ACT Government
Justice and Community Safety

Open Access release outcome decision – Partial access granted

Document Category: Ministerial Briefs

Title of document: Attorney General – Quarter 4 2020 Ministerial Briefs

Description of the information: Question Time Briefs provided to the Attorney General between 1 October and 31 December 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

I have determined that some of the information contained within the document is taken to be contrary to the public interest to disclose under the following Schedule 1 provision of the Act.

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 of the Act. On balance, I have determined that the information is in the public interest to disclose with minor redactions. I have included below the relevant factors 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 additionally helps in promoting government accountability and transparency.

2.2 Factors favouring non-disclosure in the public interest

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

(ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.

On balance, I consider the ministerial briefs to be in the public interest to release, with minor redactions. This includes redactions to the personal information of ACT Policing staff where disclosure could reasonably be expected to prejudice their right to privacy.

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
2 January 2026

ACT Government
Justice and Community Safety

OPEN ACCESS Q4 2020 SCHEDULE
PORTFOLIO: ATTORNEY-GENERAL

No.	Folio	Description	Date	Status	Reason for non-release or deferral
Question Time Briefs - Sitting Days 2 & 3 December 2020					
1	1-2	Question Time Briefs Index - 2 & 3 December 2020	December		
2	3-8	COVID-19 Impacts - Relief to Clubs and Licensed Premises	December		
3	9-13	Awareness of Legal Assistance Services during Covid-19	December		
4	14-16	Spitting or Coughing at Frontline Workers	December		
5	17-21	Gaming Harm Reduction Measures	December		
6	22-26	Updates on Incentive Applications under Voluntary Surrender Agreements	December		
7	27-34	Community Contributions	December		
8	35-47	Club Engagement	December		
9	48-50	Petition received to remove Government Funding to the Horse Racing Industry	December		
10	51-57	How the ACT Liquor Act Compares to NSW Changes	December		
11	58-60	Resourcing of Magistrates and Coroners Court	December		
12	61-64	Coroner's Court Reform	December		
13	65-68	Drug and Alcohol Court	December		
14	69-73	National Security Issues	December		
15	74-77	OMCG Incidents	December	Partial	Sch 2, s2.2 (a)(ii)
16	78-81	Serious and Organised Crime Response	December		
17	82-83	Assaults on Police and Emergency Services Personnel	December		
18	84-87	Property Crime Campaign	December		
19	88-89	2019-2028 Aboriginal and Torres Strait Islander Agreement/Justice Action Plan	December		
20	90-95	Restorative Justice	December		
21	96-100	Reducing Recidivism	December		
22	101-103	Crimes (Offenses Against Vulnerable People) Amendment Bill 2020	December		
23	104-109	Residential Tenancies	December		
24	110-114	Electoral Amendment Bill 2018 & 2019	December	Partial	Sch 1, s1.2
25	115-118	Review of Child Protection Decisions in the ACT	December		
26	119-121	Tenant's Advisory Service	December		
27	122-125	Age of Criminal Responsibility	December		
28	126-128	Cannabis Prosecution Assistance	December		
29	129-130	Review into Whole of Justice System Interactions with Aboriginal and Torres Strait Islander People	December		
30	131-132	Positive Definition of Consent - Consent Legislative Reforms	December		

ATTORNEY-GENERAL

QUESTION TIME BRIEFS

COVID-19 Related	
1.	COVID-19 Impacts-Relief to clubs and licensed premises
2.	Awareness of legal assistance services during COVID-19
3.	Talking Points - Spitting or coughing at frontline workers (COVID-19) - ACT criminal law response
Racing and Gaming	
4.	Gaming Harm Reduction Measures
5.	Updates on incentive applications under Voluntary Surrender Agreements
6.	Community Contributions
7.	Club Engagement
8.	Petition received to remove Government Funding to the horse racing industry
9.	How the ACT Liquor Act compares to NSW changes
Judicial/Courts	
10.	Resourcing of Magistrates and Coroners Court
11.	Coroner's Court Reform
12.	Drug and Alcohol Court
Security and Crime	
13.	National Security Issues
14.	OMCG Incidents – Taskforce Nemesis (Copy of ACT P Brief only)
15.	Serious and Organised Crime Response (Policy)
16.	Assaults on Police and Emergency Services Personnel
17.	Property Crime Campaign
Justice	
18.	2019 – 2028 Aboriginal and Torres Strait Islander Agreement/Justice Action Plan

19.	Restorative Justice
20.	Reducing Recidivism

General	
21.	Crimes (Offenses Against Vulnerable People) Amendment Bill 2020
22.	Residential Tenancies
23.	Electoral Amendment Bill 2018 & 2019
24.	Review of child protection decisions in the ACT
25.	Tenant's Advisory Service
26.	Age of Criminal Responsibility
27.	Cannabis prosecution assistance
28.	Review into Whole of Justice System Interactions with Aboriginal and Torres Strait Islander People
29.	Positive Definition of Consent - Consent Legislative Reforms

QUESTION TIME BRIEF

MIN:2020/000095-068

Portfolio: Minister for Gaming

ISSUE: COVID-19 Impacts - Relief to clubs and licensed premises

Talking points:

- The Government has provided urgent financial support to clubs and licensed premises affected by COVID-19 and emergency closure directions made under the *Public Health Act 1997*.
- Amendments passed in the Assembly on 2 April 2020 gave effect to the following Economic Survival Package initiatives:
    - suspending the obligation of clubs to make payments to the Diversification and Sustainability Support Fund (DSSF) for a 12-month period;
    - allowing the Attorney-General to declare certain payments to be emergency community purpose contributions for a certain period during and after the emergency closure directions;
    - providing that clubs will be able to claim $2 for every $1 the club contributes to charitable support by preparing or providing food for emergency-affected people, to assist clubs in meeting their community contributions obligations;
- The Government has delivered emergency relief funding of approximately $3.3 million to clubs from the DSSF to support them to keep their workers employed or provide other income support, and will continue Government contributions to the DSSF despite the suspension of clubs' payments to the fund.
- Since June, the Government has offered cash payments of $15,000 to gaming machine licensees (clubs and hotels) in exchange for each surrendered gaming machine authorisation, with the payments being used towards:
    - staff employment;
    - diversification activities and initiatives; and
    - energy and water efficiency measures.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Group Manager	Ext:
Contact Officer name:	Danielle Perks	Ext: 75192
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-068	

- The incentive is available to all gaming machine licensees on a 'first come, first served' basis ending:
    - when applications have been received for a total of $3.75 million in incentive payments (i.e. up to 141 additional authorisations); or
    - at 11.59pm on 4 December 2020.
- To date, a total of 129 authorisations have been surrendered by clubs under this incentive, for cash payments totalling $1.935m.
- Under the *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020*, clubs can claim staff wages as community purpose contributions, provided the amount meets or exceeds the relevant minimum wage under the *Registered and Licensed Clubs Award 2010*. This measure extends until 23 March 2021 to provide support to clubs and their workers during the emergency period and into the recovery phase.
- Under the *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2020*, clubs can claim contributions made to or for the local live performance industry for music or other live entertainment (other than sport) from 28 August 2020 until 31 August 2021 as *emergency community purpose contributions*. This measure will provide support to the local live performance industry, which continues to be affected by COVID-19.
- The Government has waived fees for most liquor licences and permits for 12 months to put approximately $5.8 million dollars back into the pockets of licensed businesses at a time when they need it most.
    - In particular, annual liquor licence fees are waived for all on licensees, and for off licensees with a gross liquor purchase value of $3 million or less in the last reporting period.
    - Additionally, free commercial liquor permits were issued to on licensees for three months from 25 March 2020 to allow them to sell takeaway liquor. Fees will also be waived to extend commercial liquor permits to sell takeaway liquor for up to 12 months from the date of first issue.

