



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Inquiry into ACT Budget 2021-22](#))

**Members:**

**MR J HANSON (Chair)**  
**DR M PATERSON (Deputy Chair)**  
**MS J CLAY**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**TUESDAY, 19 OCTOBER 2021**

**Secretary to the committee:**  
**Ms B McGill (Ph: 620 70524)**

**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

<b>ACT Human Rights Commission</b> .....	<b>47</b>
<b>Justice and Community Safety Directorate</b> .....	<b>60</b>

## **Privilege statement**

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*Amended 20 May 2013*

## **The committee met at 4.30 pm.**

Appearances:

ACT Human Rights Commission

Watchirs, Dr Helen, President and Human Rights Commissioner

Griffiths-Cook, Ms Jodie, Public Advocate and Children and Young People Commissioner

Yates, Ms Heidi, Victims of Crime Commissioner

Toohey, Ms Karen, Discrimination, Health Services, Disability and Community Services Commissioner

**THE CHAIR:** Good afternoon and welcome to the third of six public hearings of the Standing Committee on Justice and Community Safety inquiry into the ACT budget 2021-22. This afternoon we are going to speak to the minister and statutory office holders. We have appearing before us the Human Rights Commission. Welcome to you all.

There are a couple of housekeeping issues. There are no opening statements today. If I can just confirm—just give me a thumbs up—that you have all read the privilege card. You are all good to go. Well done. That is great. I will start off, then.

Obviously, with COVID, there has been a lot of engagement of human rights—there is no doubt about it—and it is a fine balance between keeping the community safe and at the same time trying to maintain everybody's rights. Starting with you, Dr Watchirs—and maybe the others if they have a view—I would be very interested in whether you have any concerns about what has happened over the last little while and moving forward, and whether you think there are any significant changes that need to be made to what is happening or things that we need to be watching out for as we, hopefully, come out of the pandemic.

**Dr Watchirs:** Sure. As you would be aware, we wrote to all three political parties calling for the re-establishment of the COVID select committee, and that was carried. We did a submission to that committee. Some of the highlights we talked about were that every piece of legislation or policy, including public health directions, needs to be proportionate to have a limit under the Human Rights Act, under section 28.

We made a submission to the former COVID committee that public health directions should be accompanied by an assessment of human rights impacts, and that was accepted in principle. There have been generic statements tabled by the Chief Health Officer, but we would like them to accompany every single public health direction.

There have been recent ones on aged care, mandatory vaccination for teachers and childcare assistants, as well as healthcare workers, and there may be more. Certainly, there have been calls for disability workers. In other jurisdictions there have been police and corrections officers who have been included. We do have views on mandatory vaccination. We have set out a position paper, and it is on our website. We have got a special page for COVID and human rights. We set that up last year and we have added to it substantially this year.

Some of the issues are public housing. We saw two—one example of community housing, Condamine Court, and also Ainslie Village—and the issue of using special facilities for isolation and quarantine. We called for there to be a protocol between the police and the health department so that people who may be breaching those orders are not taken to the AMC and would be taken to purposely used—not built—facilities similar to Howard Springs in the Northern Territory. That would be much preferable.

I think there have been 10 people in the AMC who have been COVID positive. I must say that nine have cleared, and the fact that no-one has transmitted COVID in the AMC is a testament to the staff and detainees, particularly the healthcare workers assisting with much higher vaccination rates than other jurisdictions, and not one transmission is a very big plus in the ACT.

We did write to the attorney saying that we do not think that the Public Health Act, section 120, covers mandatory vaccination and there should be a specific power such as Queensland have, rather than relying on generic powers. It is a very substantial limitation of rights to subject workforces to mandatory vaccinations. So we would prefer that legislative amendment.

There have been a number of complaints. You might like to talk to my colleague Karen Toohey. We did do some questions on notice from the COVID select committee about how we have been increasing our profile so that people know how to make complaints to the Human Rights Commission, and inquiries, and we have an online tool for people reporting.

**THE CHAIR:** Have you had a meeting with, or expressed these issues, not just to the attorney but also to the Minister for Human Rights?

**Dr Watchirs:** Yes, we have had meetings with the Minister for Human Rights and we have written to the health minister as well. On our website we have that correspondence, generally, so that it is transparent to the community.

**THE CHAIR:** Have you received a response?

**Dr Watchirs:** Not yet, but you might be aware that we wrote to the Minister for Human Rights and the health minister about the COVID-safe app, that we were not happy that it did not have legislative protection, and WA and the commonwealth did legislate for that. That bill was tabled in August and passed in September, making sure that police could not use COVID-safe data for other purposes, and that now has a solid legislative protection which we are happy with.

