised that the Reconciliation Commitment is 'well progressed and is in final draft stage'.

Bimberi Youth Justice Centre

Blueprint for Youth Justice in the ACT 2012–22

3.53 In 2012 the ACT Government released the *Blueprint for Youth Justice in the ACT 2012–22*. This whole-of-government document provides strategies that set the direction for the youth justice system in the ACT. A three-year action plan was also developed to give effect to the strategies.³²

3.54 The *Blueprint for Youth Justice in the ACT 2012–22* notes that it was 'influenced by the recommendations of the *ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the ACT Human Rights Commission*'. It also includes the following section on the human rights framework in the ACT:

The Human Rights Framework

Australia is a signatory to the *United Nations Convention on the Rights of the Child (1989)* and the *United Nations Declaration of the Rights of Indigenous Peoples (2007)*, as well as the *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, and the *Convention against Torture and other cruel, inhuman or degrading treatment or punishment* (and has indicated an intention to ratify the Optional Protocol to this Convention which will impose requirements to regularly monitor all places of detention). It has a responsibility to protect children and young people, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community.

The ACT *Human Rights Act 2004* provides the statutory basis for respecting, protecting and promoting the rights of young people in the ACT community.

The ACT *Children and Young People's Act 2008* provides the principles, including the best interests principle and youth justice principles, that apply to the provision of services to children and young people.

The Blueprint is underpinned by these principles and reflects the essential elements of a quality youth justice system within this human rights framework. It builds on the ACT

³⁰ Community Services Directorate's *Empowering People: Community Services Directorate Strategic Plan 2018-2028* p 2.

³¹ Community Services Directorate's *Empowering People: Community Services Directorate Strategic Plan 2018-2028* p 2.

³² *Blueprint for Youth Justice in the ACT 2012–22* p 6.

Government's commitment to human rights and will contribute to a culture of dignity and respect for all young people.³³

Children, Youth and Families Division Plan

- 3.55 The *Children, Youth and Families Division Plan* is a high level, brief document, which identifies:
- the purpose of the division;
 - the functions of the division;
 - the alignment of the work of the division with the core principles of the Directorate;
 - measures of success; and
 - a series of strategic initiatives for the division.
- 3.56 The *Children, Youth and Families Division Plan* does not mention human rights or the obligations of public authorities.
- 3.57 In response to the draft proposed report, the Community Services Directorate noted that the *Empowering People: Community Services Directorate Strategic Plan 2018-2028* was launched in 2018 and 'annual division business plans will be developed and will outline each division's alignment with the purpose and core outcomes of the Strategic Plan, with a special focus on the needs of the division's clients and service partners'.
- 3.58 Strategic and organisational policies and other Community Services Directorate documents reviewed showed varying levels of support for the development of a human rights culture. The *Blueprint for Youth Justice in the ACT 2012–22* refers to human rights and the *Human Rights Act 2004*, and notes that it was 'influenced by the recommendations of the *ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the ACT Human Rights Commission*'. *Empowering People: Community Services Directorate Strategic Plan 2018-2028* is a comprehensive, ten-year strategic plan that brings together the Directorate's 'strategic, organisational and division level planning to support the achievement of the core outcomes'. The Strategic Plan, and additional supporting statements for each of the Plan's identified outcomes, do not directly reference human rights. However, it should be noted that there is a strong, albeit implicit, alignment with human rights in the plan and its identified outcomes for the community.

³³ *Blueprint for Youth Justice in the ACT 2012–22* p 19.

4 OPERATIONAL PRACTICE AND PROFESSIONAL DEVELOPMENT

- 4.1 This chapter examines whether the operational and administrative arrangements within the Justice and Community Safety Directorate and the Community Services Directorate support staff to comply with their obligations as public authorities to act consistently with human rights.

Summary

Conclusion

The Community Services Directorate and Justice and Community Safety Directorate have implemented practices to support staff to comply with their obligations as public authorities under the *Human Rights Act 2004*, but these vary in their quality and comprehensiveness.

The activities of staff at the Bimberi Youth Justice Centre (Community Services Directorate) are supported by a comprehensive set of operational policies and administrative documents, which directly reference human rights and the *Human Rights Act 2004* and the obligations of public authorities. The *Charter of Rights for Young People in Bimberi Youth Justice Centre* and *A Young Person's Guide to Bimberi Youth Justice Centre* are also key documents that provide information and guidance on the importance of young people's rights. Collectively, the documents provide a sound framework for operational and administrative decision-making to comply with the *Human Rights Act 2004*.

Operational policies and administrative documents referenced by Community Corrections staff (Justice and Community Safety Directorate) implicitly recognise the importance of human rights, but do not provide practical guidance on human rights and their specific application to operational activities and administrative decision-making. There is also an opportunity to improve the documentation of human rights considerations for key decision-making processes in both directorates.

Key findings

Key operational policies and administrative documents for Community Corrections include the *Community Corrections and Release Planning Operational Plan 2018-19* and *Corrective Services Rehabilitation Framework* (November 2018). The Community Corrections and Release Planning Operational Plan 2018-19 makes no direct reference to human rights, but does include measures to improve the way Community Corrections meets the needs of Aboriginal and Torres Strait Islander people and clients from non-English speaking backgrounds. The *Human Rights Act*

Paragraph

4.8

2004 is identified in the *Corrective Services Rehabilitation Framework* (November 2018) in the list of Acts which provide context for the Framework and the Framework refers to treating detainees with 'respect for their human dignity'. Neither document directly refers to, or provides further information on, the obligations of public authorities under the *Human Rights Act 2004*.

There is a range of administrative policy and procedural documents in use in ACT Corrective Services that provides guidance and instruction to Community Corrections officers and their decision-making. There is inconsistent reference to, and acknowledgement of, human rights and the *Human Rights Act 2004* in these documents. Many documents make no reference to human rights and the *Human Rights Act 2004*, while some documents make passing reference, with little additional information or guidance. As these documents provide guidance for Community Corrections' officers and their operational activities it would be appropriate for this guidance to reference human rights and the *Human Rights Act 2004*, and the associated obligations of public authorities. 4.15

Pro formas for various assessment reports prepared by Community Corrections officers do not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit, documented consideration of human rights in the assessment reports, which are an input into decision-making processes that have serious human rights-related implications for individuals. Notwithstanding the lack of direct reference and explicit consideration of human rights, there is no evidence that the recommendations contained in the reports were not compatible with the *Human Rights Act 2004*. 4.16

The *Charter of Rights for Young People in Bimberi Youth Justice Centre* and *A Young Person's Guide to Bimberi Youth Justice Centre* are key documents that provide information and guidance on the importance of young people's rights in the Bimberi Youth Justice Centre. These documents align with human rights and the *Human Rights Act 2004*. The *Charter of Rights for Young People in Bimberi Youth Justice Centre* specifically 'requires Bimberi staff, police and other workers, including health and education staff, to act in line with these rights and to consider human rights when developing policies, delivering services and making decisions'. 4.26

Policy and Procedures developed for the operation of the Bimberi Youth Justice Centre include a direct reference to the relevant sections of the *Human Rights Act 2004* that are impacted by, or otherwise relevant to, the activities covered by the document. The explicit connection between the activities covered by the Policy and Procedures and the human rights relevant to the activities is an effective way of reminding staff of the importance of human rights in their activities and decision-making. 4.30

Practice Guidelines for the Bimberi Youth Justice Centre have been developed to convert Policy and Procedures into operational level documents. There is a specific Practice Guideline addressing human rights, *Practice Guideline: Human rights compliance and limitation – youth justice*, which discusses the limitations on human rights for young people in a youth justice context. It 'guides staff when a decision or action that limits human rights may need to be considered' and explains how Bimberi 4.39

ensures human rights and the circumstances where rights may be limited to ensure the security and good order of the centre.

Pro formas for Bimberi Youth Justice Centre staff administrative decision-making do not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit and documented consideration of human rights in the decision-making documents, which represent an administrative decision that is likely to have human rights implications. Notwithstanding the lack of direct reference and explicit consideration of human rights, there is no evidence that the administrative decisions were not compatible with the *Human Rights Act 2004*. 4.46

The Justice and Community Safety Directorate and Community Services Directorate risk management plans and risk registers do not directly identify or articulate a risk of non-compliance with the *Human Rights Act 2004*. 4.69

Complaints processes at Community Corrections are provided for by: JACS Complaints Management Policy (October 2017); JACS Complaints Management Standard Operational Procedure (2017); and ACT Corrective Services Client Feedback – Information Sheet. There is no reference to human rights or the Human Rights Act 2004 in any of these documents. As records of verbal complaints are not maintained, Community Corrections is not in a position to monitor and report on them or use this information to assess any systemic concerns regarding human rights. 4.77

The Community Services Directorate's *Complaints Handling Charter* and *Complaints Handling and Management Policy* identify the *Human Rights Act 2004* as a relevant Act, but do not provide any further guidance on its application to complaints management processes or the obligations of the Community Services Directorate as a public authority under the Act. The *Complaints Handling and Management Platform Policy* does reference the *Human Rights Act 2004* and the obligations of public authorities and that individuals have a right of direct action to the Supreme Court. 4.84

There is a range of policy and procedural documents in place for the management of complaints at the Bimberi Youth Justice Centre, including the *Children and Young People (Complaints Management) Policy and Procedures* and relevant Practice Guidelines. Additionally, the *Charter of Rights for Young People in Bimberi* and the *Young Person's Guide to Bimberi Youth Justice Centre* (provided to new arrivals), explain the complaint mechanisms and specifically refer to the ACT Human Rights Commission as an avenue for complaints. 4.92

Human rights training is mandatory for all ACT Corrective Services staff; staff are required to attend at least once, generally within the first six months of their employment. Training is provided by the ACT Human Rights Commission and is tailored to ACT Corrective Services staff and their responsibilities as officers in a public authority. A total of 251 staff have attended the training since 2010-11. Feedback from ACT Corrective Services participants at the December 2017 human rights training provided by the ACT Human Rights Commission was positive. 4.99

New staff commencing at the Bimberi Youth Justice Centre participate in an induction program, which includes a mandatory session provided jointly by the Children and Young People Commissioner and the Public Advocate, the intent of which is to provide an overview of the roles of the Children and Young People Commissioner and the Public Advocate. Human rights-specific training is provided through a Human Rights Act Introduction: e-Learning module, which was developed by the ACT Human Rights Commission in 2015. (Other training modules relate to specific Policy and Procedures and, in some instances, reference human rights and the *Human Rights Act 2004*). The Human Rights Act Introduction: e-Learning module is not specific nor targeted to the Bimberi Youth Justice Centre and does not refer to specific conditions encountered by staff working in a youth justice environment.

