ACT Government
Justice and Community Safety

Open Access release outcome decision – Partial access granted

Document Category: Ministerial Briefs

Title of document: Special Minister of State – Quarter 1 2021 briefs

Description of the information: Question Time Briefs provided to the Special Minister of State between 1 January and 31 March 2020.

The original record of this document contained information the release of which would be contrary to the public interest. This information has been redacted from this publicly available version of the document for the reasons outlined below.

Grounds for decision to withhold disclosure

It was decided certain information contained in the document would not be disclosed as, on balance it would be contrary to the public interest test set out in section 17 of the FOI Act.

I have included below the relevant factors considered in making this decision.

1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

Information that would reveal advice subject to legal professional privilege has been redacted.

I have also assessed the remaining information against the factors favouring disclosure and factors favouring non-disclosure in Schedule 2.

I have included below the relevant factors I considered in making this decision.

2.1 Factors favouring disclosure in the public interest

(a) Disclosure of the information could reasonably be expected to do any of the following:

(i) promote open discussion of public affairs and enhance the government's accountability;

(ii) contribute to positive and informed debate on important issues or matters of public interest;

(iv) ensure effective oversight of expenditure of public funds;

(viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

I consider that the release of the ministerial briefs may be expected to help inform ongoing discussions and debate on matters of continued public importance. The disclosure of this information also helps to promote government accountability and transparency.

On balance, I consider the ministerial briefs to be in the public interest to release, with minor redactions. This includes redactions to information subject to legal professional privilege.

Review rights

My decision to release or withhold open access information is a reviewable decision as identified in Schedule 3 of the FOI Act. You can seek an Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published on the Justice and Community Safety Directorate website, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision, you may write to the ACT Ombudsman at:

ACT Ombudsman
Attention: ACT Strategy and FOI Section
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

Further assistance

If you have any queries regarding this Open Access release, please contact JACSFOI@act.gov.au or phone (02) 6207 2167.

Authorised by

L. Callow

Lauren Callow
Information Officer
9 April 2026

ACT Government
Justice and Community Safety

OPEN ACCESS Q1 2021 SCHEDULE
PORTFOLIO: SPECIAL MINISTER OF STATE

No.	Folio	Description	Date	Status	Reason for non-release or deferral
Question Time Briefs - Sitting Days 9-11 February 2021					
1	1	Question Time Briefs Index - 9-11 February 2021	February		
2	2-6	National Security & Public Safety	February		
3	7-9	Petition received to remove Government Funding to the horse racing industry	February		
4	10-12	Canberra Times article: ACT Electronic voting system flawed	February		
5	13-17	Electoral Amendment Act 2020	February	Partial	Sch 1, s1.2
2020-21 Budget Day - Sitting Day 9 February 2021					
6	18	Budget Day Index - 9 February 2021	February		
7	19-31	2020-21 Budget Summary (including summary of JACS Initiatives)	February		
8	32	Better Government – Supporting government transparency	February		
9	33-34	Strategic and Accountability Indicators - Output 1.1 Policy Advice and Justice Programs	February		
Question Time Briefs - Sitting Days 30-31 March 2021					
10	35	Question Time Briefs Index - 30-31 March 2021	March		
11	36-40	National Security & Public Safety	March		
12	41-43	Petition received to remove Government Funding to the horse racing industry	March		
13	44-46	Canberra Times article: ACT Electronic voting system flawed	March		
14	47-51	Electoral Amendment Act 2020	March	Partial	Sch 1, s1.2

ACT Government
Justice and Community Safety

MINISTER CHRIS STEEL MLA
SPECIAL MINISTER OF STATE
QUESTION TIME BRIEF PACK
9-11 FEBRUARY 2021

Question Time Briefs	
1.	National Security & Public Safety
2.	Petition received to remove Government Funding to the horse racing industry
3.	Canberra Times article: ACT Electronic voting system flawed
4.	Electoral Amendment Act 2020
5.	Records for Auction on All Bids - (EPSDD February 2021) *

* In accordance with section 35 of the Territory Records Act 2002, this brief has been transferred to City and Environment Directorate (CED) as the current record owner. Refer to the ACT Government website (www.act.gov.au) for further information on the release of this brief under Open Access.

QUESTION TIME BRIEF

JACS2021/47-001-031

Portfolio/s: Chief Minister

Police and Emergency Services

Special Minister of State

ISSUE: NATIONAL SECURITY AND PUBLIC SAFETY

TALKING POINTS

Australian Government Critical Infrastructure Reforms (Chief Minister)

- Critical infrastructure is essential to the function of our daily lives in the ACT.
- The ACT's establishment of a second power supply is one example of how the ACT is strengthening the resilience of our critical infrastructure.
- The ACT remains supportive of the focus by the Australian Government to strengthen the security of Australia's critical infrastructure by reforming the Security of Critical Infrastructure Act 2018.
- The ACT maintains its own critical infrastructure arrangements and relationships between government and non-government owners and operators.
- This relationship was used to great effect during the 2019-20 bushfire season to share information about critical infrastructure.

Cyber Security and Online Safety (Special Minister of State)

- The ACT remains an attractive target for cyber criminals.
- The cyber threat is persistent. State actors, criminal syndicates, issue motivated groups and self-motivated individuals continue to target children, families, businesses, online critical infrastructure and steal Government intellectual property.
- Cyber security remains a top priority for the ACT Government.
- Our specialist teams work to protect information managed by the ACT Government and regularly meet withthe National Cyber Security Committee to monitor the cyber threat environment.

Cleared as complete and accurate:	27/01/2021	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Bren Burkevics	Ext: 78628
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	JACS2021/47-001-031	

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QUESTION TIME BRIEF

- In response to recommendations from the Auditor-General's audit on data security, the ACT has engaged a provider to undertake a thorough risk and threat assessment of the ACT's environment. This is in addition to a wide range of other activities to strengthen the ACT's cyber security resilience.
- The ACT supported the development of *Australia's Cyber Security Strategy 2020*, launched August 2020. The strategy responds to continuing malicious cyber threats and activities faced by Australians.
- With more Canberrans working and studying online due to COVID-19, the potential for online harm is increased. Visit the eSafety Commissioner's website for ways to keep you and your family safe online.
- I encourage all Canberrans to follow the IT security advice of the Australian Cyber Security Centre available at cyber.gov.au.

Foreign Interference (Chief Minister)

- The ACT values its open and transparent international engagement with other governments to progress matters of mutual benefit.
- Unfortunately, some foreign actors are pursuing opportunities to interfere for example with decision makers, intellectual property, and IT systems in Australia. The ACT is not immune from this interference.
- Foreign interference activities go beyond routine diplomatic influence practiced by governments. Interference may be coercive, covert, deceptive and clandestine in nature and can cause harm to the ACT's interests.
- The ACT partners with the Australian Government and other states and territories on efforts to protect our systems of government, democracy, critical infrastructure, education and media.
- Concerns about foreign interference should be reported to the National Security Hotline on 1800 123 400.

Public Spaces and Venue Safety (Minister for Police and Emergency Services)

- Canberra's public places and events remain a safe and attractive place for communities and families.
- While the national terrorism public alert level remains at PROBABLE, there is no specific or credible threat to the ACT at this time.

- The ACT Government and ACT Policing continually monitor the security threat environment. We must all remain vigilant to the threat of terrorism.
- The government remains ready as COVID restrictions ease to host safe and enjoyable public events.
- We will continue to use CCTV, vehicle protection barriers and other measures as appropriate to protect Canberrans.

Countering Violent Extremism (Chief Minister)

- Our best defence against violent extremism is maintaining a welcoming and inclusive city, where diversity is respected and celebrated.
- Unfortunately during COVID-19 we have seen an increase in racial abuse and hate speech directed towards some members of our community – this is unacceptable and goes against what the ACT stands for.
- The ACT Government recognises communities play an important role in preventing and countering violent extremism, alongside government agencies. This is a shared challenge and requires a whole-of-society approach.
- The ACT's approach is focussed on education, effective community dialogue and safeguarding those most vulnerable to the messages of violent extremists.
- The ACT Government and ACT Policing continue to work to keep Canberrans safe from all forms of violent extremism in partnership with our Commonwealth, State and Territory colleagues.
- I encourage families, friends and communities to contact authorities for help and advice if you are concerned someone may be radicalising or vulnerable to violent extremism.
- Concerns can and should be reported to the National Security Hotline on 1800 123 400. Please visit the Living Safe Together website for more information.

QUESTION TIME BRIEF

Fixated Threat Capability (Minister for Police and Emergency Services)

- In the ACT Budget 2019-20, the Government announced $1.08 million over three years to establish and trial a fixated threat capability for the ACT. This capacity has been established.The ACT now has specially trained officers from ACT Policing, and mental health professionals from Canberra Health Services co-located and working closely together to assess and manage fixated individuals in the ACT.
- A fixated individual is a person with an unhealthy obsession or perceived grievance with another person. In many cases, a fixated individual may have undiagnosed or untreated mental health issues.
- A focus for the ACT's fixated threat capability is to reduce harm to the community by engaging (or sometimes re-engaging) fixated individuals with appropriate mental health or other community support services.
- The establishment of this capability completes the ACT's implementation of the October 2017 agreement of the Council of Australian Governments to adopt a national approach to assessing and managing fixated individuals.

