



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: [Inquiry into Annual and Financial Reports 2023-24](#))

Members:

**MR P CAIN (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MR S RATTENBURY**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 19 FEBRUARY 2025

**Secretary to the committee:
Ms K de Kleuver (Ph: 6207 0524)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

APPEARANCES

Justice and Community Safety Directorate.....	129
--	------------

Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 12.00 pm.

Appearances:

Cheyne, Ms Tara, Attorney-General, Minister for Human Rights, Minister for City and Government Services and Minister for the Night-Time Economy

Justice and Community Safety Directorate

Johnson, Mr Ray, Acting Director-General

Ng, Mr Daniel, Executive Group Manager, Legislation, Policy and Programs

Manzoney, Ms Lisa, Acting Deputy Director-General, Justice

THE CHAIR: Good afternoon, and welcome to the public hearing of the Standing Committee on Legal Affairs for its inquiry into annual and financial reports 2023-24. The committee today will examine the Minister for Human Rights.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

Today the committee welcomes Ms Tara Cheyne MLA, the Minister for Human Rights, and officials. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Mr Ng: Yes.

Mr Johnson: I understand.

Ms Manzoney: I understand.

THE CHAIR: Thank you, everyone. We are not inviting opening statements, so we will jump straight to questions. Minister, since July last year, the ACT Human Rights Commission, as you are aware, assumed the role of ACT Privacy Commissioner. Could you please provide an update on how this new role has been performed, what the primary challenges have been since commencement, and what, as far as you know, are the key priorities of the Privacy Commissioner?

Ms Cheyne: I confirm that I have read and understood the privilege statement. I will try to be as helpful as I can, Chair. Some of those questions are perhaps better directed

to the commissioner herself. Ms Karen Toohey has assumed this role and effectively has assumed it as part of her broader role, noting that we wanted to see what the impact would be on resources before making a decision about what further support would be needed.

I understand, from a short conversation with her last week, that the role has been able to be undertaken and, like all of her functions, is being performed very well. In terms of what the challenges might be, that is perhaps best directed to her, Chair, if that is all right.

THE CHAIR: Did the Privacy Commissioner play any role in the government's decision to ban Deep Seek and TikTok from ACT government devices?

Ms Cheyne: I do not believe so, but I will check.

THE CHAIR: Take that on notice.

Ms Cheyne: Mr Johnson might be able to answer.

Mr Johnson: I can answer that question, to the extent that the decision to ban both Deep Seek and TikTok relate to national security issues, not privacy-related issues, so they were activated on the basis of advice from the commonwealth.

THE CHAIR: With the Privacy Commissioner role, why was it necessary for the ACT to assume these duties, rather than continue its arrangement with the Office of the Australian Information Commissioner? Perhaps this has been explored before, but—

Ms Cheyne: I do not believe it has, Chair, so you are perfectly right to ask this. Mr Ng has some of the detail about the arrangements prior to July 2024.

Mr Ng: Mr Cain, the Office of the Australian Information Commissioner indicated that they could no longer undertake the function. You asked the question more broadly about how it has been going, with the co-location in Ms Toohey's office. Part of the reason for the selection of her office as the co-location venue for the information privacy function in the ACT was the synergies with some of the existing functions. She holds existing functions in relation to complaints about health records, access to health records and also privacy complaints in the context of obligations under the Human Rights Act. She is familiar, obviously, with the introduction of the new complaints mechanism into the Human Rights Commission regarding complaints about public authority compliance with human rights, and part of those are public authority compliance with privacy obligations as well.

It was considered that there was a range of synergies with the role that the information privacy commissioner undertakes under the Information Privacy Act and the existing functions of Ms Toohey. The minister was correct in identifying that Ms Toohey will probably be able to give you a bit more colour and movement about the key challenges and activities in that role. One statistic I can pass on is that I understand from the period 1 July to 31 December 2024 the commissioner dealt with 25 complaints in her new function under the Information Privacy Act.

THE CHAIR: Has the commissioner been given any extra resources to take on this new role?

Mr Ng: Yes. There was an amount of resources allocated to the Office of the Australian Information Commissioner when they undertook the function, and that amount has been transferred over to Ms Toohey's office.