4.112

Thirty-five Bimberi Youth Justice Centre staff (42 percent of the current Centre staff) have completed the e-Learning human rights course (or attended face-to-face training on human rights delivered prior to 2015) while employed at the Centre. Of the 84 staff currently employed at the Centre:

4.113

- 15 of the 22 staff that commenced in the ACT Public Service after 1 July 2017 (68 percent) have undertaken human rights training; and
- 20 of the 62 staff who commenced in the ACT Public Service prior to 1 July 2017 (32 percent) have undertaken human rights training.

Operational policies and procedures

- 4.2 The Audit Office considered how Community Corrections in the Justice and Community Safety Directorate and the Bimberi Youth Justice Centre in the Community Services Directorate articulate human rights in operational policies and procedures and demonstrate consideration of human rights in operational decision-making.

Community Corrections

- 4.3 Key operational policies and administrative documents for Community Corrections include:
- *Community Corrections and Release Planning Operational Plan 2018-19*; and
 - *Corrective Services Rehabilitation Framework* (November 2018).

Operational policies and guidelines

Community Corrections and Release Planning Operational Plan 2018-19

- 4.4 The *Community Corrections and Release Planning Operational Plan 2018-19* states the organisation's vision, mission, values and behaviours and six strategic pillars. The Operational Plan then details the tasks, Output/Performance Indicators, responsibilities, dependencies and outcomes under each pillar. The *Community Corrections and Release Planning Operational Plan 2018-19* makes no direct reference to human rights. However, it does include measures to improve the way it meets the needs of Aboriginal and Torres Strait

Islander people and clients from non-English speaking backgrounds, noting that 'all case plans consider cultural issues (31 May 2019)'.

Corrective Services Rehabilitation Framework

- 4.5 The *Corrective Services Rehabilitation Framework* (November 2018) states in its introduction that:

Corrective Services sentence management addresses specific and offence related risks and needs; both in custody and in the community. The Rehabilitation Framework principles are based on research evidence that has been demonstrated to reduce reoffending.

- 4.6 The *Corrective Services Rehabilitation Framework* (November 2018) includes contextual information and key statistics; it also articulates the principles for ACT Corrective Services' programs and services for rehabilitation.

- 4.7 The *Human Rights Act 2004* is identified in the *Corrective Services Rehabilitation Framework* (November 2018) in the list of Acts which provide context for the Framework; the Framework also refers to treating detainees with 'respect for their human dignity'. The flyer that accompanies the Framework does not reference human rights or the *Human Rights Act 2004* and, beyond the reference to the *Human Rights Act 2004*, there is no other reference to human rights in the Framework.

- 4.8 Key operational policies and administrative documents for Community Corrections include the *Community Corrections and Release Planning Operational Plan 2018-19* and *Corrective Services Rehabilitation Framework* (November 2018). The *Community Corrections and Release Planning Operational Plan 2018-19* makes no direct reference to human rights, but does include measures to improve the way Community Corrections meets the needs of Aboriginal and Torres Strait Islander people and clients from non-English speaking backgrounds. The *Human Rights Act 2004* is identified in the *Corrective Services Rehabilitation Framework* (November 2018) in the list of Acts which provide context for the Framework and the Framework refers to treating detainees with 'respect for their human dignity'. Neither document directly refers to, or provides further information on, the obligations of public authorities under the *Human Rights Act 2004*.

Administrative policies and procedures

- 4.9 There is a number of administrative policy and procedural documents in use in Corrective Services, as shown in Table 4-1. The Audit Office considered how these documents recognise the concept of human rights and articulate the requirement for decision-makers to comply with their obligations as a public authority under the *Human Rights Act 2004*.

Table 4-1 Decision making guidance in Community Corrections

Name of policy	Purpose	Date approved
ICO Breach Policy	Policy and operational procedure	October 2016
ICO Assessment Report Framework	Policy and procedural framework	November 2016
CVTRQ Guidelines (Corrections Victoria Treatment Readiness Questionnaire)	Guidelines	August 2015
Management of Domestic and Family Violence Offenders	Framework for ACT CS to adopt practice principles aligned with the Australian National Standards and seek to contribute to the development of correctional practice in this priority area of offending.	October 2016
Early Termination and Suspension of Supervision Orders	To provide brief guidelines for the ongoing task of rationalising case load numbers.	September 2015
Alcohol and other Drugs (AOD) Assessments for Community Based Orders	Identifying difference between abuse and dependence when assessing suitability of offenders for community based orders where the offender's use of alcohol or other drugs appears to be an issue.	September 2015
Parole Unit – Policy and Procedures	Policy establishes the ACT Parole Unit, its role and functions and addresses the interaction of the Parole Unit with AMC Case Managers and Community Corrections Officers.	September 2015
ICO Supervision and Case Management Framework	'(s)ets out the supervision and case management approach, as well as minimum standards that will be adhered to by Community Corrections when supervising offenders on an ICO' (p 3)	November 2016
Breach Policy and Procedures	Covers breaches of Parole and Good Behaviour Orders.	October 2016
ICO Policy (Intensive Correction Order)	Overview of intent and operation of ICOs (alternative to prison for short sentences)	May 2016
Pre-Sentence Report Policy	Policy and Practice Guidelines	November 2016
Home Visit Assessment Policy	Covers Pre-Release Home Visit Assessments and Supervision Home Visit Assessments as undertaken for the relevant category of offender (listed in doc).	September 2015

Source: ACT Audit Office analysis of ACT Corrections guidance documents

Analysis of the administrative policy and procedural documentation in Table 4-1 shows that:

- there is no reference to human rights in the *ICO Breach Policy*; *ICO Assessment Report Framework*; *CVTRQ Guidelines*; *Management of Domestic and Family Violence Offenders*; *Early Termination and Suspension of Supervision Orders*; *AOD Assessments for Community Based Orders*; *Parole Unit – Policy and Procedures*; and *ICO Supervision and Case Management Framework*. These documents provide guidance for

Community Corrections' officers and their operational activities and it would be appropriate for these documents to provide guidance with reference to human rights and the *Human Rights Act 2004* and the associated obligations of public authorities;

- the *Breach Policy and Procedures* identifies the *Human Rights Act 2004* in the list of relevant Acts but makes no further reference to human rights. As this document provides guidance for Community Corrections' officers and their operational activities it would be appropriate for this document to provide guidance with reference to human rights and the *Human Rights Act 2004* and the associated obligations of public authorities; and
- the *Intensive Correction Order Policy*, *Pre-Sentence Report Policy* and *Home Visit Assessment Policy* do not reference human rights. However, it is noted that the:
 - *Pre-Sentence Report Policy* makes no direct reference to human rights but includes specific reference to Aboriginal and Torres Strait Islander peoples and 'careful consideration of cultural and historical factors relating to Aboriginal and Torres Strait Islander Disadvantage' and references Restorative Justice which, as a less restrictive option, is in line with section 28 of the *Human Rights Act*;
 - *Home Visit Assessment Policy* references the Human Rights Framework under 'Why we do this'. However, the 2005 Framework was not in circulation at the time of the audit and the expected Human Rights Principles were specific to detainees at the Alexander Maconochie Centre; ACT Corrective Services advised that the *Home Visit Assessment Policy* will be reviewed as part of their policies and procedures review project.

Decision-making documents

4.10 A selection of Community Corrections' assessment reports (18) were examined to identify the role of human rights and the *Human Rights Act 2004* in the administrative process. In preparing the various reports, Community Corrections staff are making recommendations to the Magistrates Court, the Sentence Administration Board or the Supreme Court. Assessment reports considered included:

- two pre-sentence reports;
- an update pre-sentence report;
- a court duty report;
- a pre-release report;
- a breach parole report;
- a supplementary pre-release report;
- parole progress report;
- supplementary breach of parole report;
- bail progress report;
- alleged breach of bail report;

- two alleged breach of Good Behaviour Orders;
- Intensive Correction Order assessment report;
- three Intensive Correction Order reinstatement assessment reports; and
- Intensive Correction Order breach report.

4.11 These reports were all prepared on pro formas, with specific sections and fields to be completed depending on the nature of the report. The pro formas do not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit consideration or reference to human rights in the documents.

4.12 In its response to the draft proposed report, the Justice and Community Safety Directorate advised:

... while pro-forma may not explicitly refer to human rights these are considered in relation to reasonableness in respect of directions provided to an offender or recommendation made to a sentence court or the Sentence Administration Board (SAB). Ultimately the sentencing court or SAB with the final decision-making power is in the best position to consider the individual human rights of the offender, balancing the relevant sentencing legislation and the Human Rights Act.

4.13 While this point is acknowledged, it is important for Community Corrections, in the Justice and Community Safety Directorate, to demonstrate its consideration of human rights as part of the preparation of these assessment reports, as these assessment reports and the recommendations within them, are an input into decision-making processes that have serious human rights-related implications for individuals.