**THE CHAIR:** What date did you write to the ACT human rights minister about this? Can you remember?

**Dr Watchirs:** I think it was March and June, but I would have to take that on notice.

**THE CHAIR:** And you have not received a response?

**Dr Watchirs:** There was a statutory response, which is what we really wanted.

**MR CAIN:** Commissioner, I am just wondering: have your views been proactively sought in terms of determining COVID restriction responses?

**Dr Watchirs:** There have been some cabinet submissions that we have seen early drafts on or very late drafts on and have given comments on the same day. Sometimes they have been reflected, sometimes they have not.

**MR CAIN:** But your office has not been consulted as part of the process of formulating the COVID response?

**Dr Watchirs:** Not the public health directions, no.

**DR PATERSON:** Dr Watchirs, I am sponsoring a petition at the moment: “No rights without remedy”. Noting the commitment by the ACT government to the ACT being a human rights jurisdiction, I was wondering: has the budget made provision for the Human Rights Commission to extend its complaints process to cover all rights in the ACT Human Rights Act?

**Dr Watchirs:** No, there is nothing, because there would need to be a legislative amendment to make us similar to Queensland. We have called for human rights complaints to be on a similar basis to discrimination ones, where you would do a conciliation here but then have a further remedy with the Civil and Administrative Tribunal. I gather that the petition is now up to 475 individuals. We need 500 by 10 November to get that up. But we do have International Human Rights Day, 10 December, and a special community forum looking at that issue. The Minister for Human Rights will open that.

**DR PATERSON:** Were there budgetary implications—for example, cost and savings—to extending the human rights complaints process to cover all rights under the ACT Human Rights Act?

**Dr Watchirs:** We have not looked at that in detail, but certainly in a budget bid you would need to put that in. Certainly, you will know from these estimates that there were two FTEs given for the substantial extension of Commissioner Toohey’s discrimination and other jurisdictions, such as vulnerable people, exploitation and abuse. She may want to go into more detail about that.

**MS CLAY:** Dr Watchirs, just going back to our earlier question, during the time of the COVID select committee you thought that public health directions, followed by primary legislation, might be a suitable way to make some of the laws that we were making, given the higher pace of the decisions and the case-by-case changing numbers and the shifting landscape. Is that still an appropriate method, do you think?

**Dr Watchirs:** Certainly, when you have something like mandatory vaccination, we would like to see—where you are using public health directions—that that has a basis in the actual Public Health Act. It is a very generic power under section 120, whereas in places like Queensland it has been amended to be specific so that it can be added to. So we are keen to have scrutiny by the Legislative Assembly and the committee for such a major limitation on human rights.

I know it is happening all over Australia, but we are a human rights jurisdiction and, I think, to have the benefit of a full public debate before having such an unprecedented human rights limitation is really a democratic and human rights issue.

**MS CLAY:** Have you set out really clearly which rights you think need to have that primary legislation from the start and which might be backed up by primary legislation subsequently?

**Dr Watchirs:** Certainly, we have identified where it is a serious issue, like the mandatory vaccination, the restrictions on movement. They have been very quickly introduced—and I can understand why you would want to do that under a public health direction—but we have been in a pandemic response for 18 months now; so there could be primary legislation changes. You may be aware that public health directions are not delegated legislation; they are put on the legislation register as a courtesy, to be transparent.

**THE CHAIR:** Dr Watchirs, that letter that you sent with your concerns, I think you said it went to each party; is that right?

**Dr Watchirs:** That is correct.

**THE CHAIR:** If you could just flick that through to the committee's secretary as well so that we have got a copy for the record, that would be useful.

**Dr Watchirs:** Yes. Can I just clarify an earlier question? We did get a letter from the minister the day before that bill was introduced about the privacy protection to the Check In Canberra app.

**MS CLAY:** This might be a question, I think, for our Public Advocate and Children and Young People Commissioner, but I am happy for the experts to tell me who is best to answer it. I am interested in what has happened in our domestic violence and child protection space as a result of COVID, what has happened to your complaints and interventions and whether you feel you have got adequate resources to deal with that.

**Dr Watchirs:** Can I refer that to Jodie Griffiths-Cook, as well as Heidi Yates, the Victims of Crime Commissioner.

**Ms Griffiths-Cook:** I would be inclined to defer to Ms Heidi Yates on that question. While we have had some concerns, I think in many instances those matters are brought directly to the Victims of Crime Commissioner.

**Ms Yates:** We have seen a substantial increase in client demand across the COVID period, including in relation to domestic, family and sexual violence in particular, with clients referencing the impacts of additional safety and financial concerns that have made life much more difficult during the lockdown.

Last year we saw a spike in demand at the start of the movement restrictions and by June, when those were being lifted, we were looking at, in the month of June, a

125 per cent increase in family violence matters compared to the same time in the previous year and a 50 per cent increase in sexual violence matters in that same month. Since that time, demand dropped a little over that 10-month period towards the next lockdown, but we are still operating at up to 90 to 100 per cent higher across those areas than we were prior to COVID. We have been grateful for, as you will see in the budget, initially some temporary resources and now some recurrent funding to assist us to respond to that demand.

