

## **Terms of Reference**

### **Law Reform and Sentencing Advisory Council**

#### **Establishment**

1. The Law Reform and Sentencing Advisory Council (the Council) is established by the Government of the Australian Capital Territory, by Ministerial authority, as an expert advisory council.
2. The Council is established to provide the Attorney-General with high level, independent advice in relation to law reform issues and sentencing matters in the ACT.

#### **Role of the Council**

3. The Council has two distinct roles, being a law reform function and a sentencing advisory function.

#### **Performance of Objectives and Functions - General**

4. The Council has a duty to act independently in performing all its functions and achieving its objectives and in undertaking its work and responsibilities.
5. The Council must ensure that in performing its functions, the Council gives proper consideration to human rights and any rights and/or obligations under the *Human Rights Act 2004* relevant to the matters under its consideration.

#### **Law Reform Objectives and Functions**

6. In delivering the Law Reform function the Council will:
  - a. Accept referrals from the Attorney-General regarding areas of law and legal policy to conduct reviews and research, with a view to:
    - i. The modernisation of the law.
    - ii. The elimination of defects in the law.
    - iii. The simplification of the law.
    - iv. The consolidation of any laws.
    - v. The repeal of laws that are obsolete or unnecessary.
    - vi. Uniformity between laws of other States, Territories and the Commonwealth.
  - b. Provide expert advice to the Attorney-General on these referrals, including through detailed and impartial research and active and inclusive consultation, in the form of a report with recommendations.
7. It is open to the Council to suggest to the Attorney-General that a proposal or matter relating to law reform in the ACT be referred to the Council by the Attorney-General.

#### **Sentencing Advisory Objectives and Functions**

8. The Sentencing Advisory component of the Council will:
  - a. Assist the Attorney-General to make decisions relating to sentencing issues through the provision of advice, reports and/or recommendations as referred by the Attorney-General, or by the Council's own motion following consultation with the Attorney-General. This includes:
    - i. Providing policy advice on sentencing related matters at the request of the Attorney-General.
    - ii. Undertaking relevant research and analysis on sentencing matters.

- iii. Obtaining community views on sentencing issues.
- iv. Providing advice to other agencies in relation to penalties and sentencing matters, at the request of the Attorney-General.
- b. Make recommendations for sentencing reforms using evidence-based methods.
- c. Monitor and report on sentencing trends annually.
- d. Engage and educate the community on sentencing issues.

## Membership

9. The Council will be comprised of persons appointed by the Attorney-General from time to time.
10. The Council will comprise 13 members including a Chairperson. The Chairperson for the purposes of these Terms of Reference, is also considered to be a member.
11. Membership of the Council must represent a balance, diverse group and include Aboriginal and Torres Strait Islander representation. Members will be appointed in either an ex officio capacity or in a personal capacity.
12. The following members will be appointed:
  - a. In an ex-officio capacity:
    - i. The ACT Chief Police Officer, or their delegate;
    - ii. The Commissioner of ACT Corrective Services, or their delegate;
    - iii. The Human Rights Commission President or a representative nominated by the Commission;
    - iv. A representative of the legal assistance sector;
    - v. The Director of Public Prosecutions or their delegate;
    - vi. The President of the ACT Law Society or their nominated representative; and
    - vii. The President of the ACT Bar Association or their nominated representative.
  - b. In a personal capacity:
    - i. A senior law academic;
    - ii. An expert in juvenile justice related matters;
    - iii. A former member of the judiciary;<sup>1</sup>
    - iv. Two community representatives, including at least one Aboriginal and Torres Strait Islander representative; and
    - v. A representative of a victims of crime advocacy group.
13. The Chairperson must:
  - a. Be a former member of the judiciary; or
  - b. Is, or has been for at least 5 years, a legal practitioner of the High Court, or the ACT Supreme Court, or a Supreme Court of another state or territory; or
  - c. Is a graduate in law of a university, and has experience as a member of the academic staff of a tertiary educational institution; or
  - d. is otherwise considered suitable for appointment as Chairperson by the Attorney-General due to their skills, qualifications or experience.
14. Members will initially be appointed for a one-year term, with the option of re-appointment.
15. A member's office becomes vacant:
  - a. On the expiry of their term of office; or
  - b. The member resigns from office; or
  - c. At the Attorney-General's discretion; or

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<sup>1</sup> To remove any doubt, this can include a former Judge or Magistrate.

- d. If the member is terminated for a breach of the code of conduct or conflict of interest.

### **Role of Chairperson**

16. The Chairperson will convene meetings, in consultation with Council members. In their absence, the Council will elect a member to chair the meeting.
17. The Chairperson will develop and set the agenda for meetings in consultation with Council members and ensure any issues identified by the Attorney-General are considered at meetings.
18. The Chairperson will chair meetings, which should include:
  - a. Conducting and guiding meetings.
  - b. Facilitating the participation of members.
  - c. Encouraging a cooperative and collaborative working relationship.
19. The Chairperson will provide ongoing advice to the Attorney-General on the management and progress of the Council and its associated work.

### **Role of Members**

20. Members are expected to actively contribute to the work of the Council. This includes but is not limited to attending and engaging in meetings and undertaking work out of session.
21. Members of the Council will communicate to the Chairperson, any agenda items or issues they wish the Council to consider at its meetings.
22. Members shall provide expert advice and guidance, through the Chairperson, to the Attorney-General on the management and progress of the Council's work.

### **Responsibility of the Attorney-General**

23. The Attorney-General shall be responsible for providing referrals to the Council by way of written terms of reference that includes the background and purpose of the referral.