Ms Cheyne: I understand, Chair, if it is useful, that previously under the MOU that existed we provided funding to the OAIC to undertake the services, so effectively the funding has come back to us. I believe it means that a staff member has been employed to assist Ms Toohey with that function.

THE CHAIR: How much was that?

Ms Cheyne: \$177,500.

MR WERNER-GIBBINGS: The OAIC was looking after the Information Privacy Act on behalf of the ACT?

Mr Ng: Yes.

MR WERNER-GIBBINGS: The Information Privacy Act is ACT legislation, not federal?

Mr Ng: Yes, that is correct.

MR WERNER-GIBBINGS: Many years ago, when I was working in the Office of the Privacy Commissioner, there were difficulties with the ability to use the national privacy principles and the information privacy principles effectively from a federal perspective. Is there an ongoing conversation about the teeth of the Information Privacy Act? Is it a relatively stronger act in the ACT? Will we get better, more effective utility from the act now that it has been brought in-house, as it were?

Ms Cheyne: Certainly, Mr Werner-Gibbings, Ms Toohey's willingness to take on this role was very welcome. Of course we needed to continue privacy services. Given Ms Toohey's function already is taking on the complaints function right across the ACT Human Rights Commission and a number of jurisdictions, we believed—and I am reading from a letter from the previous attorney—that this appointment would facilitate the streamlining of some of that complaints handling, similar to what Mr Ng was talking about before. With some of those health records, for example, and given she is also the Health Services Commissioner, she can take complaints about both and determine what the appropriate jurisdiction is.

Will it improve how the Information Privacy Act is operating? I would think so, simply because she has that broader overview of all the complaints that are being received and how they might be intersecting. She will be able to expand on that a little further, rather than me making the assumption.

MR WERNER-GIBBINGS: The Voluntary Assisted Dying Act 2024 will come into force later this year. Already, I have received—I imagine I am not the only one—

“submissions” is the wrong word, but there is a lot of interest in the community regarding who is eligible, the limitations and the rights. Will there be a review at some point? If so, what would be the ideal time line for a review of the act, from the government’s perspective?

Ms Cheyne: Yes, we have a legislated review of the act in the act, which contains a direction about what the government must consider at that time, but it is not limited to those things. It includes things like capacity and age eligibility, and location, because now that almost every state and territory except the Northern Territory has legislated, one of the original safeguards from the Victorian act that has been copied was about ensuring that you lived in a place for 12 months or more. There is a suggestion that that may not be as necessary. Of course, being within New South Wales, our arrangements with them will have to be looked at pretty closely when both are operational. In the shorter term, with the time line for that, I think it is within three years. I will have to refresh my memory.

Mr Ng: That is correct.

Ms Cheyne: There is a particular section. There you go; it is three years, then every five years after that. I am not sure that we are unique in having it every five years, or having ongoing reviews; certainly, not all states and territories have that condition in their legislation. It was important for us to send a message that we want our legislation to evolve with community understanding as we proceed.

In the shorter term, the Health Directorate has been undertaking some work based on a private member’s motion from now Minister Paterson, regarding loss of capacity once a person has gone through all eligibility steps, has been considered eligible and the drug has been able to be provided but they have not yet taken it, and how their wishes might be best given effect or not. That work is being undertaken at the moment. In the meantime the Health Directorate and CHS are working on operationalising it. I know that a working group met last Monday, including with some terrific advice from New South Wales and Victorian experts as well.

MR RATTENBURY: On 5 February, the ACT Bar Council president published a media statement about your decision to dissolve the Law Reform and Sentencing Advisory Council. He noted that they were in the process of conducting an inquiry into the Bail Act and made the important point that the Bail Act pre-dated the introduction of the Human Rights Act. Specifically, he said:

There are multiple aspects of the Bail Act which are incompatible with the Human Rights Act, and the association was optimistic the current inquiry would address these problems.

In previous commentary you have said that there was an Assembly inquiry last year that looked at the Bail Act and made some recommendations. My recollection of that inquiry is that they did not particularly address the human rights compatibility issues. What is your plan to ensure that the Bail Act becomes compliant with the Human Rights Act?