4.14 There is a range of administrative policy and procedural documents in use in ACT Corrective Services that provides guidance and instruction to Community Corrections officers and their decision-making. There is inconsistent reference to, and acknowledgement of, human rights and the *Human Rights Act 2004* in these documents. Many documents make no reference to human rights and the *Human Rights Act 2004*, while some documents make passing reference, with little additional information or guidance. As these documents provide guidance for Community Corrections' officers and their operational activities it would be appropriate for this guidance to reference human rights and the *Human Rights Act 2004*, and the associated obligations of public authorities.

4.15 Pro formas for various assessment reports prepared by Community Corrections officers do not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit, documented consideration of human rights in the assessment reports, which are an input into decision-making processes that have serious human rights-related implications for individuals. Notwithstanding the lack of direct reference and explicit consideration of human rights, there is no evidence that the recommendations contained in the reports were not compatible with the *Human Rights Act 2004*.

RECOMMENDATION 3**COMMUNITY CORRECTIONS OPERATIONAL POLICIES AND PROCEDURES**

In order to promote administrative decision-making in accordance with the *Human Rights Act 2004*, the Justice and Community Safety Directorate should review Community Corrections' existing administrative policy and procedural documents and include in these documents relevant references to human rights considerations under the *Human Rights Act 2004*.

Bimberi Youth Justice Centre

4.16 Operational and administrative policies and documents at the Bimberi Youth Justice Centre include:

- guidance for young people:
 - *Charter of Rights for Young People in Bimberi Youth Justice Centre*;
 - *A Young Person's Guide to Bimberi Youth Justice Centre*; and
 - Guide to Bimberi for Residents (video).
- operating instructions:
 - Policy and Procedures;
 - Practice Guidelines; and
 - Director's Instructions.

Guidance for Young People

Charter of Rights for Young People in Bimberi Youth Justice Centre

4.17 A *Charter of Rights for Young People in Bimberi Youth Justice Centre* was developed in 2017. Its stated aim is to strengthen the protection of young people in the Centre by developing awareness of their rights and responsibilities.³⁴

4.18 The *Charter of Rights for Young People in Bimberi Youth Justice Centre*:

- outlines the rights of young people in detention related to their need for protection, rehabilitation and support;
- identifies the responsibilities of young people in detention; and
- aims to help young people understand how they 'can expect to be treated and how they should treat others while at Bimberi'.³⁵

³⁴ *Blueprint for Youth Justice in the ACT 2012-22. Progress Report 2012-17* (March 2018) p 28.

³⁵ *Charter of Rights for Young People in Bimberi Youth Justice Centre*, p 1.

- 4.19 The *Charter of Rights for Young People in Bimberi Youth Justice Centre* 'requires Bimberi staff, police and other workers, including health and education staff, to act in line with these rights and to consider human rights when developing policies, delivering services and making decisions'.³⁶
- 4.20 The Charter was developed in consultation with key stakeholders including the ACT Children and Young People Commissioner, the ACT Human Rights Commission, young people in the Centre and entities who provide services to the Centre.
- 4.21 When releasing the Charter the Minister stated:
- The development of a Charter aligns with the strategic direction of the *Blueprint for Youth Justice in the ACT 2012-22*, which includes a focus on the rights and the voice of the young person throughout the youth justice system.³⁷
- 4.22 Nine of the twelve human rights in the *Charter of Rights for Young People in Bimberi Youth Justice Centre* can be directly aligned to human rights detailed in the *Human Rights Act 2004*. Three rights in the Charter, such as to '(b)e given a copy of Bimberi rules and information about your rights and responsibilities when you arrive, in a way you can understand' are site specific and additional to those in the *Human Rights Act 2004*.

A Young Person's Guide to Bimberi Youth Justice Centre

- 4.23 Young people arriving at Bimberi Youth Justice Centre are provided with *A Young Person's Guide to Bimberi Youth Justice Centre*. One of the sections in this document is entitled 'What are your rights at Bimberi'³⁸ and sets out 14 rights that young people have while at Bimberi.

Guide to Bimberi for Residents (video)

- 4.24 The *Guide to Bimberi for Residents* video, approximately 11 minutes long, explains the operations of Bimberi Youth Justice Centre to new arrivals in an age appropriate way. It includes their rights and what is expected of them and indicates the various staff members they can talk to if they have a complaint. The video also discusses external bodies, such as the ACT Human Rights Commission, that the young person can contact if they wish to make a complaint.
- 4.25 The *Charter of Rights for Young People in Bimberi Youth Justice Centre* and *A Young Person's Guide to Bimberi Youth Justice Centre* are key documents that provide information and guidance on the importance of young people's rights in the Bimberi Youth Justice Centre. These documents align with human rights and the *Human Rights Act 2004*. The *Charter of Rights for Young People in Bimberi Youth Justice Centre* specifically 'requires Bimberi staff, police and other workers, including health and education staff, to act in line with these rights and to consider human rights when developing policies, delivering services and making decisions'.

³⁶ *Charter of Rights for Young People in Bimberi Youth Justice Centre*, p 1.

³⁷ Rachel Stephen-Smith, MLA Media Release: New Charter of Rights for young people in Bimberi (01.08.2017).

³⁸ *A Young Person's Guide to Bimberi Youth Justice Centre*, p 9.

Administrative policies and procedures

- 4.26 Policy and Procedures to facilitate the effective and efficient management of detention services for young people can be created under section 143 of the *Children and Young People Act 2008*. Behaviour Management Policy and Procedures can also be created under section 297 of the *Children and Young People Act 2008* (this has occurred once). Policy and Procedures created under the *Children and Young People Act 2008* are Notifiable Instruments.³⁹ Table 4-2 shows a selection of Policy and Procedures in use at the Bimberi Youth Justice Centre, relevant to human rights, which were reviewed for the audit.

Table 4-2 Selection of Policy and Procedures reviewed

Children and Young People Notifiable instruments
Children and Young People (Behaviour Management) Policy and Procedures 2018 (No.1) - NI2018-432
Children and Young People (Discipline) Policy and Procedures 2018 (No.1) - NI2018-433
Children and Young People (Complaints Management) Policy and Procedures 2018 (No.1) - NI2018-437
Children and Young People (Escorts) Policy and Procedures 2018 (No. 1) - NI2018-439
Children and Young People (Local and Interstate Leave) Policy and Procedures 2018 (No.1) - NI2018-440
Children and Young People (Police Interviews) Policy and Procedures 2018 (No.1)-NI2018-442
Children and Young People (Property) Policy and Procedures 2018 (No.1) - NI2018--45
Children and Young People (Search and Seizure) Policy and Procedures 2018 (No.1)-NI2018-448
Children and Young People (Transfers) Policy and Procedures 2018 (No.1) - NI2018—49
Children and Young People (Treatment of Convicted and Non-Convicted Young People) Policy and Procedures 2018 (No.1) - NI2018-450
Children and Young People (Segregation) Policy and Procedures 2018 (No.1) - NI2018-453

Source: Bimberi Youth Justice Centre

- 4.27 The Policy and Procedures include a section titled 'Legal Authority and Obligations'. Within this section each selected document stated that 'The *Children and Young People Act 2008* (the Act) is the primary source of authority for the operations of a detention place' and discussed any relevant section of that Act. Some Policy and Procedures also referred to other authorities such as the *Crimes Act 1914*. Following this is the phrase 'Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedure are: ...'. The Policy and Procedures then include a series of boxed extracts from the *Human Rights Act 2004*, which reference the specific human rights that may be impacted by, or are otherwise relevant to, the activities covered in the document. The document then references the international human right standards that apply in the ACT.

³⁹ Refer section 10, *Legislation Act 2001*. 13.

4.28 *Children and Young People (Treatment of Convicted and Non-Convicted Young People) Policy and Procedures 2018 (No.1)*⁴⁰ is an example of this; it sets out in full the following sections of the *Human Rights Act 2014* that were identified as being of relevance:

- section 19 - Humane treatment when deprived of liberty;
- section 20 - Children in the criminal process;
- section 22 - Rights in criminal proceedings; and
- section 27 - Rights of minorities.

4.29 Policy and Procedures developed for the operation of the Bimberi Youth Justice Centre include a direct reference to the relevant sections of the *Human Rights Act 2004* that are impacted by, or otherwise relevant to, the activities covered by the document. The explicit connection between the activities covered by the Policy and Procedures and the human rights relevant to the activities is an effective way of reminding staff of the importance of human rights in their activities and decision-making.

Practice Guidelines

4.30 Practice Guidelines are intended to convert Policy and Procedures into operational level documents. Table 4-3 shows a selection of Bimberi Youth Justice Centre Practice Guidelines, relevant to human rights, which were reviewed for the audit.

Table 4-3 Bimberi Youth Justice Centre Practice Guidelines reviewed

Bimberi Youth Justice Centre Practice Guidelines
Human rights compliance and limitation - youth justice
Searches - frisk search
Searches - persons other than young people
Searches - deciding on and authorising a personal search
Searches - personal searches for young person's approved leave
Searches - Strip Search
Prior to induction
Searches - conducting a property search
Ordinary search
Scanning search
The incentive scheme
Incentive scheme assessment
Incentive purchases and privileges
Incentive scheme standards

⁴⁰ Children and Young People (Treatment of Convicted and Non-Convicted Young People) Policy and Procedures 2018 (No.1) - NI2018-450.

Bimberi Youth Justice Centre Practice Guidelines
Complaints management - joint process (CYPS, ACT Together and Uniting)
Complaints and feedback
Segregation Directions
Segregation – Health
Segregation - Protective custody
Segregation - Young person transferred from interstate
Staff training and development – supervision
Staff training and development – individual performance agreements

Source: Bimberi Youth Justice Centre

- 4.31 There is a specific and explicit Practice Guideline for human rights, *Practice Guideline: Human rights compliance and limitation – youth justice*, which states:

The Human Rights Act 2004 (the HR Act) provides a statutory basis for respecting and protecting civil and political rights. Staff are required to act compatibly with the HR Act and give proper consideration to relevant human rights when making decisions in all aspects of their work.