### **Consideration of References**

24. The Chairperson, with agreement of members and approval of the Attorney-General, may form sub-committees to consider particular references, having regard to the need for relevant expertise and a balance of views. Sub-committees, and their members, are bound by the same performance, confidentiality, code of conduct and conflict of interest obligations and responsibilities that apply to members and the Council generally under these Terms of Reference.
25. The Council may invite people who have particular knowledge or expertise in a matter to participate in meetings of the Council and/or meetings of a sub-committee of the Council.
26. The Joint Advisory Council Chairs group may be used to source community representation.
27. The Council may, with the approval from the Attorney-General, undertake public consultation.

### **Remuneration**

28. Council members who are appointed representatives of the ACT Government do so on a voluntary, unpaid basis. All other members will be provided with remuneration for their contribution and time on a per diem basis, subject to a Remuneration Tribunal determination.

## **Code of Conduct/ACT PS Values**

29. All members are expected to observe the highest standards of ethical conduct as outlined in the *ACT Government Governance Principles* and the ACT Code of Ethics, including honesty, courtesy, fairness and declaring any actual, potential or perceived conflicts of interest.
30. Members will be deemed to be on Council business when representing the Council at meetings and other forums; and when generally attending to the operation of the Council. Members must report back to Council on official activities.
31. As part-time public office holders, Council members are required to adhere to the *Public Sector Management Act 1994* (PSM Act) and ACT Public Service (ACTPS) Code of Conduct while acting in an official capacity.

## **Confidentiality**

32. All Council papers must be considered as confidential unless indicated otherwise by the Chairperson, or where the papers are already in the public domain.
33. Members may occasionally also be provided with other confidential material, which they should not disclose to anyone outside the Council and should treat with the utmost care and discretion.
34. Discussion within Council meetings must also be treated as confidential.

## **Conflict of Interest**

35. When a member is aware prior to a meeting of the Council, or becomes aware during the course of the meeting, that a possible conflict of interest exists, they are required to inform the Chairperson of the nature of the conflict.
36. If it is deemed that a conflict of interest or perceived conflict of interest exists, the affected Council member must not participate in any discussions or decision relating to that matter.

## **Privacy**

37. The Council, including its members will comply with Territory privacy legislation.

## **Media**

38. Any information or comment to be released on behalf of the Council or by Council members, including to the media, must be cleared through the Chairperson and in accordance with the PSM Act and the ACTPS Code of Conduct, noting that public employees and, as appropriate, other specified roles, must not make public comment in an official capacity, unless expressly authorised to do so.

## **Procedures**

### *Meeting of the Council*

39. The Chairperson will convene as many meetings of the Council as they consider necessary for the efficient conduct of the Council's functions, with a minimum of four meetings per calendar year.
40. The Council may meet in person or by teleconference/videoconference.
41. Meetings are to be held in the ACT.
42. The quorum for a meeting is at least half of the total appointed membership of the Council at the time.
43. All decisions of the Council must be recorded in minutes.

44. Meetings are to be conducted in such a way as to allow free discussion and the maximum exchange of ideas and information, with respectful and meaningful purpose. The Chairperson is to direct and guide discussions and manage the agenda of each meeting.
45. If a vote is required, it will be determined by a majority of votes of the members present. The Chairperson will have a deliberative vote, and, in the event of an equality of votes, will have a casting vote.
46. Where a matter requiring resolution is to be dealt with, out of session, agreement by two thirds of Council members is required for assent.

#### *Presence of non-members at Meetings*

47. As a general principle, guests will only be invited to Council meetings for specific purposes. Guest speakers will be present only for the relevant agenda items unless otherwise invited by the Chairperson.

#### *Non-Attendance at Meetings*

48. If a member is unable to attend two consecutive meetings, they may be asked to discuss their commitment to their membership of the Council with the Chairperson. If the outcome of this discussion is not satisfactory, the Chairperson may recommend to the Attorney-General, that the member be asked to reconsider their commitment and membership to the Council.

#### *Communication*

49. All inbound correspondence related to Council activities is to be communicated to the Chairperson, and tabled at the next meeting of the Council for the reference of all members. Any response drafted, must be prepared in consultation with the Chairperson. Members may be consulted as the need arises.
50. All formal correspondence must be signed by the Chairperson or by a member and authorised by the Chairperson.
51. All documents related to the Council must be maintained appropriately.

#### *Agendas and Minutes*

52. Input to an agenda must be provided by members to the Chairperson, not less than two weeks prior to a scheduled meeting.
53. The agenda and associated papers will be distributed to members no less than one week prior to the meeting.
54. Minutes are to be distributed to members within ten days following a meeting.
55. Minutes with any amendments should be ratified at each subsequent meeting of the Council.

#### *Publication of Reports and Research*

56. The Council will provide the Attorney-General a copy of all publications at least three weeks prior to their anticipated release date. This will allow the Attorney-General the opportunity to review material and if required, request any additional information.

### *Annual Reports*

57. The Council shall, at the end of each calendar year, prepare a report on its operation that will include a summary of each referral received during the financial year, an annual financial statement of the source and application of funds for the year of the report.
58. The Annual Report shall be made available to the public.

### **Secretariat**

59. The Council will be supported by a secretariat provided by the Justice and Community Safety Directorate to enable to perform its functions as required.
60. The Secretariat will report directly to the Chairperson in all matters regarding the Council's work.
61. The Chairperson will liaise with the Secretariat to ensure that any action required is appropriately assigned and progressed.

### **Review**

62. The Attorney-General may review these Terms of Reference as and when the need arises.