**MS CLAY:** Do you think that that long tail is likely to remain? It sounds like your complaint levels have doubled, and I am not certain that is likely to change simply because lockdown is finished. Do you feel that we have got the funding adequately resourced now for years to come?

**Ms Yates:** The government undertook a full review of our two main frontline service programs, the victims services team and the financial assistance team, which was tabled in June. The immediate, urgent recommendation of that review was to make temporary positions recurrent, which has occurred in this budget. However, the concerns highlighted in that report as to the significant pressure that staff are carrying regarding the increasing load persist. Recognising that, we welcome the recurrent money, but we are concerned that, with the release of lockdown, we may see again a further increase in demand, as we saw last time around, and we are steeling ourselves for that at the moment.

**MR BRADDOCK:** How does the Human Rights Commission work with ACT Corrective Services to ensure that the human rights of detainees are maintained? Do you have any concerns or issues that you are actively working on at the moment in that space?

**Dr Watchirs:** Certainly, all three commissioners, Karen Toohey, Jodie Griffiths-Cook and I, or our staff, attend regular oversight meetings of the AMC and we have then a collaborative forum, one of which was this morning, with the Alexander Maconochie Centre staff. We forward the questions from the oversight meeting to Corrective Services for them to brief us on what is happening.

There have been extra forums during COVID with Ray Johnson, the acting commissioner, with the community, as well as oversight agencies. Some of the issues we have been looking at have been the vaccination rates for detainees. If I could just get the figures from today's meeting, at the moment there is a general rate of 86 per cent first vaccination and 78 per cent for second. In relation to Aboriginal detainees it is slightly lower, 84 per cent and 73 per cent, and women are lower than that, 82 per cent and 71 per cent. But, compared to other jurisdictions, that is a pretty high vaccination rate and it has increased since the outbreak.

There has been a limitation on visits. Zoom visits were curtailed. There have been, as I said, 10 active COVID cases in the AMC, as well as one staff member visiting the AMC. And none have been transmitted to either detainees or staff. Zoom visits were reinstated last week, as you would know. Face-to-face visits were suspended in the last period and the current one. Recommended visits were suspended during COVID to the AMC and Bimberi this year.

**MR BRADDOCK:** Just to break out of the context of COVID, does ACT Corrective Services address human rights as part of its decision-making and how it handles detainees?

**Dr Watchirs:** Certainly, we train Corrective Services staff and Bimberi new recruits—that happens once or twice a year, when there has been an intake—and we do look at their policies and procedures, not all of them but high-level ones, ones like chemical agents, strip searches, that kind of thing. As you might be aware, we did human rights audits of both Bimberi and the AMC in the past, but a major recommendation was to set up an inspector of corrective services and since that has occurred we have not done the human rights audit.

OPCAT does come into force in January 2022; so we have been working with the federal Ombudsman, who is the national preventative mechanism for Australia. We will be working with the Ombudsman and the inspector in terms of OPCAT implementation. That is looking at conditions of detention, reporting to the UN and having UN visits if they can be done in a COVID-safe way.

**MR CAIN:** Commissioner, I note that you have received additional funding of \$7.165 million over four years for victims of crime and \$1.031 million for support of the broader work. Is the funding sufficient to meet your operational requirements, and what are your priorities over, say, the next 12 months?

**Dr Watchirs:** Certainly, there has been a huge change in funding to victims of crime since we merged in 2016. The staff have doubled in that time. There has been a significant investment. The complaints side, handled by Commissioner Toohey, as well as commission-initiated considerations, has had a much less generous input, and the Public Advocate in previous years has had some increase in funding.

I have to say that the human rights area, which I run as Human Rights Commissioner, has never had any input. We applied, following the insight review, for an extra lawyer and community engagement but they were knocked back at an early stage. No, I do not think we have sufficient legal resources or community engagement resources.

**MR CAIN:** What is the priority for your spend over the next little period?

**Dr Watchirs:** We have actually got a business planning day coming up, but some of the priority areas we have highlighted in our annual report that you will be seeing soon—in December there will be hearings—include raising the minimum age of criminal responsibility; having care and protection decisions subjected to an external review; the victims charter, as you know, has been enacted; and court interventions. We have certainly upped that work since we have not been doing as much work in the AMC due to the inspector. We had two successful interventions in the Supreme Court and we have got that priority about having a complaints mechanism rather than the expense of making people go to the Supreme Court and the delay and time and expense that are involved.

The other priority would be economic, social and cultural rights. We have education and work at the moment, and I know the parliamentary agreement has the right to a healthy environment. In our view, that should be located in the right to health. That

includes environmental rights. That is a priority that we would like. And we have on many occasions talked about having a right to housing as well. Other commissioners have their own priority—you may wish to talk to them as well—in the human rights area.