Ms Cheyne: As I have said on a number of occasions, that Assembly inquiry, its

recommendations and the government response to it are a terrific starting point for us, with our Bail Act reform, but it is not the be-all and end-all, so I have given a commitment that we will be progressing reform. The exact nature that it takes and the time line are something that we are still working through at this stage, but there have already been some useful suggestions provided directly to me. While I absolutely understand the Bar Association's point, I would also say, as I explained last week, that it is not necessarily true that that inquiry was underway.

MR RATTENBURY: I was not drawing on that point.

Ms Cheyne: No, but I think it is worth correcting the record. It is not as though that work has been undertaken and it has just been discarded.

MR RATTENBURY: I accept your point on that. What is the nature of the suggestions that you have received around how to proceed with this work?

Ms Cheyne: It varies. You would know, perhaps better than most, Mr Rattenbury, that there are a range of views about Bail Act reform.

MR RATTENBURY: Amongst lawyers, for sure.

Ms Cheyne: It can depend on the stakeholder. I am trying to understand here, particularly with the community sentiment, what the issue is that is trying to be solved, and what the outcome is that people want to be different. Again, you would know better than most that the Bail Act exists as a framework, effectively, for decisions to be taken about whether to grant bail or not, and that breaches of bail can be extremely serious, and others can be, as you have pointed out, not turning up on time to a presentation. Understanding what the issues are that people are hoping that the reform will solve gives us a way to work backwards from there about how to bring about compatibility.

MR RATTENBURY: Have you been briefed by the directorate on any issues of incompatibility of the current act with the Human Rights Act?

Ms Cheyne: Yes, in passing. Not in the way of saying, "Let's sit down and go through." I am aware that there are areas that need attention.

MR RATTENBURY: In reforming the Bail Act, what is your objective with the Bail Act?

Ms Cheyne: Again, I am still coming to my own conclusions, given everything that I have heard. I think that, every day, I am tagged in some Facebook comment about bail, which, again, I am sure you are familiar with. I am trying to understand, from the whole gamut of perspectives, what a Bail Act framework would look like that better addresses the community's concerns, without having some unintended consequences.

MS BARRY: Minister, this morning we heard from the First Nations children and young people's commissioner about sexual trafficking and rape of children in the care of CSD. She indicated that she had reported those matters to the police. I was wondering whether this is on your radar and whether you intend to investigate and potentially refer it to the ACT Human Rights Commission.

Ms Cheyne: It is not on my radar, Ms Barry. The commissioner, under the administrative arrangements, is within the responsibility of Minister Orr. With any reports of that nature, I would expect that is where that conversation would be held. Reporting to police, absolutely, is what I would be recommending. In terms of investigation powers that I have, it is none. Overall, as the human rights minister, it is about the legislation and the policy setting. The Human Rights Commission, depending on the nature of the claims, could have a further look. Trafficking is extremely serious.

MS BARRY: Of children, as well.

Ms Cheyne: Yes, absolutely. Without knowing the details—and I was not able to hear the contribution this morning—I would suggest that the course of action that has been taken by going through Policing is appropriate.

MR RATTENBURY: I have a question in terms of the safety of young people. There continue to be strip searches at Bimberi. Have you received any advice on whether those are considered to be human rights compliant?

Ms Cheyne: I have not.

Mr Johnson: Bimberi is outside JACS's directorate responsibilities, so we have not had any feedback on that particular issue.

MR RATTENBURY: I understand that, but, as the Minister for Human Rights, there is a cross-government remit; that is the basis of the question.

MS BARRY: The inspector of custodial sentences raised significant human rights concerns in this report. I was wondering whether, again, that is an issue that you would be referring to the commissioner to manage.

Ms Cheyne: In terms of referring issues to the commission, the nature of the relationship is more about their independence. I would need to reflect on exactly what the evidence was that was provided. I am very willing to have a further conversation with the relevant ministers about whether there is something here that needs to change. I would also suggest that the safety of young people is incredibly critical in any setting. Without knowing the circumstances of those searches being conducted, I probably cannot usefully comment.

MS BARRY: That is fine; I was just bringing it to your attention.

Ms Cheyne: Thank you. I appreciate it.

MS BARRY: It is a really important issue, and something needs to be done. Again, the report said that it had been raised multiple times in several reports and nothing has been done to date.