- 4.32 The *Practice Guideline: Human rights compliance and limitation – youth justice* explains human rights under the *Human Rights Act 2004* and requires staff to be aware of their obligations when making decisions.⁴¹ It is noted, however, that the other Practice Guidelines reviewed do not inform staff members of their obligations as public authorities.⁴²

- 4.33 The *Practice Guideline: Human rights compliance and limitation – youth justice* includes a table that:

- lists each of the human rights from the *Human Rights Act 2004*;
- outlines how the Bimberi Youth Justice Centre ensures each right; and
- provides an explanation of the circumstances when each right might be limited.

Right to privacy

- 4.34 The right to privacy is a key human right that may be directly impacted in a custodial setting such as the Bimberi Youth Justice Centre. In addition to the *Practice Guideline: Human rights compliance and limitation – youth justice*, five Practice Guidelines reviewed addressed the issue of a right to privacy. These were Practice Guidelines for:

- *Searches – frisk search*;
- *Searches – persons other than young people*;
- *Searches – Strip Search*;

⁴¹ *Practice Guideline: Human rights compliance and limitation – youth justice*.

⁴² *Human Rights Act 2004 Section 40B Public authorities must act consistently with human rights*.

- *Ordinary search; and*
 - *Scanning search.*
- 4.35 As an example, in the case of a frisk search, the Practice Guideline indicates that staff should be aware that a frisk search of a person involves a limitation on the person's right to privacy. It explains that: a search should be undertaken in a manner that upholds the person's dignity; is respectful; and that every effort should be made to minimise the potential negative impact of the search on the person and support their psychosocial, emotional and mental health needs. The Practice Guideline sets out how to conduct the search in order to achieve this aim.
- 4.36 However, there were instances where a reference to privacy was expected in Practice Guidelines, due to the nature of the topic, but was not present. Examples are:
- *Searches – deciding on and authorising a personal search;*
 - *Searches – personal searches for young person's approved leave; and*
 - *Searches – conducting a property search.*
- 4.37 It should be noted that the *Practice Guideline: Searches – deciding on and authorising a personal search* indicates that the decision maker must ensure that the authorised search is the least intrusive search that is necessary and reasonable in the circumstances.
- 4.38 Practice Guidelines for the Bimberi Youth Justice Centre have been developed to convert Policy and Procedures into operational level documents. There is a specific Practice Guideline addressing human rights, *Practice Guideline: Human rights compliance and limitation – youth justice*, which discusses the limitations on human rights for young people in a youth justice context. It 'guides staff when a decision or action that limits human rights may need to be considered' and explains how Bimberi ensures human rights and the circumstances where rights may be limited to ensure the security and good order of the centre.

Director's Instructions

- 4.39 Director's Instructions are to be read in conjunction with the Practice Guidelines and provide detailed, step by step instructions on specific matters. The selection of Director's Instructions, relevant to human rights, that were examined as part of the audit are:
- *Responding to risk in the management of detainees;*
 - *Strip Search Procedures; and*
 - *Scanning, frisk and ordinary searches.*
- 4.40 The *Director's Instruction on Responding to risk in the management of detainees* states that '(c)are provided to people at Bimberi Youth Justice Centre ... needs to be consistent with relevant legislation and human rights compliant. In addition, it must be provided in a manner that is mindful of disadvantage, trauma and vulnerability experienced by young

detainees'. The Instruction lists relevant legislation, including the *Human Rights Act 2004*. While some relevant Practice Guidelines are also listed, the *Practice Guideline: Human rights compliance and limitation – youth justice* is not included.

- 4.41 A checklist details the issues covered by the *Director's Instruction on Strip Search Procedures*. The checklist includes items such as: determining the reason for undertaking a strip search; and completing the necessary details in the Search Registers. While human rights are not mentioned in the Instruction it includes some privacy considerations.
- 4.42 The *Director's Instruction on Scanning, frisk and ordinary searches* sets out the reason for conducting such a search and how it is to be conducted. Human rights are not mentioned in the Instruction, however, it includes some privacy considerations.

Decision-making documents

- 4.43 A selection of decision-making forms were reviewed to identify the role of human rights and the *Human Rights Act 2004* in the decision-making process. The decision-making forms documented a decision (or decisions), and the various considerations associated with the decision, which are likely to have human rights implications for the individual. The forms selected for review were:
- seventeen strip searches;
 - twelve phone call, visits and mail requests;
 - three segregations and associated Special Management Directions;
 - three leave permits; and
 - seventeen Initial Classifications or Review.
- 4.44 These decision-making forms were all prepared on a pro forma. The pro forma did not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit consideration or reference to human rights in the documents.
- 4.45 Pro formas for Bimberi Youth Justice Centre staff administrative decision-making do not include a reference to human rights or the *Human Rights Act 2004*. This means that there is no explicit and documented consideration of human rights in the decision-making documents, which represent an administrative decision that is likely to have human rights implications. Notwithstanding the lack of direct reference and explicit consideration of human rights, there is no evidence that the administrative decisions were not compatible with the *Human Rights Act 2004*.

Public authority decision-making

- 4.46 As noted in paragraphs 4.11 and 4.44, pro formas were in use for both Community Corrections and the Bimberi Youth justice Centre to facilitate administrative decision-making (or the making of recommendations for Community Corrections). These pro forma, however, did not include a reference to human rights or the *Human Rights Act 2004*, which

meant that there was no explicit consideration or documentation of human rights in any of these documents.

- 4.47 In relation to administrative decision-making processes and the documentation of decision-making, in its response to the draft proposed report the Community Services Directorate advised:

Bimberi Youth Justice Centre is a human rights compliant facility. As outlined earlier, the *Children and Young People Act 2008* is compliant with the *Human Rights Act 2004*, provides the legislative foundation for the delivery of child protection and youth justice services in the ACT, and ensures the principles and rights of the *Human Rights Act 2004* are considered at every stage of policy development.

Policy, procedures, practice guidance and forms flow directly from the *Children and Young People Act 2008* and as such provide direction to staff that is implicitly, and at times explicitly, compliant with the *Human Rights Act 2004*.

Child and Youth Protection Services has an Integrated Management System, which is a quality assurance system that embeds all policies, procedures and practice guidelines in a compliance and risk management framework. One of the essential features of the Integrated Management System is the alignment of compliance obligations, strategic focus and operations.

The content of all policies, procedures and forms are considered for endorsement, including consideration of risk and compliance, by the Child and Youth Protection Integrated Management System Governance Committee. This committee oversees the strategic governance, accountability and implementation of the Integrated Management System and is made up of Senior Managers and Executives across Child and Youth Protection Services and Bimberi.

All forms utilised within Bimberi Youth Justice Centre have been developed through the Integrated Management System. They are written in a way which is accessible to staff, are directly applicable to the functions and day to day operations of the centre and implicitly embed human rights compliance within them. These guidance documents and forms are intentionally plain English to enable consistent and timely decision making.

- 4.48 The importance of having human rights-compliant systems and processes and their effect on decision-making is noted and acknowledged. It is also noted, however, that explicit consideration and documentation of human rights in decision-making processes, through pro forma, is an important mechanism in demonstrating compliance with the *Human Rights Act 2004* and subsection 40B(1) of the *Human Rights Act 2004*, which explicitly provides that it is unlawful for a public authority 'in making a decision, to fail to give proper consideration to a relevant human right'.

- 4.49 In *Achieving the Rights Outcome, A Toolkit for using the ACT Human Rights Act in achieving better outcomes for you and your clients*⁴³ (the Toolkit) the ACT Human Rights Commission has provided further guidance on this requirement and its impact on decision-making:

Section 40B(1)(b) of the HRA requires public authorities to give proper consideration to human rights when making decisions. A failure to do so will amount to unlawfulness. This is a procedural obligation in the sense that it directs public authorities to make decisions in a particular manner. Public authorities must actively and properly incorporate human rights into

⁴³ ACT Human Rights Commission, *Achieving the Rights Outcomes, A Toolkit for using the ACT Human Rights Act in achieving better outcomes for you and your clients*, 2015, p 20.

decision-making processes where relevant, and **should be able to provide documentary evidence of having done so** (bolded for emphasis).

- 4.50 The Toolkit provides a flow chart⁴⁴ (refer to Appendix A) that summarises the obligations of public authorities in administrative decision-making. The flowchart highlights the importance of documenting the consideration of human rights in administrative decision-making, noting that an undocumented decision gives rise to the risk that ‘The act or decision may not be compatible and the Public Authority should be encouraged to reconsider’.
- 4.51 In *The Charter of Human Rights and Responsibilities, A guide for Victorian public sector workers* (2014),⁴⁵ the Victorian Equal Opportunity and Human Rights Commission similarly discusses ways in which decision-makers can demonstrate their consideration of human rights, noting that it may be through ‘discussing it with your client, making a file note or conducting a human rights impact assessment’.
- 4.52 In *Look who’s talking, A Snapshot of ten years of dialogue under the Human Rights Act 2004, ACT Human Rights and Discrimination Commissioner (2014)* the Commissioner noted:
- There is also some complacency about existing legislation and practices, and an assumption that these already meet human rights standards, along with the tendency to equate human rights with ordinary morality or common sense. There is limited awareness of the HRA amongst frontline decision-makers and some officers who administer legislation have not appeared to appreciate the requirements of the s30 obligation to interpret legislation consistently with human rights. In part, this is because of a lack of training, information and accessible resources for public servants.⁴⁶
- 4.53 In addition to the contribution to the development of a human rights culture, explicit consideration of human rights, and the requirement to document that consideration, provides evidence that consideration has occurred should the decision be reviewed in the future.

RECOMMENDATION 4 HUMAN RIGHTS CONSIDERATIONS IN DECISION-MAKING

In order to demonstrate consideration of human rights in administrative decision-making processes for which there are significant human rights implications, the Justice and Community Safety Directorate and Community Services Directorate should include, in key decision-making documents, a section for the explicit consideration and documentation of human rights in the decision.