Counter Terrorism (Chief Minister)

- The ACT is a successful and harmonious multicultural society. This is one of our greatest strengths against acts of terrorism and violent extremism occurring in Canberra.
- Our identity is defined by an overriding commitment to our nation, its democratic values and the rule of law, not by race, religion or ethnic background.
- The ACT supports community leaders and activities to promote our vibrant, inclusive and culturally diverse community while maintaining the rule of law and protecting human rights.
- We as a government reject those who seek to impose their world view on others through intimidation and violence.
- Anyone who singles out any particular group as a target for hatred plays into the hands of terrorists.
- My government is committed to ensuring the safety and security of our community. We work closely with ACT Policing and other law

enforcement and intelligence agencies to combat terrorism and violent extremism.

- We cannot eliminate the risk of terrorism any more than any other serious crime. But we will do all we can to keep our community safe from those who seek to do us harm.
- Terrorism is a national issue, and we work closely with our interstate and Commonwealth partners on the national security challenges we face. We need to keep our legislation and capabilities under constant review to meet these evolving issues.
- The Australian National Security website contains information about Australia's security threat environment and terrorism in Australia.
- Concerns about national security or terrorism should be reported immediately to the National Security Hotline on 1800 123 400.
- If a situation requires a police response, call Police Operations on 131 444. If the situation is potentially life threatening, call Triple-Zero (000).

QUESTION TIME BRIEF

JACS2021/49-001-002

Portfolio/s: Special Minister of State

Petition received to remove ACT Government funding to the horse racing industry

Talking points:

Memorandum of Understanding between the Government, Canberra Racing Club (CRC) and Canberra Harness Racing Club (CHRC)

- In July 2017, the Government entered into a Memorandum of Understanding (MOU) with the Canberra Racing Club (CRC) and Canberra Harness Racing Club (CHRC) (the Racing Clubs).
- Under the MOU, the Government agreed to provide funding to the Racing Clubs of approximately $7.5 million per annum until 30 June 2022.
- The racing industry provides a range of economic and social benefits for the Territory, including the employment of more than 425 people and contributions of over $54 million to the ACT economy each year.
- The funding provided to the Racing Clubs contributes to the development of a well-managed, well-regulated and sustainable racing industry that works to ensure the ongoing welfare of its horses.
- Under the MoU, the Racing Clubs agree to meet a range of expectations regarding industry management, including animal welfare obligations.
- This includes adherence to the Australian Rules of Racing and the Local Rules of Racing, which contain provisions with regard to rehoming and retraining retired horses, aimed at ensuring their ongoing welfare.

The Legislative Assembly e-petition

- On 2 December 2020, an e-petition was tabled in this Assembly that expresses concern about the management, treatment and care of race horses in the ACT and calls on the Government to stop all funding to Thoroughbred Park. I intend to lodge a formal response to the petition with the Clerk of the Assembly in the coming weeks.
- The ACT Government is committed to maintaining and improving animal welfare standards in the ACT, including in the horse racing industry. Through successive terms of Government, the ACT Labor and Greens

partnership has introduced some of the most progressive animal welfare reforms in Australia. For example, the *Animal Welfare Act 1992* (the Act) recognises the sentience and intrinsic value of animals, and that they deserve to be treated with compassion that reflects their intrinsic value.

- The Act creates a positive duty to care for the physical and mental welfare of animals. It achieves its overarching objects through a robust regulatory framework that includes inspectors with significant powers to investigate animal welfare concerns, and, where concerns are clearly evidenced, refer such matters for prosecution. Significant penalties may be imposed by the court for animal welfare offences, including fines, bans on owning an animal, and terms of imprisonment.
- In 2019, as Minister for City Services, I asked the Animal Welfare Advisory Committee (AWAC), established under the Act, to conduct a review of the Code of Practice under the Act as it relates to the welfare of horses, including race horses.
- The AWAC expects to to complete its review and report to me with recommendations for strengthening the Code of Practice in early 2021. I look forward to receiving the AWAC's advice.
- My responsibility for the *Racing Act 1999* and the *Animal Welfare Act 1992* allows me to closely monitor each portfolio to ensure a balance that reflects the economic and social benefits of a financially viable industry and the ongoing welfare of race horses. I acknowledge the petitioners' concerns about the welfare of race horses but also this Government's and the racing Clubs' ongoing and demonstrated commitment to animal welfare in the horse racing industry.

Background Information

- In July 2017, the Government entered into an MOU with the Canberra Racing Club and Canberra Harness Racing Club. The MoU:
    - covers a five-year period from July 2017 to 30 June 2022.
    - agrees to establish a standard performance framework for the ongoing viability, integrity, governance, accountability and efficiency of the industry.
    - covers a range of issues, including the basis and timing of Government funding for the racing clubs, the parties' administrative responsibilities and performance reporting obligations.
- Funding under the MoU is calculated based on the budget funding proposed in the Independent Competition and Regulatory Commission (ICRC) *Investigation into the*

ACT Racing Industry Final Report (Report 2 of 2011, April 2011). However, indexation is set at CPI minus 0.5 percent, rather than CPI minus 1 percent adjustment recommended by the ICRC.

- Under the terms of the MoU, the CRC receives 85.72 percent of the annual funding and the CHRC receives 14.28 percent, i.e. approximately $6.5 million to the CRC and $1.1 million to the CHRC per annum until 2021-22.
- The CRC has proposed the MoU be renewed for a term of ten years. Before the 2020 ACT election, the CRC wrote to ACT Labor, the Canberra Liberals and the ACT Greens to request each party's racing policy commitments. The parties' responses were published on the Thoroughbred Park website. In its response, ACT Labor committed to renew the MoU, stating that the party *"recognises the economic and social benefits that arise from a well-managed, sustainable and well-regulated horse racing industry. An MoU provides certainty for the sector and sets out the Government's expectations regarding industry management in exchange for government support".*
- In relation to the possibility of a ten-year renewal, ACT Labor committed to discuss with the CRC and CHRC the potential for extending the term of the next MoU to longer than five years and potentially up to ten years. ACT Labor noted that this will assist the Clubs' certainty and sustainability and provide greater security for any external loan arrangements, as the CRC looks to diversify its revenue streams.
- ACT Labor has not committed to any increase in industry funding but stated that the Government will *"enter future MoU discussions in good faith and in recognition that costs may have risen for the Clubs to maintain the necessary health, welfare and promotion of Club activities"*.
- The e-petition alleges links between the thoroughbred racing industry and organised crime. The petition does not include evidence to support this allegation and appears to concern the industry broadly, rather than the CRC or CHRC specifically.
  Mr Andrew Clark, Chief Executive Officer of the CRC, has stated to the Canberra Times that '*there's no evidence that's been put to our club that supports any link to organised crime whatsoever. I refute that absolutely.'*

QUESTION TIME BRIEF

JACS2021/49-001-001

Portfolio/s: Special Minister of State

Canberra Times article: ACT Electronic voting system flawed

Talking points:

- The Government takes claims about errors with the ACT's electronic voting and counting system (eVACS) seriously.
- To be clear, there is nothing to indicate that there were errors in the election outcome.
- The Electoral Commission has examined the report referred to and advised that:
    - there is nothing in the report by Dr Vanessa Teague and Mr Andrew Conway that has any impact on the outcome of the 2020 election; and
    - the ACT election was conducted openly, fairly and to the highest possible levels of accuracy and integrity.

  The Electoral Commission rejects the report's allegation of an error related to grouping of transfer values, but accepts that the report has identified three minor coding issues that will be adjusted for future usage of eVACS.
- The Government will work with the Electoral Commission to ensure steps are taken to safeguard eVACS from future errors.
- Further questions on matters of detail are more appropriately directed to Elections ACT.
- Every member of the ACT Legislative Assembly has been appropriately sworn in, and the Government is continuing work to progress the Government's agenda.

Cleared as complete and accurate:	21/01/2020	
Cleared for public release by:	Executive Branch Manager	Ext: 76192
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TRIM Ref:	JACS2021/49-001-001	

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- On 2 December 2020, the Government referred an inquiry to the Standing Committee on Justice and Community Safety in relation to the operation of the 2020 ACT election. The Terms of Reference of the Standing Committee include considerations of the implementation, security and transparency of electronic voting.

Key Information

Errors in the ACT's electronic counting code report

- Cybersecurity experts, Mr Andrew Conway and Dr Vanessa Teague published a report, "Errors in the ACT's electronic counting code" dated 24 November 2020.
- The Government was notified of this report on 24 November 2020.
- Information about the report was released by the Canberra Times in an article "ACT election 2020: Electronic voting system flawed in 2020 poll, experts say" published on 26 November 2020.
- The report alleges that there were several coding errors in the 2020 version of the ACT's electronic voting and counting system (eVACS) which resulted in some tallies being wrong by more than 20 votes.
- The report notes that its findings do not change the outcome of the election and the eVACS coding errors did not cause the wrong candidates to be elected.
- The report recommends that the Electoral Act be amended to ensure that:
    - all relevant code, including the counting code, and e-voting code, be made openly available for public inspection at least six months before the election, in order to have some chance of detecting the most serious errors and vulnerabilities;
    - the pollside e-voting system have a voter-verifiable paper record, so that an immutable record of the vote can be verified by the voter independently of the software; and
    - *Internet voting*[1] be discontinued.