MR RATTENBURY: The evidence we heard yesterday was that the reason the strip searching is continuing is because the procurement of X-ray machines has not been completed at Bimberi, so we are seeing an ongoing human rights concern because of

poor procurement practices, on the face of it.

Ms Cheyne: Okay.

THE CHAIR: Minister, how many complaints have been brought to the Human Rights Commission regarding the right to a healthy environment?

Ms Cheyne: That commences, Mr Cain, on 17 March.

THE CHAIR: I beg your pardon.

Ms Cheyne: It is a perfectly reasonable question, but it is not to say that it is none. Perhaps there have been some suggestions in the context of other human rights. Again, Ms Toohey will be able to share that. But the act has not yet commenced.

THE CHAIR: I will explore that with her. When will the pathway for litigation directly to the Supreme Court be made available, or are there plans for legislation to make that available?

Ms Cheyne: Within the right to a healthy environment act itself, there is a sunset clause on that. I would need to refresh my memory, Mr Cain. On notice, I can provide you with that clause.

THE CHAIR: You can provide that.

Ms Cheyne: We may have it right here.

Mr Ng: I do have it. The ability to commence proceedings in the Supreme Court for a breach of the right to a healthy environment will commence on 1 October 2028. That correlates with an earlier review that must be undertaken. That review must commence no later than 1 October 2027, and it is required to consider the justiciability of that right.

THE CHAIR: Thank you.

MR WERNER-GIBBINGS: Yesterday, the minister for police gave us a very quick summary of the problems, from her perspective, or the difficulties with interactions between potential anti-consorting laws and the Human Rights Act. Are you able to provide your view, as the Minister for Human Rights, of the difficulties, if any?

Ms Cheyne: Freedom of association is the key right that would be impinged. I know that you may also be interested in the view of the ACT Human Rights Commission. Consistently, the advice—at least, the way that suggestions have been put—is that that right would be impinged on, and that would have consequences for other people who are looking to associate.

MR RATTENBURY: Following on from Mr Cain's question on the rollout of the right to a healthy environment, have you received any updates on training or implementation issues across the ACT public service?

Ms Cheyne: Again—and Mr Ng can help me here—I know that there has been quite a

lot of discussion. You would recall, even in the lead-up to the legislation being drafted and passed, conversations about how it would work and what it would look like.

We heard in a previous hearing with the Commissioner for Sustainability and the Environment that the consideration of the right, particularly in terms of decision-making, cabinet decisions and legislation, will be key, and exploring with different directorates how to take that into account has been a priority. Mr Ng will be able to expand on what has been occurring at officer level.

Mr Ng: There were a range of useful discussions that occurred prior to the passage of the legislation. We went through a very detailed process of working with directorates to understand what legislation was supposed to be brought forward. One of the key things that we worked through with directorates was that the right to a healthy environment, given its broad-ranging nature, could manifest in a range of different ways across the public service—health protection, Access Canberra and places with front-facing contact.

In terms of our activities more broadly, we are doing a bit of work with agencies to increase and support the growth of the culture of understanding and compliance with human rights. We have an ongoing community of practice, which is well patronised across operational and policy areas, but specifically in the training and education space. Over the caretaker period, we took the opportunity to run quite a few education sessions, 10 education sessions, which covered the Human Rights Act more broadly and public authority obligations. It also went to the right to a healthy environment. There were 10 sessions with 200 participants across government.

MR RATTENBURY: Did any particular concerns emerge from those conversations, or are people just working their way through how to implement it?

Mr Ng: I would not say that there was a particular stream of concern. With human rights, the interest in or engagement on a day-to-day basis with different parts of the public service can be quite disparate. As I say, there is the front-facing contact. There may be certain statutory decisions which enliven the obligations in section 40B of the act to be considered in the course of decision-making. There are also the policymakers that have to consider it in the development of legislation, like we do. I am not sure that I would say there were particular concerns that came out, but there were different manifestations in different parts of government.

THE CHAIR: On behalf of the committee, I would like to thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretariat within five business days of receiving the uncorrected proof *Hansard*. I would like to thank our witnesses who have assisted the committee through their knowledge and experience. I also thank broadcasting and Hansard for their support, and our terrific secretariat. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today. This meeting is now adjourned.

The committee adjourned at 12.29 pm.