  - These fee waivers are providing support for liquor licensees' efforts to adapt their business models during the emergency business closures. Fees will also be waived for existing on licensees who apply for general liquor licenses to allow them to sell both in-house and take-away liquor on an ongoing basis.

- Other support measures for clubs and licensed premises announced as part of the Economic Survival Package include:
  - waiver or refund of gaming machine tax liabilities for March 2020 gaming activity (for clubs that pay tax monthly) or gaming activity in the first quarter of 2020 (for clubs that pay tax quarterly);
  - Icon Water rebate of fixed water and sewerage charges for the next two quarters; and
  - waiver or refund of annual licence fee and gaming machine tax liability for March 2020 activity for Casino Canberra.
- Clubs may have also benefitted from additional business supports and measures announced in the Economic Survival Package, such as payroll tax relief.
- Some clubs may have benefitted from sport and recreation sector support measures, including a waiver of ACT Government sportsground hire fees for the Winter 2020 season and suspension of existing invoices for sportsground hire fees until 1 July 2020.

Key Information

- On 23 March 2020, the *Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020* [NI2020-169] (repealed) (the closure direction) directed the closure of:
  - businesses that supply liquor for consumption ON the premises but not including any part of those businesses that sell liquor for consumption OFF the premises as defined by the *Liquor Act 2010*;
  - hotels, whether licensed or unlicensed, but not to the extent that they provide accommodation, takeaway meals or a meal delivery service, or a bottleshop;
  - a casino;
  - cinemas, nightclubs or entertainment venues of any kind;
  - restaurants or cafes, other to than to the extent that they provide takeaway meals or a meal delivery service.

- These restrictions have been eased in line with Canberra's Recovery Plan and under the *Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 10)* [NI2020-617].
- Casinos and gaming facilities in clubs were permitted to reopen from 9 am on Monday 10 August 2020.

Background Information

DSSF emergency relief for clubs

- The Government has distributed emergency relief funding of approximately $3.3 million from the Diversification and Sustainability Support Fund (DSSF) to clubs affected by COVID-19.
- This funding is made up of approximately $0.8 million contributed by clubs according to the number of gaming machine authorisations held, approximately $1 million contributed by the Government as part of its undertaking to match clubs' contributions for the first three years of the DSSF's operation, and a further $1.5 million of additional funding provided by the Government.
- Funds from the DSSF must be used by ACT clubs to support the payment of wages and other financial support to staff.
- Clubs provided an undertaking to use the funds for the purpose for which they are provided and, as required, provide evidence that funds were used for the agreed purpose.
- At the second Club Presidents' Forum in July, clubs welcomed the former Attorney-General's announcement that the Government will continue to contribute to the DSSF despite clubs' contributions being temporarily suspended. Clubs acknowledged that the DSSF emergency relief funding had assisted clubs, including to support staff ineligible for other income support.

Government amendments to the *Gaming Machine Act 2004*

- Amendments to the *Gaming Machine Act 2004* which were passed on 2 April (in the *COVID-19 Emergency Response Act 2020* and the *Gaming Machine Amendment Act 2020*) will assist clubs in their compliance with the community contributions scheme.
- Amendments will also suspend clubs' obligation to contribute to the DSSF for 12 months and allow clubs to meet their community contribution requirements more flexibly.
- The *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020* [DI2020-139] allows clubs to claim as *emergency community purpose contributions* wages or salary paid to club employees and payments made to emergency-affected club employees from 23 March 2020 until 23 March 2021. These payments must be equivalent to the *Registered and Licensed Clubs Award 2010* rate. Further details are included in the declaration.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Group Manager	Ext:
Contact Officer name:	Danielle Perks	Ext: 75192
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-068	

- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2020* [DI2020-252] allows clubs to claim as *emergency community purpose contributions* contributions made to or for the local live performance industry for music or other live entertainment (other than sport) from 28 August 2020 until 31 August 2021.

Waivers for liquor licence and permit holders

- Amendments to the *Liquor Regulation 2010* allow the Commissioner for Fair Trading to waive some liquor permit and licence fees to mitigate the impacts of closure declarations on licensed businesses.
    - Annual liquor licence fees are waived for 12 months from 1 April 2020 for all on licensees and for off licensees with gross liquor purchase values of $3 million or less in the last reporting period
    - Fees for commercial liquor permits to allow on licensees to sell takeaway liquor are waived for 12 months from 25 March 2020.
    - Additional fee waivers will be offered to existing on licensees who apply for a general liquor licence and to existing commercial liquor permit holders to extend their liquor permit for up to a total of 12 months.

Surrender of Gaming Machine Authorisations

- In June, the *COVID-19 Economic Survival Package – Gaming Machine Authorisation Surrender Incentive* offered to gaming machine licensees at clubs or hotels a payment of $15,000 for every gaming machine authorisation surrendered to the Government. Payments received under this initiative had to be used towards the employment of staff. 109 authorisations were surrendered by clubs in exchange for payments totalling $1.635 million, before the deadline on 30 June 2020.
- In August, the Government agreed to extend the availability of the incentive and allow the incentive payment to be used for an expanded range of purposes, as follows:
    - staff employment;
    - diversification activities and initiatives; and
    - energy and water efficiency measures.
- The extended incentive was made available on a ‘first come, first served’ basis, ending:
    - when applications have been received for a total of $3.75 million in incentive payments (i.e. applications have been received for the surrender of a further 141 authorisations in addition to the 109 already surrendered); or
    - at 11.59pm on 4 December 2020.

- In October 2020, one club surrendered a further 20 authorisations in exchange for a cash payment of $300,000.
- To date, the total number of authorisations surrendered under the incentive is 129, with $1.935 million in incentive payments paid to participating clubs.The surrender of these authorisations has reduced the ACT's total number of authorisations from 3,997 to 3,868. This figure was capped by the *Gambling and Racing Control (New Cap on Number of Authorisations) Notice 2020 (No 3) NI2020-762* on 1 November 2020.

QUESTION TIME BRIEF

MIN:2020/000095-073

Portfolio/s: Attorney-General

ISSUE: ACCESS TO LEGAL ASSISTANCE SERVICES DURING COVID-19

Talking points:

- The ACT's legal assistance sector continues to work to support Canberrans respond to the impacts of COVID-19. I would like to reassure Canberra that its legal assistance service providers, including Legal Aid ACT, the Aboriginal Legal Service and the ACT's community legal centres, have continued to operate and have been able to be accessed during this critical time.
- COVID-19 has meant that some service providers are now operating in different ways, including offering services by phone, video or online. I encourage Canberrans to check the websites and social media platforms of service providers for updates about how they can continue to access their services.
- The Government recognises the critical role that the legal assistance sector plays in supporting Canberrans through COVID-19. Organisations within this sector provide vital services to vulnerable Canberrans, including people experiencing domestic and family violence, people with lived experience of homelessness and tenants and occupants who may be involved in disputes about their rental agreements.
- On 25 May 2020, the legal assistance sector launched its new website canberracovidlegalhelp.org.au - a single legal portal to assist Canberrans obtain the right legal information, and the right legal service for their needs. With funding provided through the Chief Minister's Charitable Fund (among other sources) the website brings together the expertise of Canberra Community Law, Women's Legal Centre ACT, Legal Aid ACT, CARE Financial Counselling and Economic Justice Australia, to provide up-to-date legal information for the Canberra Community during this time.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Kelly Lokan	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-073	

- Should you require further legal assistance, you can contact the following services:
    - Legal Aid – 1300 654 314
    - Women's Legal Centre – (02) 6257 4377
    - Canberra Community Law – (02) 6218 7900
    - CARE Financial– (02) 6257 1788
    - The Consumer Law Centre – (02) 6143 0044
    - Environmental Defenders Office – canberra@edo.org.au
    - Aboriginal Legal Service NSW/ACT – (02) 6120 88 00
- The services provided by Legal Aid and the Community Legal Centres can be accessed free of charge. If a service provider is unable to help you, they will refer you to someone who can.