Investigation findings by the Elections ACT

- Elections ACT accepts the identification of three minor coding issues that were of no consequence to the 2020 election, and intends to make minor adjustments to the code, where required, to improve eVACS for future usage.
- In relation to the alleged error relating to grouping by transfer value, Elections ACT considers that this is not a coding error but a matter of legislative interpretation and

[1] JACS suspects that the reference to internet voting in the report relates to overseas electronic voting.

determination. In redeveloping eVACS in preparation for the 2020 ACT election, Elections ACT analysed the logic behind the transfer value process and the wording of the Electoral Act to confirm that eVACS 2020 correctly undertakes the Hare-Clare count in line with the Act. Elections ACT maintains that it operates correctly.

Background Information

- The implementation of eVACS was the culmination of an extensive and complex project undertaken by the ACT Electoral Commission after the 1998 election.[2]
- Electronic voting and counting were first used at the 2001 election and have been used at all subsequent elections in 2004, 2008, 2012, 2016 and 2020[3].
- Schedule 4, clause 1A(2) of the Electoral Act was amended by the *Electoral Legislation Amendment Act 2020* on 9 July 2020 to provide that vote values calculated by multiplying ballot papers by fractional transfer values should be rounded down to six decimal places, rather than the nearest whole number.[4]
- The *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)* commenced on 9 July 2020 and introduced a legislative framework to support the roll out of electronic voting for overseas voters. The amendments are temporary measures introduced in the COVID-19 environment and will expire in April 2021.

[2] Elections ACT, "Development of the System", accessed 30 November 2020, <https://www.elections.act.gov.au/elections_and_voting/electronic_voting_and_counting/development_of_the_system>

[3] Elections ACT, "Electronic voting and counting", access on 30 November 2020, <https://www.elections.act.gov.au/elections_and_voting/electronic_voting_and_counting>

[4] This amendment was progressed in response to recommendations by the ACT Electoral Commission, set out in the ACT Electoral Commission Report on the ACT Legislative Assembly Election 2016. It sought to minimise the possibility of unfair and/or anomalous election results that may result from rounding down to whole numbers.

QUESTION TIME BRIEF

JACS2021/46-001-008

Portfolio/s: Special Minister of State

ISSUE: ELECTORAL AMENDMENT BILL 2018 / ELECTORAL AMENDMENT ACT 2020

Talking points:

- The Electoral Amendment Bill 2018 (the Bill) meets a key government election commitment from the 2016 election by banning political donations from property developers.
- The Bill was passed by the Legislative Assembly on 27 August 2020 as the Electoral Amendment Act 2020 (Amendment Act).
- The Amendment Act will increase public confidence in our democratic system of government by removing perceived bias and strengthening our electoral reporting framework.
- Amendments introduced by the Amendment Act will commence on **1 July 2021.**
- The Amendment Act introduces penalties for the acceptance or receipt of gifts made by a property developer or close associate of a property developer. A political entity includes an MLA or a political party, and a close associate includes an officer of a corporation and their domestic partner.
    - Provisions relating to this ban on donations will not apply to:
        - a close associate if, at the time the gift was given, the close associate is a candidate in an election; and
        - if the gift is returned to the giver within 30 days of receipt.
    - Provisions and acceptances of gifts <u>below $250</u> in a financial year will be subject to a fine, whereas amounts <u>over $250</u> will be subject to criminal penalty.
        - A recipient of a gift will be penalised unless they are able to show that they took reasonable steps to ensure that the giver of gifts is not a prohibited donor.
- The Amendment Act incorporates an ACT Greens' proposal to promote truth in political advertising.

Cleared as complete and accurate:	21/01/2021	
Cleared for public release by:	Executive Branch Manager	Ext: 76192
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TRIM Ref:	JACS2021/46-001-008	

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- The Amendment Act provides that electoral advertisements must not contain any statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.
- A person commits an offence if the person disseminates or authorises the dissemination of the electoral advertisement which contains such statements.
- The Electoral Commissioner may ask the person not to disseminate the advertisement again, publish a retraction or apply to the Court for a determination of a penalty.

- The Amendment Act also amended the *Electoral Act 1992* to:
  - include an objects clause to expressly state the purposes of the framework for the conduct of elections under the *Electoral Act 1992*;
  - treat the total amount of a fundraising contribution as a 'gift' for the purpose of reporting thresholds. Previously, the *Electoral Act 1992* provides that fundraising contributions of up to $250 do not need to be reported;
  - provide that gifts over $1,000 must be reported to the Electoral Commission within seven days if gifts are given between the first day of the election period and 30 days after the election period. Outside that they are reported monthly; and
  - incorporate transitional arrangements to apply between the day after the 2020 election and 30 June 2021 where gifts from prohibited donors and close associates can be returned within 30 days of receipt without penalty. If they are not returned within 30 days, the political entity must pay a fine to the Territory an amount equal to the amount of the gift received.

Constitutional issues

- There are constitutional limits on what we can and cannot do when it comes to electoral laws. They arise from the freedom of political communication implied in the Commonwealth Constitution and they apply not only to the Commonwealth, but also to the States and Territories. They have been a subject of interest in the context of political donations.

QUESTION TIME BRIEF

- The Government closely considered the relevant authorities when developing the Amendment Act.
- The most recent decision involved a challenge to the validity of a Queensland electoral law, including provisions that banned property developer donations. In *Spence v Queensland*, the High Court upheld the Queensland provisions and also found that Commonwealth legislation that sought to override State and Territory laws banning certain political donations, including those from property developers, was invalid.
- The decision in *Spence* supports the current Territory electoral amendments in prohibiting property developers from making gifts to politicial parties or councillors of a local government.

Background

- The ACT Government committed in the 2016 Parliamentary Agreement (at 10.2) to ban gifts from property developers.
- The Select Committee on the 2016 ACT Election and the Electoral Act recommended that political donations from property developers be banned in the ACT (Recommendation 8).

Key Information

Relevant High Court matters

- The implied freedom of political communication arises from provisions of the Constitution which deal with voting for both Houses of Parliament and the principles of representative and responsible government which they support. The requirement to vote, and the need to discuss matters relevant to elections, gives rise to an implied freedom of communication. The integration of federal, state and local government extends it to States and Territories.
- The implied freedom involves a two-step test: (a) does the measure burden the freedom of political communication? and (b) is that burden appropriate and adapted to its purpose? Plainly, caps on donations impose a burden on the freedom of political communication. The primary question is whether the measure in the Commonwealth, State or Territory law imposes “impermissible burden” on the freedom of political communicsation. A subsidiary question is whether any state and territory law may be inconsistent with the federal law.

Unions NSW v New South Wales [2013] HCA 58

- In *Unions NSW v New South Wales* [2013] HCA 58 the High Court found that provisions banning political donations from any person that did not appear on a federal, state or local electoral roll was unconstitutional.

- The NSW legislation that was the subject of the case banned donations from groups such as corporations, organisations and unions. The High Court found that the provisions were invalid because they impermissibly burdened various freedoms of political communication and association implied by the Constitution ***and*** the *Constitution Act 1902* (NSW), and were inconsistent with provisions of the *Commonwealth Electoral Act 1918* (Cwlth).

Unions NSW v New South Wales [2019] HCA 1

- In *Unions NSW v New South Wales* [2019] HCA 1, the plaintiffs argued that provisions in the *Electoral Funding Act 2018* (NSW) that restrict expenditure of political parites, candidates and third-party campaigners were invalid.
- The plaintiffs challenged the constitutional validity of a provision that increased the expenditure cap for political parties and candidates, whilst reducing the applicable expenditure cap for third-party campaigners quite significantly (Electoral Funding Act section 29(10)).
- The plaintiffs also challenged the constitutional validity of a provision that made it unlawful for a third party campaigner to act in consort with another person or persons to incur electoral expenditure which exceeds the applicable cap (Electoral Funding Act section 35).
- The plaintiffs challenged these provisions on the grounds that they impermissibly burden the implied freedom of political communication guaranteed under the Constitution.
- The defendants argued that the purpose of section 29(10) was to prevent the drowning out of voices in the political process by the distorting influence of money.
- The High Court found that the reduction in the cap applicable to third-party campaigners in section 29(10) was not demonstrated to be reasonably necessary to achieve the defendant's stated purpose. As a result, section 29(10) was held to be invalid. The High Court found it was not necessary to answer the validity of section 35 as there was no applicable cap upon which the section could operate.

High Court Precedent on banning political donations from property developers

McCloy v New South Wales [2015]

- In *McCloy v New South Wales [2015]* (McCloy), the High Court considered NSW legislation banning property developers from making political donations. The High Court considered whether the law was reasonably appropriate and adapted to advance its purpose. NSW argued that a history of corruption and undue influence in planning decisions over a lengthy period of time demonstrated the need for measures to restrict donations and that the bans were reasonably appropriate and adapted to that end.
- The High Court upheld the validity of the NSW provisions on the basis that a proportionate limitation on the implied freedom of political communication does not impede the system of representative government, but rather enhances it.