**MR CAIN:** I am happy to hear from the other commissioners if they have got something to add.

**Ms Yates:** If I may, I would just add that we have a substantial interest and investment in the current body of work that the ACT government is undertaking, with tripartisan support, around improving the ACT's prevention and response to sexual violence. We know that the community have clearly called for change both across the availability of therapeutic supports right through to their experience of engaging with police and as matters move through the justice system. The human rights of individuals affected by sexual violence have not been in the spotlight in the ACT for the past decade or more and it is time that action is taken. We are expecting the initial phase of that work to report back to the seven ministers who commissioned it, in November, and we will be watching carefully to ensure that action is taken.

**MR CAIN:** Commissioner for Children and Young People?

**Ms Griffiths-Cook:** There are two primary areas, I guess. In terms of my work as Public Advocate, probably the biggest area that I believe requires some additional focus and potentially investment is our mental health and forensic mental health portfolio. We have seen a significant increase in matters in the past two years, from the year prior, in terms of involuntary action that we are notified about in respect of persons in the ACT.

A particular theme that we are interrogating is to identify whether it is a trend in terms of new consumers being brought to our attention, persons who had not ever previously come to the attention of the mental health system in an involuntary way now being brought to our attention. That is one area where we have not had any growth since the implementation of the not-so-new now Mental Health Act in 2015-16. And certainly the demand over the last two years indicates that if we are to keep our finger on the pulse in terms of our oversight responsibilities for mental health and forensic mental health that will need some additional investment.

The other priority is under my Children and Young People Commissioner hat, which is that of continuing to ensure that we are seeking and drawing upon the views of children and young people in terms of their participation generally but also, more specifically from a child-safe perspective, the introduction and the need to introduce—and sooner rather than later, given that we are now nearly five years on from the royal commission—and invest in the child-safe standard scheme, which certainly has been indicated is a priority for government. But we are yet to see that scheme come into effect. That is very much a key priority for me as Children and Young People Commissioner in particular.

**MR CAIN:** Commissioner Toohey, anything to add?

**Ms Toohey:** Yes. We are looking hopefully at a consultation paper coming out

shortly on reviewing the Discrimination Act and the exceptions in the Discrimination Act, which would be great because it was a piece of work that was recommended five or six years ago by the Law Reform Council here. We are very keen to see that happen.

I think the other policy area that we are working on is the code for unregistered health workers, which would cover everyone who is not currently a registered health worker and therefore covered by the national registration scheme which, in the current environment, we have seen as being an exposure because it means we have not been able to take the same sorts of actions that our colleagues in New South Wales, Victoria, Queensland and South Australia can take with respect to workers who are noncompliant in aged care, in disability settings. Given some of the issues that we have seen coming out of those settings during lockdown and during the whole pandemic, the ACT has certainly been a bit behind some of our colleagues in other jurisdictions by not having that code implemented here.

**MS CLAY:** Dr Watchirs, you mentioned the right to complain—and I think that is the right to remedy—and a broader range of remedies so that people do not have to go through the Supreme Court. Can you talk us through the need for that and whether it would just be ACAT remedies or what sorts of remedies you mean?

**Dr Watchirs:** What we recommend would be a jurisdiction similar to the Discrimination Act. Queensland currently has that and it has been working well. People in fact have made a number of complaints that are both discrimination and Human Rights Act based. You would have freestanding human rights ones and ones that are allied with other existing complaints.

Of course we have got a much broader jurisdiction in the ACT. Commissioner Toohey has roles as health services commissioner and disability and community services commissioner. Those economic, social and cultural rights that we talked about, such as education and work, and if health and housing were added, would complement the rights in all those jurisdictions by making them much more actionable and make public authority obligations much more powerful and people could actually see human rights being implemented in practice in their individual cases, as opposed to having to go to the Supreme Court, which is very costly and needs legal representation.

There is one major difference between what we are recommending and Queensland. Those cases do not go to their Civil and Administrative Tribunal, whereas we strongly think that those cases should go to ACAT as they currently do for discrimination, but they do not for victims charter or disability and community services cases.

**MS CLAY:** Having that ACAT remedy might also make the conciliation processes a bit more effective leading up to it?

**Dr Watchirs:** Absolutely. It is a carrot and stick. There was one thing I did not mention in the priorities: the Aboriginal community's call for a royal commission into over-representation. Commissioner Yates and I have participated in two roundtables this year, in March and September, looking at the type of inquiry that could look into that issue, and doing an audit of existing recommendations and whether they have

been implemented to the community's satisfaction or not is an important priority.

**THE CHAIR:** That is over-representation in the criminal justice system?

**Dr Watchirs:** Exactly, yes.

**THE CHAIR:** Ms Yates, in terms of the charter, the victims rights charter, that has been operational for a little while now. There is money in the budget that you have got as well. Based on the operational expense—I cannot remember whether there was a prescribed review period or not—are you recommending any changes now that you have seen it rolling out for a while?