If asked about Commonwealth funding to the ACT to support the legal assistance sector during COVID-19

- On 28 May 2020, the ACT Government signed the *Project Agreement for COVID Funding to the Legal Assistance Sector*. The funding will deliver over $1.39 million in Commonwealth funding to the ACT Legal assistance sector between 2019-20 and 2020-21 to help the sector support people who have been impacted by COVID-19.
- This funding will support the sector to have the ICT capacity to deliver services remotely, and provide for increased frontline services to meet the additional demand flowing from the COVID-19 emergency.
- This announcement was welcomed by the ACT Government.
- The frontline services funding will deliver increased legal assistance support for Canberrans in 2020-21 through:
    - the engagement of a family law lawyer and an employment and discrimination lawyer at the Women's Legal Centre;
    - the engagement of a housing law lawyer at Canberra Community Law;
    - enabling the Consumer Law Centre and CARE Inc to provide the Reach Out Program to support Canberrans impacted by economic abuse;

  - the engagement of an additional lawyer in Legal Aid ACT's Family Violence Unit and Older Persons ACT Legal Service;
  - additional resourcing to support Legal Aid ACT to provide an employment advice service to Canberrans whose employment has been impacted by COVID-19;
  - the engagement of a senior trial advocate at the Aboriginal Legal Service NSW/ACT to support Aboriginal and Torres Strait Islander people accessing the justice system.
- The ACT Government has provided further funding to Canberra Community Law to engage a social security lawyer in 2020-21 to support Canberrans who have been impacted by COVID-19.

Key Information

- Legal Aid ACT has a helpline for general legal information and advice that is open to all members of the community. It runs the Tenancy Advice Service and the Older Persons ACT Legal Service in the ACT, as well as many other services. More information is available at: http://www.legalaidact.org.au/
- The Aboriginal Legal Service Canberra Office provides legal advice, court representation and referral support in the area of criminal law for the Aboriginal and Torres Strait Islander community of the ACT and surrounds. It also provides a range of culturally specific community justice programs. More information is available at: https://www.alsnswact.org.au/
- Canberra Community Law (CCL) is providing legal advice, assistance and representation to people in the ACT on low incomes for matters relating to public housing, community housing and occupancy agreements, social security and disability discrimination law, including issues related to COVID-19.
- CCL is still providing public housing, social security and race discrimination legal services to Aboriginal and Torres Strait Islander communities through its Dhurrawang Aboriginal Human Rights Program and general law services to people who are homeless or at risk of experiencing homelessness through its Street Law program.

- CCL's Night Time Legal Advice Service (NTLAS) operates from February to November each year on Tuesday nights. NTLAS provides one off advice in most areas of law not covered by CCL's day time services. NTLAS is available on 02 6218 7000. Intake is done between 6pm and 7pm on a Tuesday night. More information is available at: https://www.canberracommunitylaw.org.au/
- CCL's COVID-19 General Law Clinic will start again from Thursday 4 February 2021. The COVID-19 General Law Clinic provides advice in most areas of law directly or indirectly related to COVID-19 including but not limited to property, employment, debt and contractual disputes. The COVID-19 General Law Clinic is available on 02 6218 7900 on a Thursday night. Intake is done between 6pm to 7pm on a Thursday night. More information is available at: https://www.canberracommunitylaw.org.au
- Additional information is available on CCL's newly launched COVID-19 website: www.canberracovidlegalhelp.org.au.
- Care Inc and the Consumer Law Centre provide support and advice to people in financial stress. They are continuing to provide financial counselling, legal advice and microfinance services. More information is available at: https://www.carefcs.org/
- Environmental Defenders Office's ACT Office provides free initial legal advice on planning and environmental law matters. More information is available at: https://www.edo.org.au
- The Women's Legal Centre is providing specialist advice in relation to family law, care and protection, employment and discrimination issues, including issues related to COVID-19. The Centre's Aboriginal Women's Program, Mulleun Mura, is also still providing culturally safe support to Aboriginal and Torres Strait Islander women. More information is available at: http://womenslegalact.org/

QUESTION TIME BRIEF

Background Information

- On 25 March 2020, ACT Community Legal Centres issued a joint communique identifying the essential legal assistance services the sector will continue to deliver and the issues it has identified as a result of the COVID-19 outbreak.
- The ACT Government has heard from CLCs that the matters they are facing are becoming more complex following COVID-19. CLCs anticipate increased legal need in the community in early - mid 2021 in alignment with reductions to the JobKeeper payment.
- An ABC News Report about responding to family violence in the ACT on **28 September 2020** quotes the A/g Coordinator-General for Family Safety, Kirsty Windeyer, as stating the following: "after the [COVID-19] restrictions were lifted there was an increase in the number of people who were reporting experiencing violence for the first time in the home" and "there was also an increase in the brutality of the violence and in the physical violence". The article is available via: https://www.abc.net.au/news/2020-09-28/back-to-the-future-for-act-policings-family-violence-response/12709150

Cleared as complete and accurate:	30/11/2020	
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Contact Officer name:	Kelly Lokan	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-073	

ACT Government
Justice and Community Safety

TALKING POINTS

Minister Attorney-General

Ref: MED:2020/000049

People spitting or coughing on frontline workers (COVID-19) – ACT criminal law response

- The behaviour of people threatening to spread COVID-19 to frontline workers by deliberately spitting or coughing on them is unacceptable.
- This atrocious conduct, whether committed against a police officer, health worker or any other person in the community will not be tolerated.
- In the ACT, criminal penalties already exist which can apply to anyone who intentionally spits or coughs on a police officer, health worker, or any other person.
- Under ACT laws, general assault provisions and public alarm offences apply so that a person who engages in this criminal behaviour may be subject to maximum penalties of between 2 to 15 years imprisonment.
- ACT Policing has already charged two people with offences related to causing public alarm, which attract a maximum penalty of 10 years imprisonment.
- The ACT Government is aware that other jurisdictions have introduced, or may be looking to introduce, specific offences to deal with people threatening to spread COVID-19 by spitting or coughing on frontline workers.
- The ACT's existing criminal laws provide a suite of offences. This means the Territory is prepared with the measures needed to ensure people who

threaten or harm others with the spread of COVID-19 will be held to account.

- The ACT Government presented the *Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019* in October 2019. The Bill proposes new offences of assaulting an emergency worker and driving at police. The Bill is before the Assembly, with debate yet to be scheduled.