QUESTION TIME BRIEF

Gary Douglas Spence v the State of Queensland [2019] HCA 15

- The High Court's reasoning was published on 15 May 2019. In Spence v Queensland, the High Court considered Queensland legislation which ban political donations from property developers to be valid, these were the *Local Government Electoral Act 2011* (QLD) and the *Electoral Act 1992* (QLD). Queensland's reliance on the NSW experience was found to be entirely proper and appropriate. Spence v QLD also considered the validity of section 302A of the Commonwealth Electoral Act that provides that despite any State or Territory electoral law, a person or entity may give and receive a political donation if it is not prohibited under the Commonwealth Electoral Act. Property developers are not prohibited donors under the Commonwealth Act.
- The majority of the High Court held section 302CA to be invalid as it would render the amendments to the Queensland laws inoperative and that it had gone beyond the limits of the Commonwealth's legislative power conferred under section 51 of the Constitution in its application of sections 10 and 31 of the Constitution (i.e. laws in force in each State are to apply, as much as possible, to elections of senators and members of the House of Representatives for the State).
- Sch 1, s1.2 [redacted]

[redacted]

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Justice and Community Safety

MINISTER STEEL
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ACT Government
Justice and Community Safety

2020-21 BUDGET DAY BRIEF

JACS2021/143-002-001

Portfolio/s: JACS Ministers

DELAYED BUDGET DECISIONS

Attorney-General

Increased Magistrates Court resourcing

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	310	0	0	0	**310**
Offset – Expenses	-310	0	0	0	**-310**
Net cost of services	**0**	**0**	**0**	**0**	**0**

The Government will provide additional capacity in the Magistrates Court from the Confiscated Assets Trust to manage the backlog of court activities resulting from COVID-19.

Enhancing administration of the Victims of Crime Financial Assistance Scheme

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	130	399	0	0	**529**

The Government will provide additional staff to administer the Victims of Crime Financial Assistance Scheme. These additional resources will help ensure the scheme continues to provide critical support to the victims of crime in a timely manner while a review of the administration of the scheme is finalised.

More support for the Public Trustee and Guardian

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	400	410	420	431	**1,661**
Revenue	494	506	519	532	**2,051**
Net cost of services	**-94**	**-96**	**-99**	**-101**	**-390**

The Government will increase Community Service Obligation funding to the Public Trustee and Guardian (PTG) to reflect the increased cost and complexity in managing the affairs of clients. The PTG will also increase its own-source revenue to reflect the cost of managing its clients' accounts.

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Improving road safety through Mobile Device Detection Cameras

	2020-21	2021-22	2022-23	2023-24	**Total**
	$'000	$'000	$'000	$'000	**$'000**
Expenses – Transport Canberra and City Services Directorate	726	2,073	1,922	1,973	**6,694**
Expenses – Chief Minister, Treasury and Economic Development Directorate	210	762	911	929	**2,812**
Expenses – Justice and Community Safety Directorate	0	144	150	154	**448**
Revenue	0	6,311	7,762	5,570	19,643
Net cost of services	**936**	**-3,332**	**-4,779**	**-2,514**	**-9,689**

The Government will introduce mobile device detection cameras, as part of the ACT's road safety camera program, to support law enforcement activities and to increase road safety.

Minister for Gaming

Community Clubs Ministerial Advisory Council

Empty Cell	2020-21	2021-22	2022-23	2023-24	**Total**
	$'000	$'000	$'000	$'000	**$'000**
Expenses	249	489	502	515	**1,755**

The Government will establish a Community Clubs Ministerial Advisory Council to support more sustainable clubs. Funding will also provide for the development of policy and legislation to support the introduction of $5 bet limits and $100 load-up limits on electronic gaming machines. The Government intends for a staged rollout of the new limits to commence by the end of 2022.

Gaming Machine Authorisation Surrender Incentive – extension

	2020-21	2021-22	2022-23	2023-24	**Total**
	$'000	$'000	$'000	$'000	**$'000**
Expenses	0	0	0	0	**0**

The Government will extend the gaming machine authorisation surrender incentive for an additional six months to June 2021. The extension will utilise the remaining funding available from the $3.75 million originally provided for the measure.

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ACT Government
Justice and Community Safety

2020-21 BUDGET DAY BRIEF

Minister for Corrections

AMC Reintegration Centre – Soil rectification contingency

	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Capital	1,754	3,870	0	0	**5,624**
Depreciation	0	82	141	141	**364**

The Government will increase the contingency for the Alexander Maconochie Centre (AMC) Reintegration Centre project to address soil rectification issues subject to further investigation. The Centre will accommodate up to 60 low-risk detainees and an Industries Building to enhance opportunities for employment for detainees when they are released.

Minister for Police and Emergency Services

Management and remediation of firefighting substances at Fire Stations

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	1,452	797	0	0	**2,249**

The Government will undertake further investigations into the existence of poly-fluoroalkyl substances (PFAS) at eight current Emergency Service Agency sites and the site of the former Charnwood Fire Station. This critical work is required to ensure the safety of Government sites and workplaces.

Relocating ACT Policing's Traffic Operations Centre

	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Capital	NFP	NFP	NFP	NFP	**NFP**
Depreciation	NFP	NFP	NFP	NFP	**NFP**
Expenses	NFP	NFP	NFP	NFP	**NFP**
Net cost of services	**NFP**	**NFP**	**NFP**	**NFP**	**NFP**

The Government will relocate ACT Policing's Traffic Operations Centre from its current site at Belconnen to a fit for purpose facility which will better meet the business and operational needs of ACT Policing. The cost of this initiative has been withheld to secure value for money when the Government approaches the market.

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2020-21 BUDGET DAY BRIEF

Expanding the Police, Ambulance and Clinician Early Response (PACER) service

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	1,934	3,965	4,064	4,166	**14,129**
Offset – Health Funding Envelope	0	-3,965	-4,064	-4,166	**-12,195**
Net cost of services	**1,934**	**0**	**0**	**0**	**1,934**

The Police, Ambulance and Clinician Early Response (PACER) service brings together a team of experts to better respond to Canberrans in mental health crisis. Police, paramedics and mental health clinicians provide in-community assessment and treatment of people, significantly reducing demand on the Emergency Department. The Government will continue to provide ongoing funding for the PACER service, with services expanded to operate seven days per week.

COVID-19 Public Health Response

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses – ACT Health Directorate	9,839	0	0	0	**9,839**
Expenses – Education Directorate	4,163	0	0	0	**4,163**
Expenses – Chief Minister, Treasury and Economic Development Directorate	3,539	0	0	0	**3,539**
Expenses – Justice and Community Safety Directorate	2,434	0	0	0	**2,434**
Expenses – Transport Canberra and City Services	2,450	0	0	0	**2,450**
Expenses – ACT Local Hospital Network	500	0	0	0	**500**
Expenses – Community Services Directorate	328	0	0	0	**328**
Expenses – Provision	0	16,593	0	0	**16,593**
Offset – Savings	-6,418	0	0	0	**-6,418**
Offset – Savings Provision	0	-5,336	0	0	**-5,336**
Hotel quarantine fees	1,138	437	0	0	**1,575**
Net cost of services	**15,697**	**10,820**	**0**	**0**	**26,517**

The Government will continue the COVID-19 response through the next phase of the pandemic in the coming 12 months. This initiative will continue to support the whole of government response to the health emergency. This initiative will be funded through a cost sharing arrangement between the Commonwealth and the Territory.

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Justice and Community Safety

ECONOMIC AND FISCAL UPDATE DECISIONS

Attorney-General

Increased Magistrates Court resourcing

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	0	310	0	0	0	**310**

The Government will fund additional capacity in the Magistrates Court to quickly address any backlog of cases as a result of reduced court activity arising from the COVID-19 pandemic.

This initiative was published on 19 June and remains unchanged.

Minister for Gaming

Continuing the Gaming Machine Authorisation Surrender Incentive

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	1,635	2,115	0	0	0	**3,750**

The Government will extend the Gaming Machine Authorisation Surrender Incentive until 4 December 2020. The initiative will provide gaming machine licensees with the opportunity to access a payment of $15,000 per authorisation if they voluntarily surrender a gaming machine authorisation.

This initiative was published on 19 June, but it was included in the *Supporting Community Clubs* initiative. The financial estimates have been revised to reflect activity to date and to incorporate the extension of the scheme until 4 December 2020.

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Supporting Community Clubs

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	5,138	0	0	0	0	**5,138**

The Government is providing further support to Canberra's community clubs and Casino, to enable them to keep staff employed through a waiver/refund of gaming machine tax liabilities for clubs for March 2020 activity (for larger clubs that pay gaming tax monthly) or for first quarter 2020 activity (for smaller clubs that pay gaming tax quarterly).

The Government has also made an additional $1.5 million contribution to the Clubs Diversification Fund, which will support clubs in the ACT to keep staff employed on the Clubs award rate.

This estimate has been revised down from the original estimate, due to initial take-up of measures being lower than originally estimated. The final cost of this initiative will depend on the final take-up of available measures.

Additionally, the Government has amended legislation to allow payment of award wages to staff to be claimed as community contributions where an emergency declaration has been made and provide incentives for clubs to prepare food for the vulnerable.

This initiative was published on 19 June, for presentation purposes, the voluntarily surrender of gaming machine authorisation component is now reflected in the *Continuing Gaming Machine Authorisation Surrender Incentive* initiative.

Minister for Corrections

Contraband detection and intelligence solution

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Capital	0	610	0	0	0	**610**
Depreciation	0	0	58	58	58	**174**
Associated Expenses	0	212	0	0	0	**212**
Total Expenses	**0**	**212**	**58**	**58**	**58**	**386**

The Government will provide additional contraband detection equipment at the Alexander Maconochie Centre to improve operational safety and security for both staff and detainees.