**Ms Yates:** Certainly, I recall that there is a review built in after three years of operation. We have been pleased to see justice agencies engage enthusiastically with the charter since its commencement on 1 January. My office has handled over 50 concerns from community members about their rights being breached by those agencies. I am still firmly of the view that victim complaints should, if they are not settled at conciliation here at the Human Rights Commission, be able to go on to be considered by ACAT. As Ms Clay notes, we know that conciliation is much more effective when there is a remedy beyond being in the room together.

I would also note that we need to ensure that some of the larger agencies like corrections and police have sufficient resources to deliver their rights and responsibilities or their obligations to victim rights and responsibilities under the charter. It is not clear that one FTE in each of those agencies is, as yet, sufficient. We will certainly be monitoring the patterns and concern as we receive the complaints. Today they have been very useful in identifying systemic issues that we can tackle from a reform perspective.

**DR PATERSON:** I was wondering about the mental health and forensic mental health that you mentioned and the involuntary mental health orders. Have you seen an increase in involuntary mental orders and how does that overlap with your role as the Children and Young People Commissioner? Is this happening a lot more with young people in the ACT?

**Ms Griffiths-Cook:** Those notifications come to me in my Public Advocate capacity. Under the act there is a requirement for Health to send those notifications through to me indicating any action or proposed action of an involuntary nature under that act.

What we have seen from 2018-19 to 2019-20, and now into 2020-21, is an increase of over 2,000 compliance documents per year over that 2018-19 figure. We went from 5,000-odd—I do not have the exact figures in front of me, but am happy to take that on notice if you would like specific figures—compliance documents that came through to over 7,000. In particular, what we noticed last year in reviewing our data was that, of the 1,100-odd persons brought to our attention, I believe the figure was 570 who were new consumers, which is a significant proportion, as you can appreciate, from that data.

By way of overlap, I guess, with my Children and Young People Commissioner hat, that commissioner role obviously has a broader responsibility for overall wellbeing

and making Canberra the best place it can be for children and young people. So there is that overlap, I guess, underneath that. But it still is a mix.

Yes, we are seeing, particularly in this last 18 months, a slowly increasing trend in children and young people, and I think that has been recognised this year with the injection of funding into mental health, particularly youth mental health in that space. It is something I do think we as a community, and as government and as statutory office holders within that space, do need to keep a really close eye on.

I think, coming out of this most recent lockdown and the pandemic generally, there is an ongoing and significant risk to mental health that may not be felt for some years to come. So I do think there is a need to keep the finger on the pulse of that and keep that monitoring, which I am certainly committed to through the involuntary side of things. But I think we also need to be cognisant of the fact that there is large demand out there from people seeking services in a voluntary way that we may not have sufficient capacity to address. It does go both ways. I think that if we cannot respond to those who are voluntarily seeking assistance then we run the risk of those persons ending up coming into the system in an involuntary capacity because they have reached a crisis point. Certainly, I would hope that it is everyone's priority to mitigate that eventuality and to ideally be able to service people in a voluntary way.

**DR PATERSON:** When you oversee those orders as they come through, have there been any that you have questioned or sent back for further information?

**Ms Griffiths-Cook:** Yes, we have the capacity or a standing, I guess, within the ACAT in terms of being able to speak in support or otherwise of the orders and/or to interrogate the evidence being presented in support of taking a particular action. We intervened, I think, for 35-odd per cent of persons brought to our attention in the last financial year, which is well above the number in previous years, which has usually been in the 20 to 25 per cent levels. That, unfortunately, because of our resourcing, has been to the detriment of our ability to review the compliance documents.

While our target in this last reporting period was 75 per cent, we were only able to review 64 per cent of the compliance documents brought to us in the mental health and forensic mental health space. There is always that offset that is a challenge for us at a resourcing level in that that is where we are needing to intervene, and do. Sometimes we see those orders stood down or those applications not proceed. On other occasions we can see the validity of it and they do proceed. But it is to the compromise, I guess, of our ability to work through the compliance documents at a level that I believe would give adequate oversight.

**DR PATERSON:** Is there a pattern in the interventions that you have had to make in terms of seeing such an increase? Is that a consistent theme that is coming through with the interventions or is it all manner of different things?

**Ms Griffiths-Cook:** There are all manner of different causal factors that have brought the person to the attention of the system. We have had to triage them in some specific areas that we focus on. One is certainly persons under 24 years. We do look at that younger cohort, particularly those who are still a minor, as in under 18 years.

But we also have had a particular focus on the compliance documents known as ED11s, which is an emergency detention for 11 days. That is because of the procedural element there. There is an ED3, which is usually an emergency. If that is not alleviated within a three-day period, an 11-day extension to that may be sought. You are then stretching into a time period where someone is detained for up to two weeks under those arrangements.

