



**Submission:**  
**Designing a model for the effective protection of human rights**  
**Response to the Discussion Paper**

Submitted by email to: [JACSLPP@act.gov.au](mailto:JACSLPP@act.gov.au)

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## **Changes to the model for protection of human rights in the ACT**

This submission has been prepared by the ACT Mental Health Consumer Network in response to the invitation from the Justice and Community Safety Directorate Discussion Paper.

The ACT Mental Health Consumer Network is a consumer-led peak organisation representing the interests of mental health consumers in the ACT in policy and decision-making forums. The Network is committed to social justice and the inclusion of people with experience of mental illness. Run by consumers for consumers, our aim is to advocate for services and supports for mental health consumers which better enable them to live fuller, healthier and more valued lives in the community.

The Network has held two forums for members to discuss the ACT Human Rights Commission (HRC), one in late 2014, and the other in May 2015 specifically to discuss the proposed restructure. A number of our members have sought assistance from the Commission at various times, and we are aware of a range of complaints our members have lodged with the Commission, or with its various Commissioners. This submission draws on the experiences of our members.

### **General Comments**

Many mental health consumers are among the most disadvantaged in our society, often without stable or safe accommodation and living on very low incomes. They are vulnerable to discrimination on a range of bases, and have high levels of interaction with the health system, too often involuntarily.

Therefore, consumers need an effective system that will promote an understanding of equality, and work to reduce and remove stigma and discrimination. This must be backed by effective powers to investigate and resolve their complaints or breaches to their human rights. So the Network would like to see a strong and effective ACT Human Rights Commission with functions that include education, advocacy, investigations and audits, and complaints handling.

With regards to the proposed changes to the structure of the Commission, consumers have a wide range of concerns about the Commission in its existing form. Firstly, it is clear that current funding for the existing structure of the Commission does not enable the various Commissioners to fully perform their functions. Concerns also include inconsistency of approach between different areas within the Commission, confusion about who is responsible for which complaints, and lack of assistance by Commission staff when raising a concern or seeking to make a complaint.

Our experience is that while Commission staff generally do seek to assist complainants, the complaints process still requires a significant amount of paperwork and organisation of material – both of which can be difficult for some mental health consumers.

We see possible benefits from the proposed restructure, if it provides a more efficient use of resources. We are also attracted to having clear governance and accountability lines, through the new President's role.

## **Public Advocate**

We see merit in the proposals in relation to the Public Advocate's functions. In our view, these should include a change to the basis on which the Public Advocate provides individual advocacy. The Public Advocate currently conducts individual advocacy on a 'best interests' basis. We, however, think that this is an outdated approach which instead should be 'best will and preference', based on the Convention on the Rights of Persons with Disabilities. If it remains solely 'best interests' advocacy, this needs to be very clearly communicated to people so they understand the advocate may not pursue their preferences.

We do have concerns about potential conflict between the individual advocacy and complaints roles, for example, where the advocate has formed a view about best interests and the consumer wishes to complain about this. Furthermore, there is a strong relationship between advocacy and complaints – our members believe that there is need for very sound protocols to avoid conflict.

## **Complaints**

Our members strongly agree that having a single access point for members of the community with rights questions, concerns, complaints, or general queries would mean less confusion and increase accessibility. Our members have found that there is currently confusion, internal conflict and inconsistency of advice from different areas within the Commission about potential complaints or how a complaint will be handled. Therefore, having the president as the intake point for all representations, enquiries, requests and complaints has the potential to alleviate this confusion and conflict allowing for a fairer system – although this has the potential to lead to efficiency problems if not managed well.

The discussion paper clearly states that “no human rights complaint function exists or is being considered”. The Network strongly believes that there should be a mechanism for complaints to be made to the Commission about breaches of the Human Rights Act (HRA) or, alternatively, to create a civil wrong for breach of the HRA, compensable in the same way as negligence.

## **Victims of Crime**

The Network supports the proposal that the Victims of Crime role is absorbed by the Commissioner with community safety functions. However, we have two concerns.

Firstly, we are concerned that the victims of crime commissioner role might be placed in a position where it has the potential to lose out as the newcomer to the Commission within a narrowly defined role. Moreover, the Discussion paper outlines that the proposed Commissioner with functions relating to community safety and victims of crime “acts as a justice advocate through collaboration and coordination on committees and working groups dealing with crime prevention and justice

discrimination". Given this function outline, we are concerned that community safety has been too narrowly defined, by reference to crime. The Network would like to highlight that community safety is much broader than protection of victims of crime, for example, including safe services.

Lastly, we would like to see more fundamental consideration of complaints, e.g. use of the public advocate while within services, and at hearings under HRA. Any complaint about a health service, where the person is still in the situation, would probably require individual advocacy – the Commission needs to be clear regarding how it will manage this. Too often mental health consumers feel unsupported; they should have further assistance and have access to individual advocacy whilst going through the process of making a complaint. They should not have to go to conciliation without representation.

### **Conclusion**

Overall, the Network agrees that a cohesive, unified Human Rights Commission is better placed to resolve complaints and promote rights. For mental health consumers who have made complaints through the Commission, some complaints have had positive outcomes, some have not, and some have been abandoned by our members as they found the process too difficult. Therefore, we agree that the process for accessing services of the Commission needs to be simplified and there is a strong need for greater cohesion and clarity internally.

With regards to the proposed changes to the Commission, we see some benefits in the proposed restructure in addressing issues concerning inconsistent messages regarding complaints and approaches to handling complaints and inquiries between different areas.

It is clear that the Commission needs an overall increase in funding and the Network supports that more funding should be allocated to the Commission for it to better serve the community at large.