ACT Government
Justice and Community Safety

2020-21 BUDGET DAY BRIEF

Minister for Police and Emergency Services

More ACT Fire & Rescue Staff and Construction of Acton Station

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	0	7,335	8,354	10,745	15,709	**42,143**
Depreciation	0	0	0	0	1,690	**1,690**
Total Expenses	**0**	**7,335**	**8,354**	**10,745**	**17,399**	**43,833**
Associated Capital	0	6,653	29,423	7,983	1,127	**45,186**

The Government will provide an additional 99 firefighters by 2024-25 to ensure ACT Fire & Rescue operational response capability is able to meet the increased demand for its services.

The Government will also design and construct a joint ACT Fire & Rescue and ACT Ambulance Service station at Clunies Ross Street, Acton, which will become operational in the 2022-23 financial year. The new station will help to improve Fire & Rescue and the ACT Ambulance Service emergency response times.

Strategic accommodation study for Policing

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	0	687	0	0	0	**687**

The Government will undertake two feasibility studies to consider strategic accommodation options for the Winchester Police Centre in Belconnen and the ACT Policing Gungahlin Police presence currently located at the Joint Emergency Services Centre in Gungahlin.

Emergency Services Agency critical ICT investment

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Capital	0	550	0	0	0	**550**
Offset – Capital	0	-253	0	0	0	**-253**
Net Capital	**0**	**297**	**0**	**0**	**0**	**297**
Depreciation	0	0	59	59	59	**177**

The Government will strengthen critical ICT systems and spatial awareness infrastructure used by front-line staff of the Emergency Services Agency in the delivery of emergency services to the ACT community.

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2020-21 BUDGET DAY BRIEF

Minister for Human Rights

Additional resources for the Victims of Crime Commissioner

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	0	130	0	0	0	**130**

The Government will provide additional resources to the Victims of Crime Commissioner to meet increased demand for the Victims of Financial Assistance Scheme and the Victims Services Scheme during COVID-19. These schemes provide critical support to the victims of crime.

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CONTINUATION OF ACTIVITIES CEASING AT 30 JUNE 2020

Attorney-General

Legislation, Policy and Programs - Funding to Deliver Government Priorities

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses	1,096				**1,096**
Total Additional FTEs (number)	**6.00**	**0**	**0**	**0**	

The Government will fund additional capacity to deliver the Government's legislative initiatives, legal policy and justice system programs by providing a stable, permanent and experienced workforce.

Implementing the Commonwealth Redress Scheme for Institutional Child and Sexual Abuse

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses JACS	431				**431**
ACT Policing	40				**40**
Total Additional FTEs (number)	**4**	**0**	**0**	**0**	

As part of the Commonwealth Redress Scheme, the Government will provide funding to support eligible survivors of abuse in Government institutions through a redress payment, counselling and psychological care.

Expense: ($0.431m in 2020-21)

The funding for this initiative has been split across several directorates. The table above shows the JACS components only.

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2020-21 BUDGET DAY BRIEF

Strengthening legal and court support for vulnerable young people and families affected by domestic and family violence

Financial Impacts Summary	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts[(a)]						
Expenses - Justice and Community Safety Directorate	0	250	256	260	262	**1,028**
Expenses – ACT Legal Aid	0	313	321	329	337	**1,300**
Expenses – Education Directorate	82	85	0	0	0	**167**
Offset – Expenses – Education Directorate	-82	-85	0	0	0	**-167**
Total Additional FTEs (number)						
Courts	0	2	2	2	2	
Legal Aid	0	3	3	3	3	

The Government will invest in court and legal support services for families and young people impacted by domestic and family violence by:

- continuing support for ACT Courts to deal with applications for Family Violence Orders;
- continuing to contribute to Legal Aid's Family Violence Unit which is based at the ACT Courts building; and
- improving access to legal assistance for young people and their families through the introduction of a Legal Liaison pilot program in schools.

More Support for families and inclusion: Enhancing the Victims of Crime Financial Assistance Scheme

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses	391				**391**
Total Additional FTEs (number)	**2.5**	**0**	**0**	**0**	

The Government will provide more resources to administer the new Victims of Crime Financial Assistance Scheme and outstanding claims under the previous court-based Victims

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of Crime Financial Assistance Scheme, to improve the claims experience for scheme participants.

Minister for Corrections

Winnunga Model of Care at the AMC

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses CAT funded	874				**874**
Total Additional FTEs (number)	**5.6**	**0**	**0**	**0**	

This measure will address the immediate need to provide culturally appropriate holistic health and well-being services to members of the Aboriginal and Torres Strait Islander population of the Alexander Maconochie Centre (AMC).

Minister for Police and Emergency Services

Economic Survival Package – Police, Ambulance and Clinician Emergency Response (PACER)

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expenses					
ACTAS (ESA)	240	0	0	0	**240**
ACT Policing	240	0	0	0	**240**
ACT Health	240	0	0	0	**240**
Total	720	**0**	**0**	**0**	**720**
Total Additional FTEs (number)	**2.00**	**0**	**0**	**0**	

The Government will fund ACT Policing, the ACT Ambulance Service (ACTAS) and the ACT Health Directorate as part of the tri-service mental health emergency co-response PACER to strengthen first-response capability for acute mental health episodes in order to provide in-situ mental health assessment treatment and care.

ACT Government
Justice and Community Safety

2020-21 BUDGET DAY BRIEF

Traffic Operation Centre (TOC) Feasibility Study

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses	258				**258**
Total Additional FTEs (number)	**0**	**0**	**0**	**0**	

The current TOC facility is 'not fit for purpose'. This initiative will fund an assessment of requirement to provide a viable solution for TOC.

ACT Policing 2020-21 - Enhanced Forensic Medical Services

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts[(a)]					
Expenses – ACT Policing	729	0	0	0	**729**
Total Additional FTEs (number)	**0.0**	**0.0**	**0.0**	**0.0**	

The Government will increase funding for the provision of on-call forensic medical services available to ACT Policing. Additional funding will support services such as the medical assessment of people in custody, coronial and criminal investigations including documenting evidence of injuries of assaults for victims of violent crimes, attending death scenes to assist in the coronial process and providing expert evidence for court.

ACT Policing Emergency Cost Pressures

Empty Cell	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	**Total $'000**
Expenses	879	0	0	0	**879**

The Government will provide funding to ACT Policing for costs associated with combating the 2019-20 bushfire crisis and for the implementation of initiatives to keep members of the community safe during the COVID 19 pandemic, including providing Personal Protection Equipment for police officers and additional cleaning and intercoms at Police Stations.

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2020-21 BUDGET DAY BRIEF

Minister for Human Rights

Victim Services Scheme: therapeutic support for victims

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses	204				**204**
CAT funded					
Total Additional FTEs (number)	**0**	**0**	**0**	**0**	

The Government will continue to support victims by providing resources to address scheme demand. This initiative will ensure victims of family violence and other violent crimes can access therapeutic support aimed at minimising the traumatic impacts of crime, improving personal safety and assisting victims and their families to actively pursue recovery.

More Support for families and inclusion: Enhancing the Victims of Crime Financial Assistance Scheme

Financial Impacts Summary	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Totals $'000
Expense Impacts					
Expenses	391				**391**
Total Additional FTEs (number)	**2.5**	**0**	**0**	**0**	

The Government will provide more resources to administer the new Victims of Crime Financial Assistance Scheme and outstanding claims under the previous court-based Victims of Crime Financial Assistance Scheme, to improve the claims experience for scheme participants.

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2020-21 BUDGET DAY BRIEF

REC20/43488

Portfolio/s: Special Minister of State

Better Government - Supporting government transparency

	2020-21 $'000	2021-22 $'000	2022-23 $'000	2023-24 $'000	Total $'000
Chief Minister, Treasury and Economic Development Directorate – Expenses	130		0	0	**130**
Community Services Directorate – Expenses	1,021		0	0	**1,021**
Environment, Planning and Sustainable Development Directorate – Expenses	130		0	0	**130**
Education Directorate – Expenses	156		0	0	**156**
Transport Canberra and City Services Directorate – Expenses	156		0	0	**156**
Justice and Community Safety Directorate – Expenses	130		0	0	**130**
Total Expenses	**1,723**		**0**	**0**	**1,723**

The Government will provide funding for capacity and capability to sustain the intent of the framework established by the *Freedom of Information* Act 2016 which is to increase and maintain transparency of the ACT Government.

Expense: ($1.723 million in 2020-21) – JACS component is $0.130 million in 2020-21.

JACS is funded for one ASO 6 position. Other resources as outlined below have been provided across ACT Government directorates to fully support the increased processing demand to ensure compliance with the Act.

Directorate	Positions
CMTEDD	1 ASO6
CSD	1 SOGB, 3 SOGC, 2 ASO6, 1 ASO4
EPSDD	1 ASO6
Education	1 SOGC
TCCS	1 SOGC
JACS	1 ASO6
TOTAL	**12**

Since the commencement of the Act, there has been a significant increase in the number and complexity of FOI applications received across government.