So we seek to interrogate those to make sure that that is an appropriate course of action, ideally to mitigate the longer term psychiatric treatment order having to be sought for that person. What we are seeking to explore is what is being done to attend to the presenting issues for that person in an appropriate manner, to mitigate them needing to be on longer term orders. But that is part of our own triaging of that.

There are, potentially, situations that we are unable to resource that might benefit from our attention. We keep our finger on the pulse of trying to also take spot checks of those to make sure that, as far as possible, we are getting to as many as possible in the most appropriate way.

**MS CLAY:** I am pleased to see the community engagement targets that you have set out there. This is probably, again, for all commissioners. I am interested in knowing how you reach multicultural and CALD communities and vulnerable Canberrans, given that they are probably the ones most in need of your services but probably also the ones who are hardest to reach.

**Dr Watchirs:** Can I refer that to Commissioner Toohey.

**Ms Toohey:** We have got a range of ways of communicating with these people about both what their rights are and certainly what processes are available and what services are available through the commission. That includes direct contact with the community. That includes working through peaks, and that is certainly one of the ways that we do it.

I have got a very small team with a very high workload. One of the things that we know, often, with those communities is that they do not necessarily want to engage directly with us. They want to engage through someone they already trust. And that is where a lot of our work goes, particularly with the multicultural community. We have been running some public service announcements on multicultural radio in a number of languages over the last couple of months to endeavour to reach those communities more directly about racism but also more broadly about the other services that the commission provides.

I guess as an example, one of my new jurisdictions, the vulnerable people jurisdiction, allows people to bring concerns to us about elder abuse. We have gone out and spoken to JPs, we have spoken to GPs, we have worked through Capital Health Network, again to try and get to people through people they trust and know. And we have found that to be really effective. We are getting a lot of calls from people. We have certainly dealt with a range of matters in that space from people from diverse cultural backgrounds. We are always looking for new ways to communicate with people and we are always looking for new mechanisms to try and reach those people in the community that are vulnerable.

**MS CLAY:** It is difficult, though, isn't it? If you become more effective at communicating you will see a sudden uptick in complaints and it will be difficult for you to unpick exactly what is going on with that.

**Ms Toohey:** Yes. We have certainly seen a growth in complaints to do with race discrimination over the last three or four years. We have gone from about 25 about four years ago; we have got about 50 this year. That is fairly good growth. We have also seen overall growth in discrimination claims from about 70 to, this year, just over 220, which is about equivalent to what the South Australian Equal Opportunity Commission gets.

I think we are doing a reasonably good job. There is always room for improvement, and we completely understand that. At the moment, race complaints are about 21 per cent of our discrimination complaints, as an example. But, as you have said, there is always room to improve the communication channels and the way that we get information out to people. We are certainly always looking for feedback on that. I notice, Heidi, you had your hand up.

**Ms Yates:** I think you have made a really good point, Commissioner Toohey. I would just add that I know that the victim support part of the 64 per cent increase that we have had in overall clients in the last two years has been due to the hard work of our outreach program. We now operate an Aboriginal and Torres Strait Islander outreach program, including two Aboriginal and Torres Strait Islander victim liaison officers. We have a multicultural outreach program which is founded around our single multicultural outreach officer but draws in staff from across our team to be out there in community.

More recently we have had some temporary funds to trial a disability outreach program. Those team members are based in victim support. They go out to the community, on an ad hoc basis and as required, but are also going to places like the Theo Notaras Centre on a regular basis—each Friday we operate out of there—and also over to Winnunga and other places. They are there as representatives of the commission and often connect people back into services.

We know, as Commissioner Toohey mentioned, that connecting to people through trusted places is a key way but also being able to be much more flexible about when and how we see people face to face. We continued service in our lockdown face to face where required by particularly vulnerable community members. It has made all the difference in building community trust, I think, in our service across a broader range of parts of community in the last few years.

**Ms Griffiths-Cook:** I was just going to make a brief mention that pre-COVID we were about to launch a consultation with children and young people about their understanding of and experience of racism as another means by which to both understand how we can improve our own services as a commission but also, more broadly, what might be required within the Canberra community to better address those considerations. We had to put that on hold because that was a face-to-face consultation but we will be picking that up again as well.

Again, as my fellow commissioners have indicated, we are partnering with the Multicultural Hub and with Curiyo, an Aboriginal organisation, to undertake that consultation so that we are ensuring that we are utilising trusted allies, I guess, to reach those population groups and get that understanding as completely as we can.

**MR BRADDOCK:** My question relates to the ACT Inspector of Correctional Services report on the forced strip search, which highlighted some areas where greater consideration of human rights was required. What actions has the Human Rights Commission been undertaking or looking at as a result of that report?