BACKGROUND / SENSITIVITIES

NSW offence for spitting or coughing on public officials

- On 9 April 2020, the New South Wales (NSW) *Public Health (COVID-19 Spitting and Coughing) Order 2020* commenced, which directs that 'a person must not intentionally spit at or cough on a public official in a way that would reasonably be likely to cause fear about the spread of COVID-19'.
- Breach of the direction is an offence which attracts a fine of $5,000 under the Public Health Regulation 2012.
- Under the NSW *Public Health Act 2010*, the maximum penalty for breach of a public health direction is 100 penalty units and/or 6 months imprisonment.

ACT criminal laws that apply for spitting or coughing on others

- The *Crimes Act 1900* (Crimes Act) contains offences against the person which may cover spitting or coughing on a police officer, health worker or other person.
- These offences and maximum imprisonment penalties include: common assault (2 years), acts endangering life (15 years), acts endangering health (5 years), threat to inflict grievous bodily harm (5 years) and affray (10 years).
- For conduct which leads to a person's death, the offence of manslaughter (28 years) or murder (imprisonment for life) may apply.
- The Crimes Act, Division 6.7 also includes offences relating to causing public alarm, with maximum penalties of 200 penalty units and/or 10 years imprisonment.

Recent ACT incidents of spitting and coughing

- On 27 March 2020, ACT Policing charged two people with separate incidents of causing public alarm by allegedly spitting and coughing in public while claiming to be infected with COVID-19.

- One incident involved a man refusing to leave a restaurant after being asked to leave in order to comply with relevant public health directions.

- The other incident involved a man who allegedly coughed at staff at a youth hostel in Civic.

- Both defendants were charged with acting with intent to cause public alarm under section 140A of the Crimes Act.

Government Bill and PMB for new frontline worker assault and driving offences

- The Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019 is a Government Bill presented in the Assembly in October 2019 and, if passed, would create new offences for assaulting certain emergency workers and driving at police and police vehicles.

- The Crimes (Offences Against Frontline Community Service Providers) Amendment Bill 2019 is a private members bill (PMB) which was also presented in October 2019. The PMB is different to the Government Bill in that it proposes higher maximum penalties for the assault offence and new aggravated offences, and proposes to cover a broader range of occupations as victims of the new offences. In the Government Position on the PMB, human rights concerns are raised due to these aspects of the PMB.

- Both Bills are currently before the Assembly, with debate yet to be scheduled.

QUESTION TIME BRIEF

MIN:2020/000095-052

Portfolio/s: Minister for Gaming

ISSUE: GAMING MACHINE HARM REDUCTION MEASURES

Talking points:

- The Parliamentary and Governing Agreement for the 10th Legislative Assembly includes 10 commitments towards reducing harm from gaming while supporting sustainable clubs. These commitments are:
  - establishing a Ministerial Advisory Council with government, industry and unions to build a long-term, sustainable clubs sector in the ACT
  - targeting a further reduction in the number of gaming machine authorisations to 3,500 by 1 July 2025
  - establishing a rigorous, across-venue self-exclusion regime across the ACT, with significant penalties for breaches, aligning with or exceeding reforms currently progressing in NSW
  - matching or exceeding any further harm reduction reforms commenced in NSW, such as cashless gaming
  - introducing $5 bet limits and $100 load-up limits with a staged rollout to commence by the end of 2022 at the latest
  - facilitating planning and other processes to allow clubs to diversify to other revenue generating streams
  - providing a just transition for workers in the industry
  - conducting a review into water cost for high-intensity club users of non-potable water in 2021
  - establishing a five-year $5 million Building Energy Efficiency Upgrade Fund to be accessed by community clubs
  - supporting clubs to become heat and smoke refuges for local communities, including air filtration systems and financial payments for venues designated as official extreme weather refuge sites.
- These commitments build on progress made under the previous Government.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Danielle Perks	Ext: 75192
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2002/000095-052	

QUESTION TIME BRIEF

Reducing Authorisations to 4,000

- On 23 August 2018 the ACT Government announced the pathway to reduce the number of gaming machine authorisations in the ACT to 4,000 by 2020. This pathway was informed by the recommendations of the Club Industry Diversification Support Analysis by Mr Neville Stevens AO.
- The number of authorisations in the ACT has reduced to 3,868 as a result of strong club industry participation in the voluntary surrender of authorisations and uptake of Government incentives provided through the Pathway to 4,000 and COVID-19 Economic Survival Package, the first stage of compulsory surrender, and forfeitures as a result of trading activity between clubs.

Diversification and Sustainability Support Fund

- The Government implemented the Diversification and Sustainability Support Fund from 1 July 2019. The Fund is jointly funded by industry and Government to help clubs pursue a future away from gaming machines and support club staff to develop new skills. With supplementary Government funding of $1.5 million, the Government has delivered emergency relief funding of approximately $3.3 million from the Fund to keep club staff employed or provide other income support to club staff, as part of its COVID-19 support measures.
- Industry contributions to the Fund have been suspended until March 2021 as a COVID-19 relief measure. However, the Government has made available for distribution in 2020-21 approximately $1 million in previously-appropriated funding. The Advisory Board is currently considering applications received for this funding and will make recommendations to me about payments from the Fund.

Gaming Machine Tax Rebate

- The Government continued the 50 per cent gaming machine tax rebate for small and medium clubs and club groups to support these clubs as they diversify their revenue sources away from gaming machines and facilitate new services and support for the Canberra community.

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- Since 1 July 2020, eligibility for the gaming machine tax rebate no longer takes into account gross gaming machine revenue in 2017-18. Instead, a club or club group is considered small or medium where its annual gross gaming machine revenue (GGMR) is not more than $4 million, or where it receives some amount of rebate under new phased reduction provisions. The phased reduction provisions reduce the amount of rebate by $0.50 for every $1 over $4 million in GGMR per annum.

Regulatory reforms (incl. Code of Practice)

- Amendments to the *Gaming Machine Act 2004* enhanced the compliance framework for gaming machines and provided the ACT Gambling and Racing Commission with more tools for effective enforcement, including enforceable undertakings and a higher maximum financial penalty as part of disciplinary action.
- The COVID-19 public health emergency interrupted work on strengthening the *Gambling and Racing Control (Code of Practice) Regulation 2002* through proposed changes that:
  - improve the definition of gambling harm
  - provide greater clarity about the signs of gambling harm for club staff, and their requirement to record and respond to this
  - require club staff to undertake better training more often, in recognition of the crucial role they play in identifying signs of harmful gambling
  - require club board members to be trained to foster a culture where gambling harm reduction and consumer protection is the priority
  - enhance the operation of self-exclusion, and
  - require a Gambling Contact Officer to be on-site at every club whenever the gaming machines are turned on to provide an immediate point of contact for club patrons that are impacted by gambling harm.
- Any further work on these measures will be considered in the context of the new Parliamentary and Governing Agreement commitments.

QUESTION TIME BRIEF

Key Information

- There are currently **39** licensed club venues and **5** hotels in the ACT who hold gaming machine authorisations.
- The most recent figures published by the Gambling and Racing Commission (1 November 2020) state there are **3,868** authorisations and **3,536** electronic gaming machines in operation in the Territory.
- Under the COVID-19 Economic Survival Package to date, 129 authorisations have been surrendered in return for $1.935 million in incentive payments to be used towards staff employment, and (under the extended incentive) diversification activities and initiatives, and energy and water efficiency measures. The incentive has been extended until applications have been received for the surrender of a total of $3.75m in incentive payments (i.e. surrender of a further 141 authorisations), or until 4 December 2020, whichever occurs first.