Cleared as complete and accurate:	03/02/2021	
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2020-21 BUDGET DAY BRIEF

TRIM: JACS2021/143-002-017

Portfolio/s: Attorney-General

ISSUE: 2020-21 STRATEGIC AND ACCOUNTABILITY INDICATORS OUTPUT 1.1 POLICY ADVICE AND JUSTICE PROGRAMS

Strategic Objective 2

Safe Community

An effective criminal justice system underpins the safety of the community. Although neither the Directorate nor the ACT Government can control all of the factors that impact on community safety, effectiveness can be measured by examining the level of crime against people and property and whether the justice system deals with offenders in a way that reduces the risk of further offending.

Table 3: Strategic Indicator 2: Crime Related Community Safety

Success	Strategic Indicator	2019-20 Targets	2019-20 Actuals	2020-21 Targets
Reduction in level of crime	Number of known and reported criminal offences:			
	- against the person per 100,000 population [1]	682	826	<800
	- against property per 100,000 population [2]	4,875	4,163.1	<4,875
Perceptions of safety	The proportion of people who felt 'safe' or 'very safe': [a]			
	- at home by themselves during the night	=> 89%	92.3%	=>89%
	- walking by themselves in their neighbourhood during the night	=> 54.3%	54.2%	=> 54.3%
	- by themselves travelling on public transport during the night [3]	31.1%	41.3%	n/a

Historical performance trends of these Strategic Indictors can be found in the Justice and Community Safety Directorate's 2019-20 Annual Report.

Explanation of Strategic Indicators:

a. Perceptions of safety indicators are drawn from the National Survey of Community Satisfaction with Policing, a self-reporting survey conducted by the Social Research Centre. The sample size and landline based methodology may limit how representative the results are of the ACT population as a whole.

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Note(s):

1. The target has been amended in 2020-21 to align with ACT Policing's performance measure target outlined in the Purchase Agreement 2017-21. National and local initiatives over recent years have resulted in an expected increase in reporting domestic and family violence related incidents.
2. ACT Government and ACT Policing have undertaken a range of targeted activities aimed and keeping property crime rates low under the *Property Crime Prevention Strategy 2016-2020*.
3. This indicator is discontinued in 2020-21 as this target has been consistently met and is no longer an indicator that drives JACS performance. ACT results against the national average will continue to be reported and monitored in the Report on Government Services.

Accountability Indicators

Output 1.1: Policy Advice and Justice Programs

Table 16: Accountability Indicators Output 1.1

	2020-21 Targets	2020-21 YTD Targets	2020-21 YTD Result	Variance (%)
a. Percentage of legislation requested by the JACS portfolio ministers is developed within timeframes agreed by the JACS portfolio ministers	100%	100%	100%	0
b. Proportion of surveyed users of restorative justice programs satisfied with service received [a]	97%	97%	99%	2
c. Number of initiatives that reduce regulatory burden [b]	2	2	2	-
Total Cost ($'000)	28,810	13,779	13,701	(1)
Controlled Recurrent Payments ($'000)	26,219	12,510	12,510	-

The above Accountability Indicators should be read in conjunction with the accompanying notes.

Explanation of Accountability Indicators:

a. Following a restorative justice conference, surveys designed to monitor convenors' delivery of the process and participant experience for quality assurance and service improvement are provided to each offender, victim and support person. Nine key questions are included in the surveys. These questions capture feedback on different aspects of the restorative justice process to provide an insight into the level of participant satisfaction. 47 participants completed the survey with 99 per cent being satisfied with services received.

b. Relevant initiatives include changes or innovations made as part of legislative reforms or policy or program design or modification and which have been identified as reducing regulatory burden.

ACT Government
Justice and Community Safety

MINISTER CHRIS STEEL MLA
SPECIAL MINISTER OF STATE
QUESTION TIME BRIEF PACK
30-31 MARCH 2021

Question Time Briefs	
1.	National Security & Public Safety
2.	Petition received to remove Government Funding to the horse racing industry
3.	Canberra Times article: ACT Electronic voting system flawed
4.	Electoral Amendment Act 2020

QUESTION TIME BRIEF

JACS2021/47-001-031

Portfolio/s: Chief Minister

Police and Emergency Services

Special Minister of State

ISSUE: NATIONAL SECURITY AND PUBLIC SAFETY

TALKING POINTS

Australian Government Critical Infrastructure Reforms (Chief Minister)

- Critical infrastructure is essential to the function of our daily lives in the ACT.
- The ACT's establishment of a second power supply is one example of how the ACT is strengthening the resilience of our critical infrastructure.
- The ACT remains supportive of the focus by the Australian Government to strengthen the security of Australia's critical infrastructure by reforming the *Security of Critical Infrastructure Act 2018*. The ACT remains engaged with the Commonwealth and the state and territory governments to support the development of the reforms.
- The ACT maintains its own critical infrastructure arrangements and relationships between government and non-government owners and operators.
- This relationship was used to great effect during the 2019-20 bushfire season to share information about critical infrastructure.

Cyber Security and Online Safety (Special Minister of State)

- The ACT remains an attractive target for cyber criminals.
- The cyber threat is persistent. State actors, criminal syndicates, issue motivated groups and self-motivated individuals continue to target children, families, businesses, online critical infrastructure and steal Government intellectual property.
- Cyber security remains a top priority for the ACT Government.

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Lead Directorate:	Justice and Community Safety	
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- Our specialist teams work to protect information managed by the ACT Government and regularly meet withthe National Cyber Security Committee to monitor the cyber threat environment.
- In response to recommendations from the Auditor-General's audit on data security, the ACT has engaged a provider to undertake a thorough risk and threat assessment of the ACT's environment. This is in addition to a wide range of other activities to strengthen the ACT's cyber security resilience.
- The ACT supported the development of *Australia's Cyber Security Strategy 2020*, launched August 2020. The strategy responds to continuing malicious cyber threats and activities faced by Australians.
- With more Canberrans working and studying online due to COVID-19, the potential for online harm is increased. Visit the eSafety Commissioner's website for ways to keep you and your family safe online.
- I encourage all Canberrans to follow the IT security advice of the Australian Cyber Security Centre available at cyber.gov.au.

Foreign Interference (Chief Minister)

- The ACT values its open and transparent international engagement with other governments to progress matters of mutual benefit.
- Unfortunately, some foreign actors are pursuing opportunities to interfere in a range of areas such as decision makers, intellectual property, and IT systems in Australia. The ACT is not immune from this interference.
- Foreign interference activities go beyond routine diplomatic influence practiced by governments. Interference may be coercive, covert, deceptive and clandestine in nature and can cause harm to the ACT's interests.
- The ACT partners with the Australian Government and other states and territories on efforts to protect our systems of government, democracy, critical infrastructure, education and media.
- Concerns about foreign interference should be reported to the National Security Hotline on 1800 123 400.

QUESTION TIME BRIEF

Public Spaces and Venue Safety (Minister for Police and Emergency Services)

- Canberra's public places and events remain a safe and attractive place for communities and families.
- While the national terrorism public alert level remains at PROBABLE, there is no specific or credible threat to the ACT at this time.
- The ACT Government and ACT Policing continually monitor the security threat environment. We must all remain vigilant to the threat of terrorism.
- The government remains ready as COVID restrictions ease to host safe and enjoyable public events.
- We have expanded our CCTV Network (the Network), into areas such as Glebe Park,and make use of portable CCTV capability, vehicle protection barriers and other measures as appropriate to protect Canberrans.

Countering Violent Extremism (Chief Minister)

- Our best defence against violent extremism is maintaining a welcoming and inclusive city, where diversity is respected and celebrated.
- Unfortunately during COVID-19 we have seen an increase in racial abuse and hate speech directed towards some members of our community – this is unacceptable and goes against what the ACT stands for.
- The ACT Government recognises communities play an important role in preventing and countering violent extremism, alongside government agencies. This is a shared challenge and requires a whole-of-society approach.
- The ACT's approach is focussed on education, effective community dialogue and safeguarding those most vulnerable to the messages of violent extremists.
- The ACT Government and ACT Policing continue to work to keep Canberrans safe from all forms of violent extremism in partnership with our Commonwealth, State and Territory colleagues.
- I encourage families, friends and communities to contact authorities for help and advice if you are concerned someone may be radicalising or vulnerable to violent extremism.

- Concerns can and should be reported to the National Security Hotline on 1800 123 400. Please visit the Living Safe Together website for more information.

Fixated Threat Capability (Minister for Police and Emergency Services)

- In the ACT Budget 2019-20, the Government announced $1.08 million over three years to establish and trial a fixated threat capability for the ACT. This capacity has been established.The ACT now has specially trained officers from ACT Policing, and mental health professionals from Canberra Health Services co-located and working closely together to assess and manage fixated individuals in the ACT. The ACT Government is also undertaking a two year review of the capability to ensure it is best practice and meets the requirements of the ACT.
- A fixated individual is a person with an unhealthy obsession or perceived grievance with another person. In many cases, a fixated individual may have undiagnosed or untreated mental health issues.
- A focus for the ACT's fixated threat capability is to reduce harm to the community by engaging (or sometimes re-engaging) fixated individuals with appropriate mental health or other community support services.
- The establishment of this capability completes the ACT's implementation of the October 2017 agreement of the Council of Australian Governments to adopt a national approach to assessing and managing fixated individuals.