⁴⁴ ACT Human Rights Commission, *Achieving the Rights Outcomes, A Toolkit for using the ACT Human Rights Act in achieving better outcomes for you and your clients*, 2015, p 21.

⁴⁵ *The Charter of Human Rights and Responsibilities, A guide for Victorian public sector workers* (2014), p 13.

⁴⁶ *Look who’s talking, A Snapshot of ten years of dialogue under the Human Rights Act 2004*, ACT Human Rights and Discrimination Commissioner, 2014.

⁴⁶ *Look who’s talking, A Snapshot of ten years of dialogue under the Human Rights Act 2004*, ACT Human Rights and Discrimination Commissioner, 2014, p 16.

Risk management and human rights

4.54 The Audit Office considered how Community Corrections in the Justice and Community Safety Directorate and Children, Youth and Families Division in the Community Services Directorate recognised the concept of human rights in their risk management processes.

4.55 In response to the ‘challenge of considering human rights in risk management activities’ the Victorian Equal Opportunity and Human Rights Commission has developed a paper, *Rights and Risk, How human rights can influence and support risk management for public authorities in Victoria*. The purpose of the paper is ‘to consider the benefits of looking at risk management through a human rights lens, both in terms of outcomes for individuals and the management of organisations’.⁴⁷ The paper states:

[the Victorian Charter] not only forms part of the legal framework of compliance obligations for public authorities – it prompts organisations to take a proactive, rather than reactive, approach to their operations. In this way, the Charter can positively influence the way an organisation manages risk before a problem arises. This contributes to effective government and better outcomes for the Victorian community.⁴⁸

Justice and Community Safety Directorate Risk Management Plan

4.56 The Justice and Community Safety Directorate’s *Risk Management Plan (2015-2017)* is a high level risk management plan, the purpose of which is to:

provide the necessary foundations and guidance on risk management processes throughout the Directorate and to ensure a consistent, efficient and effective approach to identifying and managing risk.

4.57 The plan states that it seeks to ‘... set the scope and application of risk management within the Directorate ...’ and states that it will allow the Directorate to ‘encourage proactive risk management at all levels ... [and] ensure compliance with all relevant legislative and regulatory requirements ...’. Under the ‘Overview of the Justice and Community Safety Directorate’ section of the plan it states:

[JACS] contribute[s] to the government priorities through our strategic Objectives: promote and protect rights and interests.

4.58 Additionally, under ‘JACS Risk Statement’ (section 5) the plan states that ‘(r)isk management in JACS supports the ACT Government’s commitment to “managing risk to meet its fiscal, social and environmental responsibilities”’. This section also details the key objectives of JACS’ risk management which include ‘compliance with relevant legislation and governance requirements’.

⁴⁷ Victorian Equal Opportunity and Human Rights Commission, *Rights and Risk, How human rights can influence and support risk management for public authorities in Victoria*, 2014, p1.

⁴⁸ Victorian Equal Opportunity and Human Rights Commission, *Rights and Risk, How human rights can influence and support risk management for public authorities in Victoria*, 2014, p1.

- 4.59 Section 12 of the Justice and Community Safety Directorate's *Risk Management Plan (2015-2017)* states that consideration and identification of risks may include risk categories other than the 20 categories listed. However, it does not identify human rights as a category that 'should be given consideration'. Section 14.2 'How to Select Risk Treatments', does not include reference to the possibility that treatments may limit human rights and that a proactive approach may assist in ameliorating any limits.

Justice and Community Safety Risk Management Plan, Implementation Plan 2015-2017

- 4.60 The *Justice and Community Safety Risk Management Plan, Implementation Plan 2015-2017* states that '(t)his plan defines how the Justice and Community Safety (JACS) Directorate Risk Management Plan is to be implemented, monitored and assessed over its lifespan'. It covers scope; background; roles and responsibilities; the implementation concept;⁴⁹ implementation plan; and review. It makes no reference to the *Human Rights Act 2004*, human rights or obligations of public authorities to act consistently with human rights. It does not reference a proactive form of risk management where limits on human rights are the least restrictive possible.

Community Corrections Operational Risk Register

- 4.61 The *Community Correction Operational Risk Register* does not articulate any risks related to compliance with obligations under the *Human Rights Act 2004*. However, of the 13 risks identified, five may involve human rights, or the *Human Rights Act 2004*, in some way. These are shown in Table 4-4.

Table 4-4 Risks identified in *Community Corrections Operational Risk Register* that relate to human rights

Risk	Relationship to the <i>Human Rights Act 2004</i>
Injuries to clients	Section 19, Humane treatment when deprived of liberty.
Inappropriate or unauthorised information collection, storage, use, sharing or release.	Section 12, Privacy and reputation.
Inability to service the court and Sentence Administration Board	Section 19, Humane treatment when deprived of liberty. The risk register identifies 'not meeting obligations under legislation' as a possible outcome but does not specify which legislation.
Serious event impacts on our ability to delivery services.	Section 19, Humane treatment when deprived of liberty. The risk register identifies being 'unable to meet our obligations under legislative requirements' as a possible outcome but does not specify which legislation.
Privacy breach	Section 12, Privacy and reputation.

Source: ACT Audit Office analysis of *Community Corrections Operational Risk Register*.

⁴⁹ This implementation plan is intended to assist in embedding risk management principles and strategies across the Directorate ... enable JACS to minimise exposure to risks through the use of appropriate identification, assessment and management techniques, as well as enhancing our ability to capitalise on innovation and opportunities to improve our overall performance.

Community Services Directorate Risk Management Framework

4.62 The Community Services Directorate's *Risk Management Framework* is dated September 2016. Advice was provided by management during fieldwork that 'the framework is currently being updated to accommodate the requirements of the AS ISO 31000: 2018 Risk Management – Guidelines which were published as an Australian adoption of the international standard in late October 2018. This is expected to be completed by December 2018'.

4.63 The Community Services Directorate's *Risk Management Framework* (September 2016) states that its objective:

is to improve the efficiency and effectiveness of the delivery of the services of the directorate. This will be achieved by staff:

- Integrating risk management into our daily decision making processes;
- Identifying, monitoring and effectively treating our risks;
- Integrating risk assessments into planning processes;
- Incorporating the triple bottom line assessment framework into all risk management activities; and
- Ensuring that the knowledge, skills and attitudes required for successful risk management are included in training and career development courses.⁵⁰

4.64 The only reference to human rights in the Community Services Directorate's *Risk Management Framework* (September 2016) is in Attachment B which concerns relevant legislation.

ACT legislation relevant to risk management in the Community Services Directorate (CSD) includes ... *Human Rights Act 2004*.⁵¹

4.65 The Community Services Directorate's *Risk Management Framework* (September 2016) does not refer to lack of compliance with human rights as a risk.

Bimberi Youth Justice Centre Operational Risk Management

4.66 The *Bimberi Youth Justice Centre Operational Risk Register* is a combined risk register with Narrabundah House. It was last updated in May 2018.⁵² The register contains no direct references to human rights. However, in the area of *Business process and systems*, according to the register the risk, 'Breaches of policy and procedures', may be due to, among other factors, 'poor decision making'.

4.67 While the Bimberi Operational Risk Register does not directly refer to human rights it does refer to Policy and Procedures documents that do. However, the risk register does not include a risk that staff members may not fulfil their obligations as public authorities.

⁵⁰ *Community Services Directorate Risk Management Framework*, p 4.

⁵¹ *Community Services Directorate Risk Management Framework*, p 19.

- 4.68 The Justice and Community Safety Directorate and Community Services Directorate risk management plans and risk registers do not directly identify or articulate a risk of non-compliance with the *Human Rights Act 2004*.

Complaints management

- 4.69 The Audit Office considered how Community Corrections in the Justice and Community Safety Directorate and the Bimberi Youth Justice Centre in the Community Services Directorate recognised the concept of human rights in their complaints management processes. In doing so, consideration was also given to whole-of-directorate complaints management arrangements.

Justice and Community Safety Directorate

JACS Complaints Management Policy

- 4.70 The *JACS Complaints Management Policy* (October 2017) states:

The Complaints Management Policy is the directorate's public commitment to providing an accessible, fair and transparent complaint process for all our clients and stakeholders. The directorate recognises that properly handled and analysed complaints help it to improve its business processes, and that time spent handling complaints is an investment in better service to the public.

- 4.71 Included in the *JACS Complaints Management Policy* (October 2017) are complainants' rights to anonymity and to confidentiality, which aligns with section 12 of the *Human Rights Act 2004*, the right to '(p)rivacy and reputation'. However, there is no direct reference to the *Human Rights Act 2004* or to human rights in the policy.

JACS Complaints Management Standard Operational Procedure

- 4.72 The *JACS Complaints Management Standard Operational Procedure* (2017) states that 'effective complaint management processes incorporate the principles of fairness, accessibility, responsiveness and efficiency'. It also describes how staff are required to act when responding to a complaint; that is 'staff must adhere to the ACTPS Values and Signature Behaviours'. Privacy and confidentiality are listed as criteria to be considered in assessing the complaint, with respect to the possibility of investigating a complaint if the complainant has requested confidentiality. Under 'Document References and/or Legislation', while the *Public Sector Management Act 1994* and the *Information Privacy Act 2014* are listed there is no reference to the *Human Rights Act 2004* or to human rights and the obligations of public authorities.