Background information

Diversification and Sustainability Support Fund

- The Diversification and Sustainability Support Fund (DSSF) applications for funding opened on 18 December 2019 and were due to close on 27 March 2020. Following the emergency closure of clubs in response to the COVID-19 public health emergency, $1.8 million from the DSSF (comprising $1.1m in Government funding and $0.7m in industry contributions) and supplementary funding of $1.5 million from Government (a total of $3.3 million) was provided to clubs as emergency relief funding for club staff.
- While this funding was generally positively received, some clubs expressed disappointment that the funding round did not continue due to the distribution of funding for COVID-19 emergency relief. The former Attorney-General advised club representatives at the Club Presidents' Forum in July 2020 that the Government will provide its appropriated contribution for 2020-21 to the Fund, even though club contributions have been suspended for 12 months (until March 2021).
- Clubs were subsequently invited to apply for approximately $1 million in available funding, with Tier 2 applications closing on 20 November 2020. 14 Tier 1 and Tier 2 applications have been received seeking a total of $2.14 million in funding. The DSSF Advisory Board is now considering these applications and will make recommendations to you about payments from the Fund.

Gaming machine bet limits

- The ACT's gaming machines currently have a $10 maximum stake amount ('bet limit').

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- The Parliamentary and Governing Agreement includes a commitment to introduce $5 bet limits and $100 load-up limits with a staged rollout to commence by the end of 2022 at the latest.
- The *Casino (Electronic Gaming) Act 2017* includes a maximum bet limit of $2 for casino gaming machines in a redeveloped casino.

Budget Funding

(JACS 27) AG - 2018-19 Budget Review Initiative - Reducing the Number of Gaming Machine Authorisations to 4,000 and Supporting Clubs to Reduce their Reliance on Gaming Machines

	2018-19 $'000	2019-20 $'000	2020-21 $'000	2021-22 $'000	**Total $'000**
CMTED Directorate – Expenses	122	351	0	0	**473**
JACS Directorate – Expenses	2,206	1,105	1,105	1,105	**5,521**
Depreciation	0	45	45	45	**135**
Total Expenses	**2,328**	**1,501**	**1,150**	**1,150**	**6,129**
CMTED Directorate – Associated Capital	225	0	0	0	**225**
EPSD Directorate – Associated Revenue	-500	-1,714	-1,714	-1,714	**-5,642**

The Government is implementing measures to support the reduction of gaming machine authorisations to 4,000 by 1 July 2020 - as set out in the *Pathway to 4,000 Gaming Machine Authorisations by 2020* - and is continuing to implement the commitments outlined in our *Supporting Local Community Clubs Policy*.

QUESTION TIME BRIEF

MIN:2020/000095-031

Portfolio/s: Minister for Gaming

ISSUE: UPDATES ON INCENTIVE APPLICATIONS UNDER VOLUNTARY SURRENDER AGREEMENTS

Please note: This QTB addresses incentives under the Pathway to 4,000 Voluntary Surrender Agreements – for information on surrender of gaming machine authorisations under the COVID-19 Economic Survival Package, please see QTB titled 'COVID-19 Impacts - Relief to clubs and licensed premises' (MIN:2020/000095-068)

Talking points:

<u>Reducing the number of gaming machine authorisations to 4,000</u>

- The number of authorisations in the ACT is now capped at **3,868** following the recent surrender of 129 authorisations in response to the COVID-19 Economic Survival Package support measures for clubs.
- The Government's target of reaching 4,000 gaming machine authorisations through the *Pathway to 4,000 Gaming Machine Authorisations by 2020* was achieved ahead of time, with the cap on the number of authorisations reducing to 3,997 by 25 February 2020.
- On 23 August 2018 the ACT Government announced the Pathway, which was informed by the recommendations of the Club Industry Diversification Support Analysis by Mr Neville Stevens AO. At that time, the number of authorisations held by clubs and hotels was 4,946.
- Under the Pathway, financial and non-financial incentives were available to clubs that voluntarily surrendered gaming machine authorisations to diversify their business models.
- The reduction in the number of authorisations was achieved through:
    - voluntary surrender of authorisations under a Voluntary Surrender Agreement (by 14 February 2019) – 911 authorisations
    - first stage of compulsory surrender (1 April 2019) – 9 authorisations
    - forfeitures through trading activity between licensees – 29 authorisations.

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- A planned second stage of compulsory surrender was not required as the Government's target of 4,000 authorisations was reached.

Outcomes of the voluntary surrender process

- Clubs and hotels with 19 or fewer authorisations were exempt from compulsory surrender, and these licensees elected not to access the incentives available through voluntary surrender. All clubs that were facing a compulsory surrender obligation participated in the voluntary surrender process.
- In total, 911 authorisations and 1 authorisation certificate were voluntarily surrendered from clubs.
- Clubs are eligible for a total of $14,390,500 in incentives - comprising $648,000 in cash incentives and $13,742,500 in offset incentives for land-related payments, fees and charges.

Cash Incentives

- Five small or medium clubs/club groups elected to receive cash payments under their Voluntary Surrender Agreement with the Territory.
- Cash payments totalling $648,000 have been made to eligible licensees.

Offset Incentives

- Thirteen clubs/club groups are eligible for offset incentives under the Pathway.
- Four clubs have accessed offset incentives to date. The incentives have been applied towards deconcessionalisation payout amounts, lease variation charges and development application fees. The total amount of offset incentives accessed to date is $875,985.
- Eligible clubs have seven years, until April 2026, to use their Total Offset Amount entitlement towards land-related payments, fees and charges.

QUESTION TIME BRIEF

Key Information

- The *Gambling and Racing Control (New Cap on Number of Authorisations) Notice 2020 (No 3)* NI2020-762 sets the cap on the number of gaming machine authorisations at **3,868** as at 1 November 2020.
- Under the Pathway, licensees that voluntarily surrendered gaming machine authorisations were eligible for financial incentives as follows:

Club type	Cash per authorisation voluntarily surrendered	Land-related Fees and Charges Offset per authorisation voluntarily surrendered
Small or medium club/club group (not more than $4 million GGMR in 2017-18)	$12,000	$25,000
Large club/club group (more than $4m GGMR in 2017-18)	N/A	$15,000
'Pokie free' club bonus (surrender authorisation certificate, maintain community access to venue)	Additional 25 per cent of eligible incentives	Additional 25 per cent of eligible incentives
Hotels NB: this is the only incentive hotels were eligible for	$6,000	N/A

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QUESTION TIME BRIEF

Cash incentives paid to date

Club/Club Group	Cash Amount Entitlement	Cash Amount Paid to Date
Belconnen Soccer Club	336,000	336,000
Canberra Irish Club	60,000	60,000
Harmonie German Club	72,000	72,000
The RUC at Turner	120,000	120,000
Yowani Country Club	60,000	60,000
Total	**$648,000**	**$648,000**

Offset incentives accessed to date

Club/Club Group	Payment, fee or charge	Total Offset Amount Entitlement	Offset Amount Accessed To Date
Magpies Group	Deconcessionalisation payout amount and lease variation charge	$625,000	625,000
Ainslie Group	Deconcessionalisation payout amount	$1.2 million	140,000
Eastlake Group	Lease variation charge	$945,000	7,500
Croatia Deakin Soccer Club	Development application fees Lease variation charge	$200,000	3,485 100,000
		Total	**$875,985**