Counter Terrorism (Chief Minister)

- The ACT is a successful and harmonious multicultural society. This is one of our greatest strengths against acts of terrorism and violent extremism occurring in Canberra.
- Our identity is defined by an overriding commitment to our nation, its democratic values and the rule of law, not by race, religion or ethnic background.
- The ACT supports community leaders and activities to promote our vibrant, inclusive and culturally diverse community while maintaining the rule of law and protecting human rights.
- We as a government reject those who seek to impose their world view on others through intimidation and violence.

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- Anyone who singles out any particular group as a target for hatred plays into the hands of terrorists.
- My government is committed to ensuring the safety and security of our community. We work closely with ACT Policing and other law enforcement and intelligence agencies to combat terrorism and violent extremism.
- We cannot eliminate the risk of terrorism any more than any other serious crime. But we will do all we can to keep our community safe from those who seek to do us harm.
- Terrorism is a national issue, and we work closely with our interstate and Commonwealth partners on the national security challenges we face. We need to keep our legislation and capabilities under constant review to meet these evolving issues.
- The Australian National Security website contains information about Australia's security threat environment and terrorism in Australia.
- Concerns about national security or terrorism should be reported immediately to the National Security Hotline on 1800 123 400.
- If a situation requires a police response, call Police Operations on 131 444. If the situation is potentially life threatening, call Triple-Zero (000).

QUESTION TIME BRIEF

JACS2021/49-001-002

Portfolio/s: Special Minister of State

Petition received to remove ACT Government funding to the horse racing industry

Talking points:

Memorandum of Understanding between the Government, Canberra Racing Club (CRC) and Canberra Harness Racing Club (CHRC)

- In July 2017, the Government entered a Memorandum of Understanding (MoU) with the Canberra Racing Club (CRC) and Canberra Harness Racing Club (CHRC) (the Racing Clubs).
- Under the MoU, the Government agreed to provide funding to the Racing Clubs of approximately $7.5 million per annum until 30 June 2022.
- The racing industry provides a range of economic and social benefits for the Territory.
- The funding provided to the Racing Clubs contributes to the development of a well-managed, well-regulated and sustainable racing industry that works to ensure the ongoing welfare of its horses.
- Under the MoU, the Racing Clubs agree to meet a range of expectations regarding industry management, including animal welfare obligations.
- This includes adherence to the Australian Rules of Racing and the Local Rules of Racing, which contain provisions about rehoming and retraining retired horses, aimed at ensuring their ongoing welfare.

The Legislative Assembly e-petition

- On 2 December 2020, an e-petition was tabled in this Assembly that expressed concern about the management, treatment and care of racehorses in the ACT and called on the Government to stop all funding to Thoroughbred Park. I have lodged a formal response to the petition with the Clerk of the Assembly.
- The ACT Government is committed to maintaining and improving animal welfare standards in the ACT, including in the horse racing industry. Through successive terms of Government, the ACT Labor and Greens partnership has introduced some of the most progressive animal welfare

reforms in Australia. For example, the *Animal Welfare Act 1992* (the Act) recognises the sentience and intrinsic value of animals, and that they deserve to be treated with compassion that reflects their intrinsic value.

- The Act creates a positive duty to care for the physical and mental welfare of animals. It achieves its overarching objects through a robust regulatory framework that includes inspectors with significant powers to investigate animal welfare concerns, and, where concerns are clearly evidenced, refer such matters for prosecution. Significant penalties may be imposed by the court for animal welfare offences, including fines, bans on owning an animal, and terms of imprisonment.
- In 2019, as Minister for City Services, I asked the Animal Welfare Advisory Committee (AWAC), established under the Act, to conduct a review of the Code of Practice under the Act as it relates to the welfare of horses, including race horses.
- The AWAC expects to complete its review and report to me with recommendations for strengthening the Code of Practice in early 2021. I look forward to receiving the AWAC's advice.
- My responsibility for the Racing Act and the Animal Welfare Act allows me to closely monitor each portfolio to ensure a balance that reflects the economic and social benefits of a financially viable industry and the ongoing welfare of racehorses. I acknowledge the petitioners' concerns about the welfare of racehorses but also this Government's and the racing Clubs' ongoing and demonstrated commitment to animal welfare in the horse racing industry.

Background Information

- In July 2017, the Government entered an MoU with the Canberra Racing Club and Canberra Harness Racing Club. The MoU:
    - covers a five-year period from July 2017 to 30 June 2022.
    - agrees to establish a standard performance framework for the ongoing viability, integrity, governance, accountability and efficiency of the industry.
    - covers a range of issues, including the basis and timing of Government funding for the racing clubs, the parties' administrative responsibilities and performance reporting obligations.
- Funding under the MoU is calculated based on the budget funding proposed in the Independent Competition and Regulatory Commission (ICRC) *Investigation into the ACT Racing Industry Final Report* (Report 2 of 2011, April 2011). However, indexation

is set at CPI minus 0.5 percent, rather than CPI minus 1 percent adjustment recommended by the ICRC.

- Under the terms of the MoU, the CRC receives 85.72 percent of the annual funding and the CHRC receives 14.28 percent, i.e. approximately $6.5 million to the CRC and $1.1 million to the CHRC per annum until 2021-22.
- The CRC has proposed the MoU be renewed for a term of ten years. Before the 2020 ACT election, the CRC wrote to ACT Labor, the Canberra Liberals and the ACT Greens to request each party's racing policy commitments. The parties' responses were published on the Thoroughbred Park website. In its response, ACT Labor committed to renew the MoU, stating that the party *"recognises the economic and social benefits that arise from a well-managed, sustainable and well-regulated horse racing industry. An MoU provides certainty for the sector and sets out the Government's expectations regarding industry management in exchange for government support".*
- In relation to the possibility of a ten-year renewal, ACT Labor committed to discuss with the CRC and CHRC the potential for extending the term of the next MoU to longer than five years and potentially up to ten years. ACT Labor noted that this will assist the Clubs' certainty and sustainability and provide greater security for any external loan arrangements, as the CRC looks to diversify its revenue streams.
- ACT Labor has not committed to any increase in industry funding but stated that the Government will *"enter future MoU discussions in good faith and in recognition that costs may have risen for the Clubs to maintain the necessary health, welfare and promotion of Club activities"*.
- The e-petition alleges links between the thoroughbred racing industry and organised crime. The petition does not include evidence to support this allegation and appears to concern the industry broadly, rather than the CRC or CHRC specifically.
  Mr Andrew Clark, Chief Executive Officer of the CRC, has stated to the Canberra Times that '*there's no evidence that's been put to our club that supports any link to organised crime whatsoever. I refute that absolutely.'*

QUESTION TIME BRIEF

JACS2021/49-001-001

Portfolio/s: Special Minister of State

Canberra Times article: ACT Electronic voting system flawed

Talking points:

- The Government takes claims about errors with the ACT's electronic voting and counting system (eVACS) seriously.
- To be clear, there is nothing to indicate that there were errors in the election outcome.
- The Electoral Commission has examined the report referred to and advised that:
    - there is nothing in the report by Dr Vanessa Teague and Mr Andrew Conway that has any impact on the outcome of the 2020 election; and
    - the ACT election was conducted openly, fairly and to the highest possible levels of accuracy and integrity.
- The Electoral Commission rejects the report's allegation of an error related to grouping of transfer values, but accepts that the report has identified three minor coding issues that will be adjusted for future usage of eVACS.
- The Government will work with the Electoral Commission to ensure steps are taken to safeguard eVACS from future errors.
- Further questions on matters of detail are more appropriately directed to Elections ACT.

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- On 2 December 2020, the Government referred an inquiry to the Standing Committee on Justice and Community Safety in relation to the operation of the 2020 ACT election. The Terms of Reference of the Standing Committee include considerations of the implementation, security and transparency of electronic voting.

Key Information

Errors in the ACT's electronic counting code report

- Cybersecurity experts, Mr Andrew Conway and Dr Vanessa Teague published a report, "Errors in the ACT's electronic counting code" dated 24 November 2020.
- The Government was notified of this report on 24 November 2020.
- Information about the report was released by the Canberra Times in an article "ACT election 2020: Electronic voting system flawed in 2020 poll, experts say" published on 26 November 2020.
- The report alleges that there were several coding errors in the 2020 version of the ACT's electronic voting and counting system (eVACS) which resulted in some tallies being wrong by more than 20 votes.
- The report notes that its findings do not change the outcome of the election and the eVACS coding errors did not cause the wrong candidates to be elected.
- The report recommends that the Electoral Act be amended to ensure that:
    - all relevant code, including the counting code, and e-voting code, be made openly available for public inspection at least six months before the election, in order to have some chance of detecting the most serious errors and vulnerabilities;
    - the pollside e-voting system have a voter-verifiable paper record, so that an immutable record of the vote can be verified by the voter independently of the software; and
    - *Internet voting*[1] be discontinued.

Investigation findings by the Elections ACT

- Elections ACT accepts the identification of three minor coding issues that were of no consequence to the 2020 election, and intends to make minor adjustments to the code, where required, to improve eVACS for future usage.
- In relation to the alleged error relating to grouping by transfer value, Elections ACT considers that this is not a coding error but a matter of legislative interpretation and

[1] JACS suspects that the reference to internet voting in the report relates to overseas electronic voting.

determination. In redeveloping eVACS in preparation for the 2020 ACT election, Elections ACT analysed the logic behind the transfer value process and the wording of the Electoral Act to confirm that eVACS 2020 correctly undertakes the Hare-Clare count in line with the Act. Elections ACT maintains that it operates correctly.