Community Corrections

ACT Corrective Services Client Feedback – Information Sheet

- 4.73 The *ACT Corrective Services Client Feedback – Information Sheet*, updated in 2018, provides information on how to make a complaint or provide feedback to ACT Corrective Services. It states that ACT Corrective Services ‘is committed to providing customer service in a friendly, efficient and respectful manner’. The Information Sheet also states that the public’s views ‘are important to us and we welcome feedback on our services and staff, both positive and negative ... if you make a complaint, ACTCS will try to resolve it quickly, courteously and fairly’. There is no reference to human rights or the *Human Rights Act 2004*, or obligations of public authorities in the Information Sheet.
- 4.74 ACT Corrective Services management advised during audit fieldwork that there were few formal complaints regarding the operations of Community Corrections. They advised that most complaints are verbal, with offenders complaining directly to Community Corrections staff; no records are maintained of verbal complaints.
- 4.75 As records of verbal complaints are not maintained, Community Corrections is not in a position to monitor and report on them or use this information to assess any systemic concerns regarding human rights. ACT Corrective Services is not in a position to examine such information to determine the nature of the complaints, to establish patterns or to assess if they were handled in accordance with Community Corrections policies and procedures. Additionally, these decisions are not able to be reviewed.
- 4.76 Complaints processes at Community Corrections are provided for by: *JACS Complaints Management Policy* (October 2017); *JACS Complaints Management Standard Operational Procedure* (2017); and *ACT Corrective Services Client Feedback – Information Sheet*. There is no reference to human rights or the *Human Rights Act 2004* in any of these documents. As records of verbal complaints are not maintained, Community Corrections is not in a position to monitor and report on them or use this information to assess any systemic concerns regarding human rights.

Community Services Directorate

- 4.77 The Community Services Directorate has the following framework for the management of complaints:
- Charter** – Formal statement of purpose, authority and responsibility with regard to the Complaint Handling oversight functions of Quality, Complaints and Regulation.
 - Policy** – Comprehensive clarification of key concepts and principles relating to the complaints management system of the Community Services Directorate.
 - Procedures** – Step by step explanation of operational complaint handling processes across the Community Services Directorate.
 - Supporting Documents** – Includes links to legislation, templates, checklists and other customised information specific to Business Units to ensure consistency of practice.

CSD Training – Supports a culture of excellence and ensures staff are aware of their complaint handling responsibilities and practices.⁵³

- 4.78 The Community Services Directorate's *Complaints Handling Charter* 'is a formal statement of purpose, authority and responsibility with regard to the Complaints Handling function within [the Community Services Directorate]. The role of the *Complaints Handling Charter* is to establish the appropriate actions to be undertaken to enable a review of an administrative decision, or to investigate a complex complaint in relation to [Community Services Directorate]'.⁵⁴
- 4.79 The Community Services Directorate's *Complaints Handling Charter* references the legislation underpinning the application of the complaints handling arrangements, including the *Human Rights Act 2004*.⁵⁵ Apart from this reference to the *Human Rights Act 2004* the Charter does not refer to human rights or the obligations of public authorities in relation to human rights.
- 4.80 The Community Services Directorate's *Complaints Handling and Management Policy* is intended to provide 'guidance for staff on the key principles and concepts of Community Services Directorate's complaint management system to ensure staff are equipped to handle complaints fairly, efficiently and effectively'.⁵⁶ It also lists the *Human Rights Act 2004* as one of the Acts underpinning the policy in an appendix.⁵⁷ The policy does not refer to the obligations of public authorities in relation to human rights.
- 4.81 The Community Services Directorate has developed an online Complaints Handling and Management Platform that covers complaints, feedback and compliments. The associated *Complaints Handling and Management Platform Policy* explains the Community Service Directorate's complaints policy has as its purpose assisting 'in delivering a consistent and high quality complaints management service to the ACT community'.⁵⁸ The Community Services Directorate *Complaints Handling Charter* and the *Complaints Handling and Management Policy* are included on the Complaints Handling and Management Platform.⁵⁹
- 4.82 The *Complaints Handling and Management Platform Policy* references the *Human Rights Act 2004* and states:

Human Rights compliance

From 1 January 2009, the Human Rights Act 2004 (ACT) enacted an obligation on public authorities to comply with its legislative requirements.

⁵³ *Community Services Directorate Complaints Handling Charter*, p 3.

⁵⁴ *Community Services Directorate Complaints Handling Charter*, p 3.

⁵⁵ *Community Services Directorate Complaints Handling Charter*, p 4.

⁵⁶ *Community Services Directorate Complaints Handling and Management Policy*, p 7.

⁵⁷ *Community Services Directorate Complaints Handling and Management Policy*, p 52.

⁵⁸ https://www.communityservices.act.gov.au/quality-complaints-and-regulation/complaints_and_advocacy/complaint-handling-and-management-platform-policy. Accessed on 4 December 2018.

⁵⁹ https://www.communityservices.act.gov.au/quality-complaints-and-regulation/complaints_and_advocacy. Accessed on 4 December 2018.

The Act expressly requires public authorities to:

- act consistently with human rights; and
- when making decisions, give proper consideration to relevant human rights.

Individuals have a direct right of action to apply to the Supreme Court to seek a remedy for an alleged contravention of this obligation. The Human Rights Commission (HRC) provides guidance on the requirements of public authorities to comply and outlines measures that department staff can take to comply with this obligation.⁶⁰

4.83 The Community Services Directorate's *Complaints Handling Charter* and *Complaints Handling and Management Policy* identify the *Human Rights Act 2004* as a relevant Act, but do not provide any further guidance on its application to complaints management processes or the obligations of the Community Services Directorate as a public authority under the Act. The *Complaints Handling and Management Platform Policy* does reference the *Human Rights Act 2004* and the obligations of public authorities and that individuals have a right of direct action to the Supreme Court.

Bimberi Youth Justice Centre

4.84 Complaints management at Bimberi Youth Justice Centre is provided for by the:

- *Children and Young People (Complaints Management) Policy and Procedures*; and
- relevant Practice Guidelines:
 - *Complaints and feedback*;
 - *Staff complaints - making a complaint*;
 - *Staff complaints - responding to a complaint*; and
 - *Complaints management - joint process (Children and Young People Services, ACT Together and Uniting)*.

4.85 According to the *Children and Young People (Complaints Management) Policy and Procedures* it aims to:

- 'resolve complaints quickly and effectively and at the lowest level of formality possible. Clear, timely and well-documented communication is essential to managing complaints appropriately'; and
- 'ensure effective communication between family, young people and staff through both frequent informal communication and more formal planned forums between stakeholders such as Unit meetings and case conferences'.⁶¹

4.86 The *Children and Young People (Complaints Management) Policy and Procedures* sets out matters such as: the legal authority and obligations; operational principles; complaints to external oversight agencies; and responding to, and reviewing, complaints.

⁶⁰ https://www.communityservices.act.gov.au/quality-complaints-and-regulation/complaints_and_advocacy/complaint-handling-and-management-platform-policy. Accessed on 4 December 2018.

⁶¹ *Children and Young People (Complaints Management) Policy and Procedures* 2018 (No.1) - NI2018-437, p 1.

- 4.87 The *Children and Young People (Complaints Management) Policy and Procedures* refers to the *Children and Young People Act 2008* and the *Human Rights Act 2004*. In other Policy and Procedures documents the relevant extracts from the *Human Rights Act 2004* are included.
- 4.88 The Practice Guidelines are intended to convert the Policy and Procedures into operational level documents. The Practice Guidelines relevant to a complaint do not refer to the *Human Rights Act 2004*, human rights or the obligations of public authorities in relation to human rights.
- 4.89 The *Charter of Rights for Young People in Bimberi* (refer to paragraph 4.17) states that a young person has the right to make a complaint. It explains that:
- Make a complaint. This means:
- if you have a problem with the way you are being treated, you can ask to speak to a person you trust to make a complaint. You have the right to ask for help to make a complaint from:
- Senior Manager of Bimberi, or their authorised representative (a worker)
- Official Visitor
- Public Advocate and Children and Young People Commissioner
- Discrimination, Health Services, Disability and Community Services Commissioner
- Human Rights Commissioner
- Victims of Crime Commissioner
- you have the right to privacy and confidentiality when making a complaint
- you will be told what is happening with your complaint.⁶²
- 4.90 The *Young Person's Guide to Bimberi Youth Justice Centre*, provided to new arrivals, explains the complaint mechanisms. In addition, the *Guide to Bimberi for Residents* video, shown to new arrivals, discusses external bodies, such as the Human Right Commission, that a young person can contact if they wish to make a complaint.
- 4.91 There is a range of policy and procedural documents in place for the management of complaints at the Bimberi Youth Justice Centre, including the *Children and Young People (Complaints Management) Policy and Procedures* and relevant Practice Guidelines. Additionally, the *Charter of Rights for Young People in Bimberi* and the *Young Person's Guide to Bimberi Youth Justice Centre* (provided to new arrivals), explain the complaint mechanisms and specifically refer to the ACT Human Rights Commission as an avenue for complaints.

Staff training and professional development

- 4.92 The Audit Office considered how Community Corrections in the Justice and Community Safety Directorate and the Bimberi Youth Justice Centre in the Community Services Directorate provide human rights training and professional development to staff. Training

⁶² *Charter of Rights for Young People in Bimberi - Right 11, p 4.*

related to the *Human Rights Act 2004*, and its obligations on public authorities to comply with human rights, is important in educating staff on their legislative obligations and in building a human rights culture.