Offset incentives remaining to be accessed

Club/Club Group	Offset Amount Remaining
Ainslie Group	1,060,000
Magpies Group	0
Canberra Highland Society and Burns Club	925,000
Canberra Labor Club Group	1,590,000
Mawson Club	450,000
Raiders Group	1,395,000
Canberra Club Group	375,000
Southern Cross Club Group	1,927,500
Canberra Tradesmen's Union Club	1,140,000
Croatia Deakin Soccer Club	96,515
Eastlake Group	937,500
Hellenic Group	870,000
Vikings Group	2,100,000
Total	**$12,866,515**

Budget Funding

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QUESTION TIME BRIEF

(JACS 27) AG - 2018-19 Budget Review Initiative - Reducing the Number of Gaming Machine Authorisations to 4,000 and Supporting Clubs to Reduce their Reliance on Gaming Machines

	2018-19 $'000	2019-20 $'000	2020-21 $'000	2021-22 $'000	Total $'000
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Depreciation	0	45	45	45	135
Total Expenses	**2,328**	**1,501**	**1,150**	**1,150**	6,129
CMTED Directorate – Associated Capital	225	0	0	0	225
EPSD Directorate – Associated Revenue	-500	-1,714	-1,714	-1,714	-5,642

The Government is implementing measures to support the reduction of gaming machine authorisations to 4,000 by 1 July 2020 - as set out in the *Pathway to 4,000 Gaming Machine Authorisations by 2020* - and is continuing to implement the commitments outlined in our *Supporting Local Community Clubs Policy*.

Changes to the *Gaming Machine Act 2004* established the legal framework for the voluntary and compulsory surrender of authorisations. The relevant provisions of the Act relating to the reduction to 4,000 gaming machine authorisations commenced on 11 December 2018. The voluntary surrender period ceased on 31 January 2019 and all voluntary surrender agreements providing incentives to participating licensees were required to be signed on or before 8 February 2019.

Cash incentive payments **($0.648 million)** were made to eligible licensees from the JACS' Territorial account resulting in savings in 2018-19 of $1.3 million. Clubs are also eligible for $13.7 million in incentives for land-related payments, fees and charges over the next seven years.

The voluntary surrender process and forfeitures through trading reduced the number of gaming machine authorisations in the ACT to 4,012 by 14 February 2019. The subsequent first stage of compulsory surrender on 1 April 2019 reduced that number to 4,003, and forfeitures through trading activity has since reduced the number of authorisations to 4,001.

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QUESTION TIME BRIEF

MIN:2020/000095-056

Portfolio/s: Minister for Gaming

ISSUE: COMMUNITY CONTRIBUTIONS

Talking points:

<u>COVID-19 support measures in the community contributions scheme</u>

- The community contributions scheme includes support measures for clubs in response to the impacts of the COVID-19 public health emergency, following changes introduced through the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*. These measures:
    - enable the Minister to declare certain things, including payments to club staff, to be community contributions, where an emergency declaration has been made; and
    - incentivise the provision of food in an emergency by allowing clubs to claim $2 for every $1 of their contribution as a community purpose contribution, where the club is providing charitable support by preparing or providing food for emergency-affected people.
- Under the *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020*, clubs can claim staff wages as community purpose contributions, provided the amount meets or exceeds the relevant minimum wage (including any relevant allowances) under the *Registered and Licensed Clubs Award 2010*. This measure applies to contributions made between 24 March 2020 and 23 March 2021 (inclusive) to provide support to clubs and their workers during the emergency period and into the recovery phase.
- Under the *Gaming Machine (Emergency Community Purpose Contribution – Local Live Performance Industry) Declaration 2020*, clubs can claim contributions to or for the local live performance industry for music or other live entertainment (other than sport) as a community purpose contribution. This declaration will encourage clubs to host live performances and will support Canberra's musicians, performers and workers in the performance industry, who have been significantly impacted by COVID-19 public health restrictions.This measure applies to

contributions made between 27 August 2020 and 31 August 2021 (inclusive).

- Revised Guidelines for the scheme, incorporating these recent changes and providing further clarity in response to feedback, are being finalised for distribution to licensees.

<u>April 2020 changes to the scheme in response to industry feedback</u>

- In response to industry feedback, the Government introduced the *Gaming Machine Amendment Act 2020*, which was passed by the ACT Legislative Assembly in April 2020. The Act includes a number of refinements to support clubs' compliance and reporting including:
    - removing the requirement for clubs with more than one venue to report on the community purpose contributions for each venue separately and allowing clubs with more than one venue to make community purpose contributions on a group basis;
    - introducing a transitional provision reducing the minimum monetary contribution for clubs that are not small or medium clubs or part of a small or medium club group from 6 per cent to 5 per cent for reporting years ending after 30 June 2019 and before 1 July 2021; and
    - introducing a transitional provision reducing community contributions shortfall tax from 150 per cent to 100 per cent for reporting years ending after 30 June 2019 and before 1 July 2021.

<u>2019 reforms to the scheme</u>

- Government reforms to the community contributions scheme commenced on 1 July 2019.
- The changes to the scheme:
    - increased the funds available to the broader community
    - required greater transparency in reporting on community contributions
    - provided more opportunities for community groups to seek community contributions and

  - increased the minimum contribution payable from net gaming machine revenue (NGMR) by 0.8 per cent for clubs and introduced a contribution requirement for hotels.

- Hotels are required to make mandatory contributions of 0.8 per cent of their NGMR. Clubs are required to contribute 8.8 per cent of of their NGMR, but may apply for a lower minimum contribution rate where they can demonstrate that meeting the overall 8.8 per cent requirement would seriously affect their viability.
- These contributions are distributed through two funds to provide support to people in the community:
  - 0.4 per cent to the gambling harm prevention and mitigation and
  - 0.4 per cent to the community charitable causes through the Chief Minister's Charitable Fund.
- Large clubs and large club groups must make a minimum monetary contribution of 6 per cent of NGMR. The minimum monetary contribution may be reduced where large clubs have long-term (3 or more years) in-kind arrangements to support a defined facility, space or program (e.g. providing office space for a community organisation).

QUESTION TIME BRIEF

Background information- Additional detail on specific aspects of the scheme

Engagement process throughout the review of the scheme and implementation of changes (refer also QTB – LPP – Club Engagement MIN:2020/95-032):

- The Government engaged extensively with the club industry to inform the delivery of key reforms to the community contributions scheme.
- In 2018, the Justice and Community Safety Directorate circulated an Options Paper, *Maximising the Benefit of the Community Contributions Scheme*, to commence the review and facilitate discussion. An exposure draft regulation, setting out new definitions and guidelines for working out community purpose contributions, was released for community comment at the end of 2018.
- Following detailed consideration of feedback received, the Government finalised the details of the new scheme through the final Regulation, with the changes coming into effect on 1 July 2019.
- The Government continued to engage with clubs, peak bodies and community stakeholders to explain the proposed changes, and to receive feedback on what the reforms would mean for the Canberra community.
- In response to industry feedback, the Government's *Gaming Machine Amendment Act 2020* included a number of refinements to support clubs' compliance and reporting.
- The Government is continuing to work with clubs to ensure they understand their obligations under the scheme.