Background Information

- The implementation of eVACS was the culmination of an extensive and complex project undertaken by the ACT Electoral Commission after the 1998 election.[2]
- Electronic voting and counting were first used at the 2001 election and have been used at all subsequent elections in 2004, 2008, 2012, 2016 and 2020[3].
- Schedule 4, clause 1A(2) of the Electoral Act was amended by the *Electoral Legislation Amendment Act 2020* on 9 July 2020 to provide that vote values calculated by multiplying ballot papers by fractional transfer values should be rounded down to six decimal places, rather than the nearest whole number.[4]
- The *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)* commenced on 9 July 2020 and introduced a legislative framework to support the roll out of electronic voting for overseas voters. The amendments are temporary measures introduced in the COVID-19 environment and will expire in April 2021.

[2] Elections ACT, "Development of the System", accessed 30 November 2020, <https://www.elections.act.gov.au/elections_and_voting/electronic_voting_and_counting/development_of_the_system>

[3] Elections ACT, "Electronic voting and counting", access on 30 November 2020, <https://www.elections.act.gov.au/elections_and_voting/electronic_voting_and_counting>

[4] This amendment was progressed in response to recommendations by the ACT Electoral Commission, set out in the ACT Electoral Commission Report on the ACT Legislative Assembly Election 2016. It sought to minimise the possibility of unfair and/or anomalous election results that may result from rounding down to whole numbers.

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QUESTION TIME BRIEF

JACS2021/46-001-008

Portfolio/s: Special Minister of State

ISSUE: ELECTORAL AMENDMENT BILL 2018 / ELECTORAL AMENDMENT ACT 2020

Talking points:

- The Electoral Amendment Bill 2018 (the Bill) meets a key government election commitment from the 2016 election by banning political donations from property developers.
- The Bill was passed by the Legislative Assembly on 27 August 2020 as the Electoral Amendment Act 2020 (Amendment Act).
- The Amendment Act will increase public confidence in our democratic system of government by removing perceived bias and strengthening our electoral reporting framework.
- Amendments introduced by the Amendment Act will commence on **1 July 2021.**
- The Amendment Act introduces penalties for the acceptance or receipt of gifts made by a property developer or close associate of a property developer. A political entity includes an MLA or a political party, and a close associate includes an officer of a corporation and their domestic partner.
    - Provisions relating to this ban on donations will not apply to:
        - a close associate if, at the time the gift was given, the close associate is a candidate in an election; and
        - if the gift is returned to the giver within 30 days of receipt.
    - Provisions and acceptances of gifts below $250 in a financial year will be subject to a fine, whereas amounts over $250 will be subject to criminal penalty.
        - A recipient of a gift will be penalised unless they are able to show that they took reasonable steps to ensure that the giver of gifts is not a prohibited donor.
- The Amendment Act incorporates an ACT Greens' proposal to promote truth in political advertising.

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- The Amendment Act provides that electoral advertisements must not contain any statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.
- A person commits an offence if the person disseminates or authorises the dissemination of the electoral advertisement which contains such statements.
- The Electoral Commissioner may ask the person not to disseminate the advertisement again, publish a retraction or apply to the Court for a determination of a penalty.

- The Amendment Act also amended the *Electoral Act 1992* to:
  - include an objects clause to expressly state the purposes of the framework for the conduct of elections under the *Electoral Act 1992*;
  - treat the total amount of a fundraising contribution as a 'gift' for the purpose of reporting thresholds. Previously, the *Electoral Act 1992* provides that fundraising contributions of up to $250 do not need to be reported;
  - provide that gifts over $1,000 must be reported to the Electoral Commission within seven days if gifts are given between the first day of the election period and 30 days after the election period. Outside that they are reported monthly; and
  - incorporate transitional arrangements to apply between the day after the 2020 election and 30 June 2021 where gifts from prohibited donors and close associates can be returned within 30 days of receipt without penalty. If they are not returned within 30 days, the political entity must pay a fine to the Territory an amount equal to the amount of the gift received.

Constitutional issues

- There are constitutional limits on what we can and cannot do when it comes to electoral laws. They arise from the freedom of political communication implied in the Commonwealth Constitution and they apply not only to the Commonwealth, but also to the States and Territories. They have been a subject of interest in the context of political donations.

- The Government closely considered the relevant authorities when developing the Amendment Act.
- The most recent decision involved a challenge to the validity of a Queensland electoral law, including provisions that banned property developer donations. In *Spence v Queensland*, the High Court upheld the Queensland provisions and also found that Commonwealth legislation that sought to override State and Territory laws banning certain political donations, including those from property developers, was invalid.
- The decision in *Spence* supports the current Territory electoral amendments in prohibiting property developers from making gifts to political parties or councillors of a local government.

Background

- The ACT Government committed in the 2016 Parliamentary Agreement (at 10.2) to ban gifts from property developers.
- The Select Committee on the 2016 ACT Election and the Electoral Act recommended that political donations from property developers be banned in the ACT (Recommendation 8).

Key Information

Relevant High Court matters

- The implied freedom of political communication arises from provisions of the Constitution which deal with voting for both Houses of Parliament and the principles of representative and responsible government which they support. The requirement to vote, and the need to discuss matters relevant to elections, gives rise to an implied freedom of communication. The integration of federal, state and local government extends it to States and Territories.
- The implied freedom involves a two-step test: (a) does the measure burden the freedom of political communication? and (b) is that burden appropriate and adapted to its purpose? Plainly, caps on donations impose a burden on the freedom of political communication. The primary question is whether the measure in the Commonwealth, State or Territory law imposes "impermissible burden" on the freedom of political communication. A subsidiary question is whether any state and territory law may be inconsistent with the federal law.

Unions NSW v New South Wales [2013] HCA 58

- In *Unions NSW v New South Wales* [2013] HCA 58 the High Court found that provisions banning political donations from any person that did not appear on a federal, state or local electoral roll was unconstitutional.

- The NSW legislation that was the subject of the case banned donations from groups such as corporations, organisations, and unions. The High Court found that the provisions were invalid because they impermissibly burdened various freedoms of political communication and association implied by the Constitution ***and*** the *Constitution Act 1902* (NSW), and were inconsistent with provisions of the *Commonwealth Electoral Act 1918* (Cwlth).

Unions NSW v New South Wales [2019] HCA 1

- In *Unions NSW v New South Wales* [2019] HCA 1, the plaintiffs argued that provisions in the *Electoral Funding Act 2018* (NSW) that restrict expenditure of political parites, candidates and third-party campaigners were invalid.
- The plaintiffs challenged the constitutional validity of a provision that increased the expenditure cap for political parties and candidates, whilst reducing the applicable expenditure cap for third-party campaigners quite significantly (Electoral Funding Act section 29(10)).
- The plaintiffs also challenged the constitutional validity of a provision that made it unlawful for a third party campaigner to act in consort with another person or persons to incur electoral expenditure which exceeds the applicable cap (Electoral Funding Act section 35).
- The plaintiffs challenged these provisions on the grounds that they impermissibly burden the implied freedom of political communication guaranteed under the Constitution.
- The defendants argued that the purpose of section 29(10) was to prevent the drowning out of voices in the political process by the distorting influence of money.
- The High Court found that the reduction in the cap applicable to third-party campaigners in section 29(10) was not demonstrated to be reasonably necessary to achieve the defendant's stated purpose. As a result, section 29(10) was held to be invalid. The High Court found it was not necessary to answer the validity of section 35 as there was no applicable cap upon which the section could operate.

High Court Precedent on banning political donations from property developers

McCloy v New South Wales [2015]

- In *McCloy v New South Wales [2015]* (McCloy), the High Court considered NSW legislation banning property developers from making political donations. The High Court considered whether the law was reasonably appropriate and adapted to advance its purpose. NSW argued that a history of corruption and undue influence in planning decisions over a lengthy period of time demonstrated the need for measures to restrict donations and that the bans were reasonably appropriate and adapted to that end.
- The High Court upheld the validity of the NSW provisions on the basis that a proportionate limitation on the implied freedom of political communication does not impede the system of representative government, but rather enhances it.

QUESTION TIME BRIEF

Gary Douglas Spence v the State of Queensland [2019] HCA 15

- The High Court's reasoning was published on 15 May 2019. In Spence v Queensland, the High Court considered Queensland legislation which ban political donations from property developers to be valid, these were the *Local Government Electoral Act 2011* (QLD) and the *Electoral Act 1992* (QLD). Queensland's reliance on the NSW experience was found to be entirely proper and appropriate. Spence v QLD also considered the validity of section 302A of the Commonwealth Electoral Act that provides that despite any State or Territory electoral law, a person or entity may give and receive a political donation if it is not prohibited under the Commonwealth Electoral Act. Property developers are not prohibited donors under the Commonwealth Act.
- The majority of the High Court held section 302CA to be invalid as it would render the amendments to the Queensland laws inoperative and that it had gone beyond the limits of the Commonwealth's legislative power conferred under section 51 of the Constitution in its application of sections 10 and 31 of the Constitution (i.e. laws in force in each State are to apply, as much as possible, to elections of senators and members of the House of Representatives for the State).
- Sch 1, s1.2 [redacted]

[redacted]

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