- 4.93 The importance of training and the need to implement training and professional development across ACT Government agencies was identified by the ACT Human Rights Commissioner in the 2014 report *Look who's talking: A snapshot of ten years of dialogue under the Human Rights Act 2004* by the ACT Human Rights and Discrimination Commissioner:

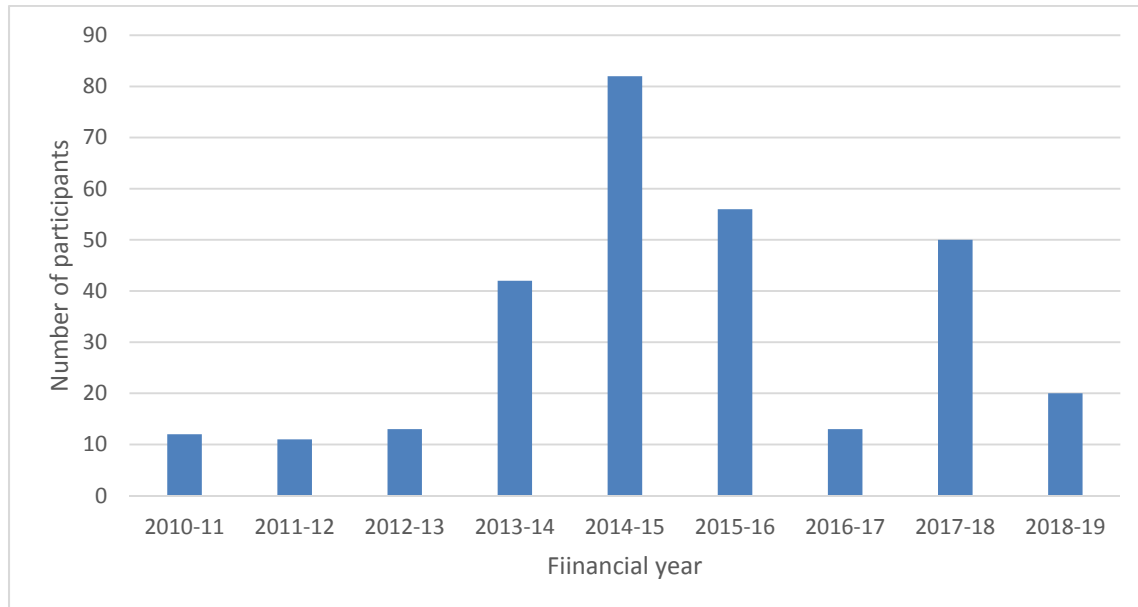
Intensive and ongoing training on the [*Human Rights Act 2004*] should be implemented across all levels of Government. To be most effective, this training should be tailored to specific agencies and roles and should provide detailed and practical examples of the [*Human Rights Act 2004*] to the particular work of those agencies and officers. This training should cover the new public authority obligations and also support the guidelines for departments' annual reports, so that there are more sophisticated [*Human Rights Act 2004*] reports.

Corrective Services staff human rights training

- 4.94 Human rights training is considered mandatory for all ACT Corrective Services staff. Staff are required to attend once, generally within the first six months of their employment, and human rights training is included in the training schedules for bulk recruitment of Community Corrections Officers and Correctional Officers. Training data for the Justice and Community Safety Directorate is kept centrally by the Organisational Development Unit, People and Workplace Strategy, and by ACT Corrective Services, to monitor staff attendance and is reported to the ACT Human Rights Commission. The *ACT Corrective Services Performance and Development Plan 2018 - 2019* also includes a requirement that the person completing the template should identify 'any JACS Mandatory training not completed' which includes human rights.
- 4.95 As part of their four week induction training Community Corrections Officers attend a 3.5 hour *Human Rights for ACT Public Authorities* training session provided by the ACT Human Rights Commission. In December 2017, 33 staff attended this training, from four areas of Corrective Services: Business, Policy & Coordination; Community Corrections; Corporate; and Training). This training included sections on:
- de-mystifying human rights;
 - background to, and content of, the *Human Rights Act 2004*;
 - human rights and obligations; and
 - how these are relevant to Corrections Officers.
- 4.96 Figure 4-1 shows the number of ACT Corrective Services staff who have attended human rights training provided by the ACT Human Rights Commission since 2010-11. A total of 251 staff have attended the training since 2010-11 (data for 2018-19 is based on the six months to December 2018). The data shows the number of ACT Corrective Services staff

attending training has varied considerably across years, ranging from 11 in 2011-12 to 82 in 2014-15.

Figure 4-1 ACT Corrective Services staff attendance at human rights training since 2010-11



Source: ACT Audit Office analysis of Justice and Community Safety Directorate training data

- 4.97 The feedback for the December 2017 human rights training, received from 32 of the 33 participants, was positive and all respondents rated the training as good or excellent with respect to course content.
- 4.98 Human rights training is mandatory for all ACT Corrective Services staff; staff are required to attend at least once, generally within the first six months of their employment. Training is provided by the ACT Human Rights Commission and is tailored to ACT Corrective Services staff and their responsibilities as officers in a public authority. A total of 251 staff have attended the training since 2010-11. Feedback from ACT Corrective Services participants at the December 2017 human rights training provided by the ACT Human Rights Commission was positive.

Bimberi Youth Justice Centre staff human rights training

Child and Youth Protection Services - Bimberi Youth Justice Centre - Professional Development Framework

- 4.99 The *Bimberi Youth Justice Centre Professional Development Framework* describes the approach to professional development and learning at the Centre. The Framework describes how it is implemented through recruitment and structured initial training, updating and improving skills, and ongoing career development and enhancement.

- 4.100 The Framework describes an Induction and Orientation Program, which provides ‘new staff with entry level knowledge and skills required to perform their duties’. It includes a ‘residential induction, which includes an introduction to:

... relevant legislation, including the *Children and Young People Act 2018* and the *Privacy Act 1988* (Commonwealth legislation) and the *Human Rights Act 2004*.

Training Modules

- 4.101 Training for Bimberi Youth Justice Centre staff is organised as a series of training modules. These modules usually relate to a specific Policy and Procedures document which, in turn, refers to the relevant sections of the *Human Rights Act 2004*. Most of the recently developed e-Learning modules conclude with a quiz. The following training modules were considered as part of the audit:

- *Human Rights Act Introduction: e-Learning;*
- *Provision of Information, Review of Decisions and Complaints;*
- *Escorts;*
- *Transfers;*
- *Admission and Classification;*
- *Treatment of Convicted and Non-convicted Young People;* and
- a series on behaviour management training.

- 4.102 The *Human Rights Act Introduction: e-Learning* module is a course developed by the ACT Human Rights Commission in 2015 and is available on its website.⁶³ It was provided to the Community Services Directorate so that it could be incorporated into the Directorate’s learning management system; this enables the Directorate to collect statistics on course completion. As the training is from the Human Rights Commission it does not refer to specific human rights that impact on staff working in a youth justice environment.

- 4.103 The *Provision of Information, Review of Decisions and Complaints* module relates to the *Children and Young People (Complaints Management) Policy and Procedures*. However, the references in the module are to the 2008 version of the Policy and Procedures. There have been two subsequent versions of this Policy and Procedures document. The *Escorts* and *Transfers* training modules also reference the 2008 versions of the relevant Policy and Procedures documents.

- 4.104 Some of the Bimberi Youth Justice Centre training modules, particularly those that have been developed recently, refer directly to the *Human Rights Act 2004* as well as specific Policy and Procedures documents which also refer to the relevant sections of the *Human Rights Act 2004*. Two examples of this are the *Admission and Classification* and the *Treatment of Convicted and Non-convicted Young People* modules.

⁶³ <http://hrc.act.gov.au/elearning/HRAIntro/story.html>

- 4.105 One of the aims of the *Treatment of Convicted and Non-convicted Young People* training module is 'to provide for differential treatment of young persons to reflect their legal status and ensure human rights law is upheld'. It recognises that a non-convicted young person in detention has the 'legal right to presumption of innocence (s22 *Human Rights Act 2004*)'.
- 4.106 There is also a series of behaviour management training modules. A number of these modules was provided by the relevant New South Wales government agency. Most slides have a footnote stating: 'This information is compliant with the *Children and Young People Act 2008*' but the training module slides' footnotes do not make a similar comment as to whether the information is compliant with the *Human Rights Act 2004*. The significance of the absence of such a compliance statement is increased as the information has been sourced from New South Wales, that is, from a jurisdiction that does not have human rights legislation.

Training Attendance/Participation

- 4.107 New staff commencing at the Bimberi Youth Justice Centre participate in an induction program, which includes a mandatory session provided jointly by the Children and Young People Commissioner and the Public Advocate. The intent of this session is to provide an overview of the roles of the Children and Young People Commissioner and the Public Advocate to the new inductees. Analysis of induction course attendance statistics for the period 1 July 2017 to 30 June 2018 shows that 93 percent of inductees attended the training.
- 4.108 Human rights-specific training was delivered face-to-face until 2015, which was when the Human Rights Commission's *Human Rights Act Introduction: e-Learning* module was adopted by the Directorate.
- 4.109 As of October 2018, there were 84 current employees on the Bimberi Youth Justice Centre staff list, including staff members on leave. Thirty-five staff members (41.6 percent of the current staff) have attended human rights face-to-face training or completed the e-Learning human rights module while employed at the Centre. Forty-nine staff members (58.3 percent of the current staff) have not attended the face-to-face training or completed the e-Learning course while at the Centre. Of the 35 staff members that have completed human rights training 31 staff members (88.6 percent) have undertaken this training in the last five years.⁶⁴
- 4.110 Of the 22 Bimberi Youth Justice Centre staff that commenced in the ACT Public Service after 1 July 2017, 15 (68.2 percent) have completed human rights training. Of the 62 staff who commenced in the ACT Public Service prior to 1 July 2017 only 20 (32.3 percent) have undertaken human rights training. The most recent human rights training for two staff members was in 2008; this training pre-dates the commencement of the public authorities

⁶⁴ The training attendance (at face-to-face training) or participation (via e-Learning) figures apply to staff members while employed by the Community Services Directorate. It is possible that staff have undertaken human rights training at another ACT Directorate.

obligations in the *Human Rights Act 2004* on 1 January 2009. Additionally, no human rights training was conducted by in 2009, 2010 and 2011.