Requirement for clubs to deduct the value of income or benefits received by the club from community contributions claimed:

- The scheme includes a longstanding requirement that clubs must deduct any income or benefits received by the club from the value of a claimed community contribution. This may include entry fees received or profit earned from food and beverage sales.
- In addition, where a club makes a contribution on condition of receiving something from the recipient in return, the value to the club of that condition being fulfilled must not be claimed as a community purpose contribution.
- These features of the scheme long predate the recent reforms to the scheme. The existing provisions have been relocated within the Gaming Machine Act or within the Regulation. While some provisions are exactly the same, in some cases redrafting has occurred for clarity but the legal effect is the same.
- It is appropriate that clubs can only claim the part of a contribution that actually benefits the broader community, not the part that benefits the club itself.
- The scheme Guidelines include examples to assist clubs in understanding their obligations under the scheme.

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Capping in-kind contributions:

- Large clubs/club groups must make minimum monetary contributions of 6 per cent of net gaming machine revenue (or 5 per cent under the transitional measure outlined above, for reporting years ending before 1 July 2021). Since clubs are required to make community purpose contributions totalling 8 per cent of NGMR, this means that clubs are limited to claiming 2 per cent of NGMR as in-kind contributions (or 3 per cent under the transitional measure).
- Where large clubs have a long-term in-kind arrangement for a defined facility, space or program, the club can reduce their minimum monetary contribution to 4 per cent of net gaming machine revenue. The arrangement must be for 3 years or more. In this case, the value of club contributions overall must still equal 8 per cent of net gaming machine revenue.
- Large clubs/club groups are those receiving over $4 million in gross gaming machine revenue each year, or who are entitled to an amount of gaming machine tax rebate under the phased reduction provisions.
- This change supports a broader distribution of community benefits under the scheme but is restricted to large clubs because in-kind claims represent a far larger proportion of community contributions for small and medium clubs/club groups, and it is appropriate that this continue.
- The scheme does not limit the amount of in-kind support that a club can provide to the community, but it does limit the amount that can be claimed under the scheme towards meeting clubs' obligations.
- For clubs that already meet their minimum cash requirements, and overall community contribution rates, any decisions about whether they withdraw funding that is provided **above those minimum amounts** is entirely a matter for each club, and those decisions should not be misconstrued as being a result of the Government's regulatory changes.

Exclusion of men's professional sport from the scheme:

- The community contributions scheme has a long-standing incentive to promote women's sport by allowing clubs to claim $4 for every $3 contributed.
- The previous Government's review of the scheme found this existing incentive was not as effective as it could be, with 5.3 per cent of total scheme funding directed towards women's sport in 2017-18 and 2.7 per cent in 2016-17. The review also considered how the scheme supports sport more generally.
- The scheme now provides that, in addition to this specific incentive for claims for women's sport, clubs are able to claim a range of sports-related expenses, for both men's and women's sport, as a community contribution, including umpires, trainers, coaches, administrators and maintenance of sports facilities – <u>except</u> to the extent they relate to professional men's sport.

- These changes do not stop clubs funding professional men's sports teams or indiviudals, but rather ensure that the 8 per cent of net gaming machine revenue allocated through the scheme is directed more broadly within the community.
- In limited circumstances, the Minister may determine that costs relating to a professional sportsman or men's professional sports team may be allowable as a community purpose contribution. This can occur where the Minister is satisfied that:
    - the contribution will support participation in community sport; and
    - the team or person's viability to participate in the sport would be adversely affected without the determination; and
    - it is in the public interest that the contribution be made as a community purpose contribution.
- A Determination made by the previous Attorney-General provided that contributions made to the Canberra Demons AFL Team are allowable as a community purpose contribution. This determination will expire in December 2021.

Record-keeping and reporting requirements:

- There are additional record keeping and reporting requirements under the new framework.
- The previous record-keeping requirements for community contributions in the *Gaming Machine Act 2004* were that clubs record the entity to which each contribution was made, the purpose for which each contribution was made, the amount or value of the contribution and the date when, or period over which, it was made. The record-keeping requirements in the Act expand on the previous provision to include the way in which the contribution is intended to be used by the recipient and the nature of the benefit to the recipient.
- These expanded record-keeping requirements provide greater transparency to the community as the reporting is now contained in the clubs' annual reports which they must make public and the Commission will publish. Previously this information was provided to the Commission for verification and only summary information was made public.
- These changes were made to give the community a greater understanding of where community contributions were going and in response to the Auditor-General's conclusion that:

  'There was insufficient information in clubs' annual returns with respect to the identification and documentation of the purpose and beneficiary of community ontributions which means that the eligibility and appropriateness of some community contributions is not clear. '

- Removing the requirement for clubs with more than one venue to report on the community purpose contributions for each venue separately and allowing clubs with more than one venue to make community purpose contributions on a group basis will assist clubs in meeting their obligations.
- The transitional measure to reduce the community contributions shortfall tax from 150 per cent to 100 per cent for reporting years ending after 30 June 2019 and before 1 July 2021 will also support clubs as they adapt to the new scheme.

Approach to enforcement as clubs adjust to the new scheme:

- Access Canberra (on behalf of the ACT Gambling and Racing Commission) is responsible for regulating and enforcing compliance with the community contributions scheme.
- In accordance with its Accountability Commitment, Access Canberra applies a risk-based compliance approach to ensure resources are targeted to where the risks of harm, unsafe practices or misconduct are the greatest, thereby strengthening its capacity to take action where the community, workers and the environment are most at risk.
- Compliance is encouraged through education but escalating enforcement action will be applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law. Conduct which contravenes the legislation is considered on a case by case basis, with consideration given to the circumstances of the conduct.
- Access Canberra is conducting an inspection program targeting compliance with the new scheme. Should enforcement action be deemed necessary, it may be taken under the *Gaming Machine Act 2004*. Disciplinary actions which may be taken against a licensee include: issuing a reprimand, imposing conditions on a licence or authorisation certificate, imposing a financial penalty, suspending a licence or cancelling a licence.
- It should also be noted that if a club's deemed eligible community contributions falls below the minimum required contribution it is required to pay a community contribution shortfall tax. This tax is currently 100 per cent of the shortfall amount (i.e. the club will be required to pay the amount of the shortfall) under the transitional measure outlined above, but this will return to 150 per cent for reporting years that end on or after 1 July 2021.

QUESTION TIME BRIEF

Budget Funding

(JACS 21) AG 2019-20 Budget Initiative - Increase to Minimum Community Contribution Rate by ACT Clubs

	2019-20 $'000	2020-21 $'000	2021-22 $'000	2022-23 $'000	**Total $'000**
Expenses	800	820	840	860	**3,320**
Offset	-800	-820	-840	-860	**-3,320**
Net Expenses	0	0	0	0	**0**

The Government will establish an independent charitable fund to distribute nominated community funds to charitable and community causes levied on venues operating electronic gaming machines.

Expenses: $3.320 million over 4 years, fully offset by revenue collected from ACT Clubs' net gaming machine revenue (NGMR) community contributions.

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QUESTION TIME BRIEF

MIN:2020/000095-032

Portfolio/s: Minister for Gaming

ISSUE: CLUB ENGAGEMENT

Talking points:

- This Government will work with stakeholders, including the club industry, to reduce harm from gaming while supporting sustainable clubs.
- The first commitment in the Parliamentary and Governing Agreement for the 10th Legislative Assembly is to establish a Ministerial Advisory Council with government, industry and unions to build a long-term, sustainable clubs sector in the ACT.
- I have already tasked JACS to start work to implement this commitment.
- I look forward to making some announcements about the Council in the near future.

Background Information

- A summary of the major consultation held with clubs for each of the previous Government's key reforms is outlined in the following pages.