**Dr Watchirs:** I know that Commissioner Toohey worked with the inspector on a commission-initiated consideration of that issue. Certainly, we have made a submission to the inspector a number of times and we do agree that there needs to be improvement in human rights being taken into consideration at a systemic level.

That was something the Auditor-General also made a finding of in looking at the implementation of the Human Rights Act. So we are not alone. It is the inspector, the Auditor-General and the Human Rights Commission. Commissioner Toohey, did you want to say anything specific about that case?

**Ms Toohey:** I am just conscious that I have got open matters related to the subject matter of the inspector's report. I am looking at issues related to the interface between corrections and justice health in that particular matter. As Dr Watchirs indicated earlier, we, through a collaborative oversight forum, worked closely with the inspector, the Ombudsman and the Official Visitors in the AMC across a range of issues. Certainly, the recommendations arising from that report will continue to be part of the follow-up process for that oversight group because it is a collective responsibility.

**THE CHAIR:** Commissioners, we might have to leave it there. Thank you very much for attending this afternoon. Thank you very much for the very important work that you do in our community over what has been a pretty difficult period of time. I think that probably as never before have human rights been so important, and having a body keeping an eye on it. We really appreciate that. I think there were no questions taken on notice, but you said that you would provide us with a copy of the letter that you sent to the parties. On that, thanks very much and we now move to the Minister for Human Rights.

Appearances:

Cheyne, Ms Tara, Assistant Minister for Economic Development, Minister for the Arts, Minister for Business and Better Regulation, Minister for Human Rights and Minister for Multicultural Affairs

Justice and Community Safety Directorate

McKinnon, Ms Gabrielle, Senior Manager, Civil Law, Legislation, Policy and Programs

**THE CHAIR:** Minister and directorate staff, thank you very much for attending. We only have 15 minutes. Can I see you give a thumbs up that you have read the privilege card? There are no opening statements, but I promised Mr Cain the first question because he missed out on the last one.

**MR CAIN:** Thank you, Minister, for joining us. Minister, we heard from the Human Rights Commissioner just now—and I believe I have captured this correctly—that they were not part of the formation of COVID responses, both pre and during lockdown, and that the response rate from government to their submissions has been very poor. As human rights minister, what have you done to advocate for more involvement by and a courteous response to the commissioner? What advocacy have you presented to the government for the incorporation of the Human Rights Commissioner in formulating COVID responses?

**Ms Cheyne:** Thank you for the question. As Minister for Human Rights, I have an important role in policy responsibility. My directorate also provides education and support to directorates on their obligations regarding human rights. While I have this overarching responsibility, it is also important to note that each minister and each directorate has specific obligations, as public authorities, to give that proper consideration to human rights. While I have specific responsibilities within my role and within the administrative arrangements, which I am sure you are familiar with, each and every one of the ministers and directorates also has responsibilities regarding human rights.

I heard the Human Rights Commission mention correspondence that they have written. The correspondence that they have written has almost always been directly to the Minister for Health, with me, as their minister, cc-ed. The Minister for Health has had responsibility, with the Chief Health Officer, for the COVID response. But I have been made aware of the representations that they have made and, in all of the cases, the Minister for Health has confirmed that she will be taking the lead in responding. As the commissioner noted, there have been some responses to that, including action taken.

Regarding specific advocacy, one notable area, Mr Cain, has been with regard to the advice that the government has produced on vaccination status for business owners. You might be aware that that went live last week or the week before. That was developed with a cross-directorate working group. Also, the Human Rights Commission, with Dr Watchirs and Commissioner Toohey, were firmly part of that. You may recall that the Human Rights Commission issued a two-page summary of

their concerns about a vaccination passport being implemented. Of course, our views very much aligned with that. But it was important for us to have their involvement and their views represented in the working group that prepared that guidance that has now been issued to businesses.

**MR CAIN:** Minister, shouldn't your policy, as human rights minister, include that there be a strong advocacy role for the Human Rights Commissioner, particularly when people's rights to movement and to conduct business are seriously affected?

**Ms Cheyne:** Mr Cain, as I mentioned, all ministers and the Chief Health Officer do have to give due consideration to human rights when making policy decisions and those health decisions. Those questions regarding the health decisions are best directed to the Minister for Health.

Of course, there is a strong advocacy role. The Human Rights Commission are strong advocates. They often make public statements and representations. I meet with them regularly, and we also share that information and those representations with the Minister for Health and her office, and any other ministers who are involved.

**MR CAIN:** You have certainly had advocacy on the territory rights issue, so why not on the rights of the citizens of the territory that have been affected by COVID restrictions?

**Ms Cheyne:** Mr Cain, I believe that the Chief Health Officer has been giving due consideration to those rights.

**MR CAIN:** But not accompanied by human rights implications, which really falls within your purview.

**Ms Cheyne:** No, Mr Cain; we have been through this. I am repeating myself now.

**THE CHAIR:** An issue raised by the Human Rights Commissioner was about the mandatory vaccinations for certain categories of workers. At this stage it has been done by health orders, and her view is that that should be done through primary legislation. Have you had any conversations with the health minister or other ministers about that? Is that your view as well or are you happy that that gets done by health orders?

