

MEDIA RELEASE**22 February 2019****Recognition and implementation of obligations under the
*Human Rights Act 2004***

ACT Auditor-General, Mr Michael Harris, today presented a report on the **Recognition and implementation of obligations under the *Human Rights Act 2004*** to the Speaker for tabling in the ACT Legislative Assembly.

Mr Harris says ‘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.’

Regarding the requirements for ACT Government bodies to report on their human rights activities, Mr Harris says ‘The quality and comprehensiveness of annual reporting on human rights by ACT Government agencies 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.’

The audit found that there is an opportunity for the Human Rights Unit, with the Justice and Community Safety Directorate, 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.

Mr Harris says ‘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made available to ACT Government agencies through the Justice and Community Safety Directorate website is old and outdated and does not provide practical guidance to ACT Government agencies, and ACT public servants, on how to meet their obligations as public authorities.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, 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.’

The audit found that the Justice and Community Safety Directorate and Community Services 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.

Mr Harris said ‘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. Additionally, the Directorates 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 summary of the **Recognition and implementation of obligations under the *Human Rights Act 2004*** audit, with audit conclusions, key findings and five recommendations is attached to this media release.

Copies of **Recognition and implementation of obligations under the Human Rights Act 2004: Report No. 2/2019** are available from the ACT Audit Office's website www.audit.act.gov.au . If you need assistance accessing the report please phone 6207 0833 or go to 11 Moore Street, Canberra City.

EXTRACT OF SUMMARY CHAPTER

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

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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.

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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

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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 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.

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DEVELOPMENT OF A HUMAN RIGHTS CULTURE

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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.

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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.

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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.

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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

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‘encourages all its community partners to act and make decisions consistent with human rights’.

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.

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OPERATIONAL PRACTICE AND PROFESSIONAL DEVELOPMENT

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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.

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<p>Pro formas for various assessment reports prepared by Community Corrections officers do not include a reference to human rights or the <i>Human Rights Act 2004</i>. 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 <i>Human Rights Act 2004</i>.</p>	4.16
<p>The <i>Charter of Rights for Young People in Bimberi Youth Justice Centre</i> and <i>A Young Person's Guide to Bimberi Youth Justice Centre</i> 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 <i>Human Rights Act 2004</i>. The <i>Charter of Rights for Young People in Bimberi Youth Justice Centre</i> 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'.</p>	4.26
<p>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.</p>	4.30
<p>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.</p>	4.39
<p>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>.</p>	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 4.112

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.

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.