- 4.111 New staff commencing at the Bimberi Youth Justice Centre participate in an induction program, which includes a mandatory session provided jointly by the Children and Young People Commissioner and the Public Advocate, the intent of which is to provide an overview of the roles of the Children and Young People Commissioner and the Public Advocate. Human rights-specific training is provided through a Human Rights Act Introduction: e-Learning module, which was developed by the ACT Human Rights Commission in 2015. (Other training modules relate to specific Policy and Procedures and, in some instances, reference human rights and the *Human Rights Act 2004*). The Human Rights Act Introduction: e-Learning module is not specific nor targeted to the Bimberi Youth Justice Centre and does not refer to specific conditions encountered by staff working in a youth justice environment.
- 4.112 Thirty-five Bimberi Youth Justice Centre staff (42 percent of the current Centre staff) have completed the e-Learning human rights course (or attended face-to-face training on human rights delivered prior to 2015) while employed at the Centre. Of the 84 staff currently employed at the Centre:
- 15 of the 22 staff that commenced in the ACT Public Service after 1 July 2017 (68 percent) have undertaken human rights training; and
 - 20 of the 62 staff who commenced in the ACT Public Service prior to 1 July 2017 (32 percent) have undertaken human rights training.

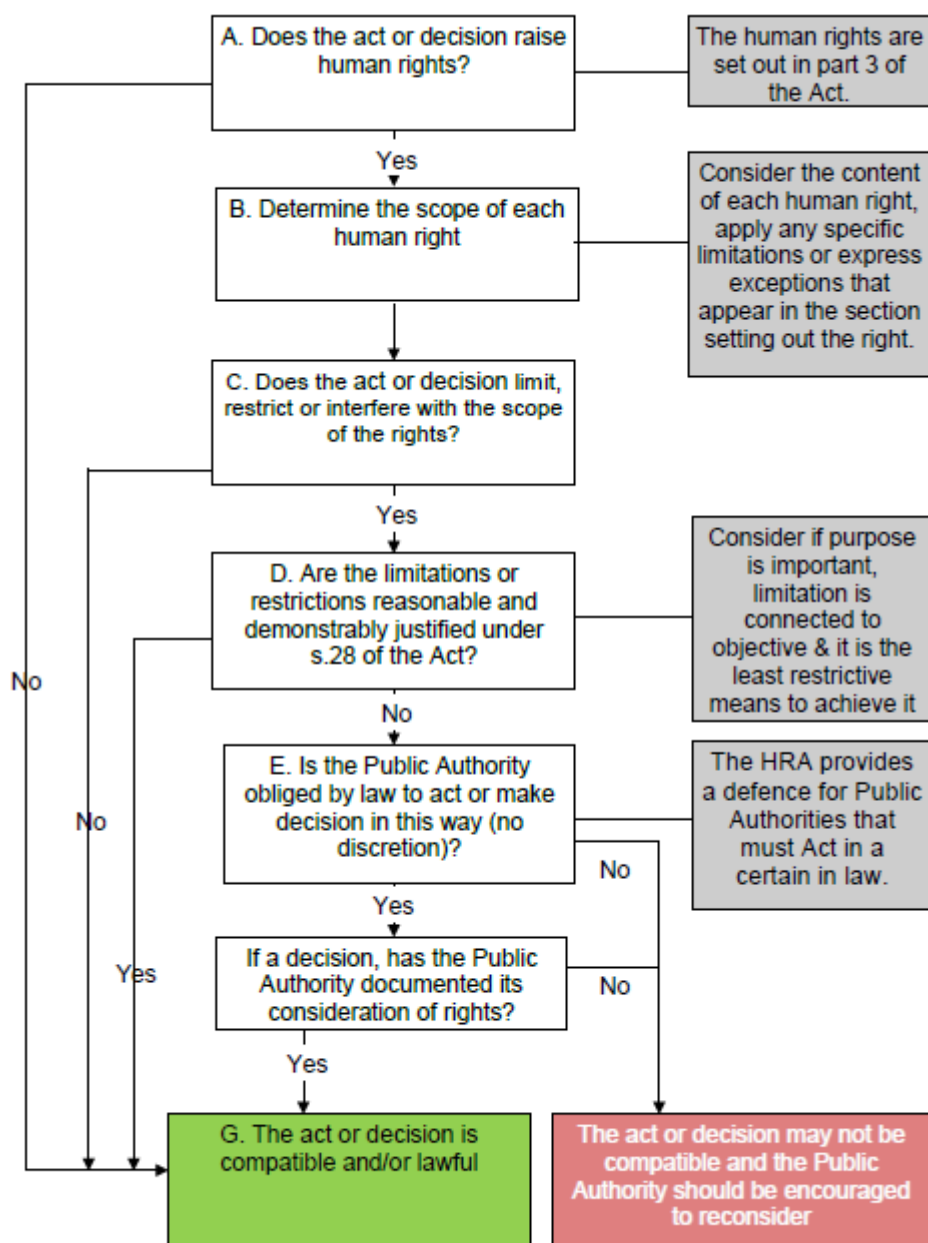
RECOMMENDATION 5

TRAINING AND PROFESSIONAL DEVELOPMENT FOR HUMAN RIGHTS

In order to improve staff knowledge and awareness of their obligations under the *Human Rights Act 2004* the Community Services Directorate should develop an ongoing program to ensure all staff undertake human rights training specifically targeted to working in a youth justice environment.

APPENDIX A: PUBLIC AUTHORITY DECISION-MAKING FLOWCHART

Public Authority Decision-making Flowchart⁶⁵



⁶⁵ ACT Human Rights Commission, *Achieving the Rights Outcomes, A Toolkit for using the ACT Human Rights Act in achieving better outcomes for you and your clients*, 2015, p 21.

APPENDIX B: ADDITIONAL COMMUNITY SERVICES DIRECTORATE RESPONSE TO DRAFT PROPOSED REPORT

In its response to the draft proposed report, the Community Services Directorate provided the following additional information:

The report makes reference to the Victorian Equal Opportunity and Human Rights Commission *2017 report on the operation of the Charter of Human Rights and Responsibilities*. The report identifies three cultural influences that can help grow a human rights culture. The third of these is *external participation and accountability* and the report goes on at paragraph 1.29 to indicate that this cultural influence was not considered as part of the audit.

Whilst this influence was not considered as part of the audit, it is the Community Services Directorates view that the report could still make reference to the considerable oversight that exists in relation to Bimberi Youth Justice Centre, which strengthens the Human Rights framework in existence. This includes:

Official Visitors

Official visitors are people who are appointed under the *Children and Young People Act 2008* to visit Bimberi. An Official Visitor visits Bimberi at least once a fortnight to talk with young people, listen and help resolve any concerns they may have with staff or the Centre. Young people can request to see or talk to an Official Visitor through a youth worker or case manager. Young people do not need to explain to anyone why they want to see an Official Visitor. Young people can also make a complaint to an Official Visitor through someone else, such as staff or others, who must talk to the Official Visitor on the young person's behalf. Official Visitors try and address young people's concerns within the Centre and with staff. In certain circumstances the Official Visitor might refer the young person's concerns to another agency if required.

Public Advocate

The ACT Public Advocate and staff from the Public Advocate's office also visit Bimberi on a regular basis. The role of the ACT Public Advocate is to speak and act on behalf of children and young people, to promote their rights and to listen to and investigate their concerns about the services provided to them. The ACT Public Advocate is required to regularly check the following three registers: searches, use of force and segregation at Bimberi.

The ACT Human Rights Commission

There are three Commissioners at the ACT Human Rights Commission. They are the Human Rights Commissioner, the Children and Young People Commissioner and the Health Services Commissioner. Young people at Bimberi can make a complaint to the Human Rights Commission if they:

- think a staff member has discriminated against them;
- are not happy with a health or medical service they have received; or

- are not happy with something at Bimberi.

The Commissioners also visit Bimberi to look at documentation such as incident reports.

The ACT Human Rights Commission also has powers to undertake a Commission Initiated Consideration of matters related to the provision of services at Bimberi.

Inspector of Correctional Services

The *Inspector of Correctional Services Act 2017* was established to enable the independent and transparent systematic review of correctional centres and correctional services. The Act is inclusive of operations at Bimberi Youth Justice Centre with commencement of the role of the Inspector to occur prior to the end of 2019.

Audit reports

Reports Published in 2018-19	
Report No. 01 – 2019	Total Facilities Management Procurement
Report No. 11 – 2018	2017-18 Financial Audits - Overview
Report No. 10 – 2018	Annual Report 2017-18
Report No. 09 – 2018	ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour
Reports Published in 2017-18	
Report No. 08 – 2018	Assembly of rural land west of Canberra
Report No. 07 – 2018	Five ACT public schools' engagement with Aboriginal and Torres Strait Islander students, families and community
Report No. 06 – 2018	Physical Security
Report No. 05 – 2018	ACT clubs' community contributions
Report No. 04 – 2018	2016-17 Financial Audits – Computer Information Systems
Report No. 03 – 2018	Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson
Report No. 02 – 2018	ACT Government strategic and accountability indicators
Report No. 01 – 2018	Acceptance of Stormwater Assets
Report No. 11 – 2017	2016-17 Financial Audits – Financial Results and Audit Findings
Report No. 10 – 2017	2016-17 Financial Audits – Overview
Report No. 09 – 2017	Annual Report 2016-17
Report No. 08 – 2017	Selected ACT Government agencies' management of Public Art
Reports Published in 2016-17	
Report No. 07 – 2017	Public Housing Renewal Program
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Report No. 04 – 2017	Performance information in ACT public schools
Report No. 03 – 2017	2015-16 Financial Audits – Computer Information Systems
Report No. 02 – 2017	2016 ACT Election
Report No. 01 – 2017	WorkSafe ACT's management of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses
Report No. 11 – 2016	2015-16 Financial Audits – Financial Results and Audit Findings
Report No. 10 – 2016	2015-16 Financial Audits – Audit Reports
Report No. 09 – 2016	Commissioner for International Engagement – Position Creation and Appointment Process
Report No. 08 – 2016	Annual Report 2015-16
Report No. 07 – 2016	Certain Land Development Agency Acquisitions

These and earlier reports can be obtained from the ACT Auditor-General's website at <http://www.audit.act.gov.au>.