**Ms Cheyne:** I respect the commission's view that these are serious limitations, but, by the same token, my understanding is that they are intended to be time limited. I think there is a balance to be had here. I also note, Mr Hanson, that our sitting calendar for the rest of the year is quite short. There are not many more days. Also, there is a need in some of these higher risk settings to have mandatory vaccinations. In the first instance, doing it through this notification achieves the balance that we are looking to get to.

**THE CHAIR:** Certainly, and when it is an emergency, emergency measures are required. If these requirements are going to be ongoing, is it your view that we need to bring forward legislation? This will go on, I would imagine, in terms of mandatory vaccinations, for a reasonably long period of time.

**Ms Cheyne:** Mr Hanson, it is something that we as a government, and the ministers that are leading this work, will continue to look at.

**DR PATERSON:** Minister, there was funding in the budget to establish an Aboriginal and Torres Strait Islander children's commissioner. Can you outline that process and explain what that will look like?

**Ms Cheyne:** You may be aware that the parliamentary and governing agreement provides a commitment to implement all of the recommendations put forward by the Our Booris, Our Way review. One of those was a recommendation to establish an Aboriginal and Torres Strait Islander children's commissioner. This has been further confirmed as a priority, following the protection of rights services review which concluded earlier this year. It was an all-encompassing review of the Human Rights Commission's functions. Again, the government formally agreed to the recommendation to establish the commissioner in its response to that review.

It is incredibly important that we create this position in a way that is co-designed. It has been absolutely our commitment to do that with the community. I will hand over to one of the officials to talk about the co-design process that we have underway, including with our partners, the Elected Body and the Our Booris, Our Way Implementation Oversight Committee.

We do need to get that right, and it will take a little bit of time. In the meantime, very pleasingly, there is \$311,000 in the budget to provide the establishment of the office, essentially, which will contain the advocate position before it becomes the commissioner position, once it has been fully designed together with the community.

Given the time that it will take to be as authentic as possible with the process, then the legislation which will be required to establish the commissioner position, we believed, and we heard very strongly from the community, that this was the best way to bridge the gap in the meantime and to induct culturally appropriate recruitment to fill the role. This advocate position will be able to start to set the scene while we continue that important co-design work.

I appreciate that we are very short of time today, but I will ask Gabrielle to give a 30-second update on where the co-design process is up to with the community.

**Ms McKinnon:** We have engaged the Jumbunna Institute, led by Professor Larissa Behrendt. She is also working with Associate Professor Paul Gray. They have a lot of experience around co-designing and working authentically with communities. Jumbunna have developed a discussion paper that is due to be released very soon. They have been working with the Our Booris, Our Way Implementation Oversight Committee. Now that we have the new Elected Body, it has been announced that they are also working with the Elected Body to progress those consultations.

Obviously, it has taken a little while; because of COVID, some of the really exciting co-design plans that were in train had to be put in hold so that they could meet with people face to face, and we are looking forward to that getting started really soon. That process is underway, and we are looking forward to a really deep engagement

with the community about what the commissioner role will look like, what each function will be, how we recruit that commissioner and how they work with the community. All of those things will be really important to test with community members and organisations, to get a really broad view about how that will work.

**MS CLAY:** Minister, we heard from the commissioner that she is very supportive of a right to remedy in ACAT. I am wondering what your view is on that. If you were going to make that kind of change, or if you were going to introduce a new human right, what would be the general time line for that?

**Ms Cheyne:** I am very conscious that there is a petition that is current; it is looking to be tabled in the Assembly soon. I appreciate that it does look like it has the makings of broad support.

I do not want to pre-empt what this committee might wish to do with the petition if it is referred to the committee. I noted some of the considerations that the Human Rights Commissioner raised about things to work through. This might be something that quite usefully could have a committee inquiry. Of course, that is absolutely within the committee's purview. I will await the outcomes of the petition and then respond more formally. If it is referred for committee inquiry, I do not want to necessarily influence the outcomes of the committee's recommendations.

**MS CLAY:** In the abstract, if you were making a change to that piece of legislation, what would be the usual time line that you would take to do that?

**Ms Cheyne:** Again, Ms Clay, it would depend on the exact form that it would take, and whether this would be subject to a committee inquiry or not. I would suspect that this would be something that would form part of a government inquiry. I am really straying into hypotheticals at this stage, so I want to perhaps contain myself, if that is all right.

**THE CHAIR:** On that note, we have run out of time. Minister, thank you very much for attending with your officials today. I do not think that you took any questions on notice. We will reconvene next Tuesday at 9 am.

**The committee adjourned at 5.31 pm.**