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QUESTION TIME BRIEF

Club Presidents' Forum

Meetings

Date	Government Attendee	Club Organisation
31/10/19	Minister/Minister's Office/JACS	All club presidents or their nominated board representatives.
21/07/20	Minister/Minister's Office/JACS	All club presidents or their nominated board representatives.

Consultation Activity

Date	Document	Club Organisations	Attachment
19 December 2019	Letter – Response to Forum attendees – Forum recap and next steps	All Forum attendees	
18 March 2020	Email – Invitations to the second Club Presidents' Forum on 28 April 2020	Club Presidents or representing Board members	
27 March 2020	Email – Forum postponed due to COVID-19	Club Presidents or representing Board members	
17 June 2020	Email –second Club Presidents' Forum, 21 July 2020	Club Presidents or representing Board members	
1 – 14 July 2020	Emails and phone calls –RSVPs for second Club Presidents' Forum	Club Presidents or representing Board members	
10 July 2020	Letter – arrangements and agenda for second Club Presidents' Forum	Club Presidents or representing Board members	
17 July 2020	Email – revised arrangements and agenda for second Club Presidents' Forum	All club licensees and club industry peak bodies	Agenda – Club Presidents' Forum – 21 July 2020
7 August 2020	Email – Response to Forum attendees – second Forum recap and next steps	All Forum attendees	Attachment 1 – Meeting Summary – 21 July 2020 Attachment 2 – Letter – 31 October 2019 (Response to first Forum attendees – Forum recap and next steps – For reference) Attachment 3 – Meeting Summary – 31 October 2019 (summary of additional matters discussed at the first Forum)

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QUESTION TIME BRIEF

Reduction to 4,000 Gaming Machine Authorisations

Meetings

Date	Government Attendee	Club Organisation
6/12/17	Minister's Office/JACS	ClubsACT
7/12/17	Minister's Office/JACS	Magpies Sports Club
12/12/17	Minister's Office/JACS	Canberra Community Clubs
18/12/17	Minister's Office/JACS	Canberra Southern Cross Club
09/01/18	Minister's Office/JACS	Canberra Labor Club
05/04/18	JACS/Neville Stevens	Canberra Community Clubs
09/04/18	JACS/Neville Stevens	Rugby Union Club
09/04/18	JACS/Neville Stevens	ClubsACT
09/04/18	JACS/Neville Stevens	Croatia Deakin
10/04/18	JACS/Neville Stevens	Burns Club
10/04/18	JACS/Neville Stevens	Canberra Community Clubs
10/04/18	JACS/Neville Stevens	Canberra Southern Cross Club
17/04/18	JACS/Neville Stevens	Raiders
17/04/18	JACS/Neville Stevens	Canberra Bowling Club
17/04/18	JACS/Neville Stevens	Ainslie Football Club
17/04/18	JACS/Neville Stevens	Canberra Labor Club
18/04/18	JACS/Neville Stevens	Magpies FC
18/04/18	JACS/Neville Stevens	Belconnen Soccer Club
18/04/18	JACS/Neville Stevens	Hellenic Club
23/04/18	JACS/Neville Stevens	Vikings
23/04/18	JACS/Neville Stevens	Yowani CC
30/04/18	JACS/Neville Stevens	Federal Golf Club
30/04/18	JACS/Neville Stevens	Eastlake Football Club
01/05/18	JACS/Neville Stevens	Harmonie German
01/05/18	JACS/Neville Stevens	Spanish Club
01/05/18	JACS/Neville Stevens	Canberra Club
04/05/18	JACS/Neville Stevens	ClubsACT
04/05/18	JACS/Neville Stevens	Canberra Community Clubs
09/05/18	JACS/Neville Stevens	Canberra Irish Club
09/05/18	JACS/Neville Stevens	Belconnen Bowling Club
14/05/18	JACS/Neville Stevens	Murrumbidgee Country Club
22/05/18	JACS/Neville Stevens	Canberra Labor Club
25/05/18	JACS/Neville Stevens	Austrian Club
29/05/18	JACS/Neville Stevens	ClubsACT
29/05/18	JACS/Neville Stevens	Canberra Community Clubs
14/09/18	JACS/Neville Stevens	Canberra Community Clubs
17/09/18	JACS/Neville Stevens	Canberra Labor Club

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17/09/18	JACS/Neville Stevens	Ainslie Football Club
17/09/18	JACS/Neville Stevens	Magpies
02/10/18	JACS/Neville Stevens	Canberra Labor Club
10/10/18	JACS/Neville Stevens	ClubsACT
10/10/18	JACS/Neville Stevens	Canberra Southern Cross Club
10/10/18	JACS/Neville Stevens	Raiders
19/10/18	JACS/Neville Stevens	Canberra Bowling Club
24/10/18	JACS/Neville Stevens	Rugby Union Club
07/11/18	JACS/Neville Stevens	Vikings
09/11/18	JACS/Neville Stevens	Belconnen Soccer Club
20/11/18	JACS/Neville Stevens	Rugby Union Club
28/11/18	JACS/Neville Stevens	Eastlake Football Club
29/11/18	JACS/Neville Stevens	Canberra Southern Cross Club
07/12/18	JACS/Neville Stevens	Yowani CC
10/12/18	JACS/Neville Stevens	Canberra Irish Club
14/01/19	JACS/Neville Stevens	Canberra Labor Club
25/01/19	JACS/Neville Stevens	Canberra Southern Cross Club
18/11/19	Minister's Office/JACS	Magpies

Consultation Activity

Date	Document	To	Attachment
July 2017	Email inviting all clubs' input on the appropriate model and timeframe to achieve 4,000 gaming machine authorisations.	All club licensees and industry groups	
August to September 2017	Options Paper circulated to industry and released for public consultation on the YourSay website.	All club licensees, industry groups	Options Paper – Reducing the Number of Gaming Machine Authorisations to 4,000
3 April 2018	Letter seeking engagement to inform report Consultation period – 3/4/18 to 31/5/18	All club licensees and industry groups	
20 August 2018	Email – Update on Pathway to 4000 Gaming Machine authorisations by 2020	All club licensees and industry groups	
23 August 2018	Media Release	Community	Pathway to 4000 Gaming Machine Authorisations by 2020

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13 November 2018	Email – announcement of financial and non-financial incentives, providing Mr Stevens to assist.	All club licensees and industry groups	Q & A - Pathway to 4000 Gaming Machine Authorisations by 2020
7 December 2018	Email – information about voluntary surrender including agreement template and Planning Lease Administration Building Services Fees and Charges, invitation to seek assistance from Mr Stevens.	All club licensees	Voluntary Surrender Notice and Application for Incentives
21 December 2018	Email – information about Offset Incentives, invitation to seek assistance from Mr Stevens.	All club licensees	– *Gaming Machine (Offset amounts) Regulation 2018* – *Gaming Machine Act 2004* – 2018-19 fees and Charges Planning Accessibility highlighted – Voluntary surrender Agreement template
13 February 2019	Email – information about accessing cash incentives.	Licensees with which the Govt has an agreement	Pathway to 4000 Gaming Machine Authorisations by 2020 – Accessing Cash Incentives
16 January 2019	Email – additional information for voluntary surrender phase.	Licensees with which the Govt has an agreement	Voluntary Surrender Notice and Incentive application with nomination of other venue
19 February 2019	Email – update on voluntary surrender phase.	All club licensees	
5 March 2019	Email – information about the Compulsory surrender Determination and process for surrender.	All club licensees	Pathway to 4000 Gaming Machine Authorisations by 2020
4 April 2019	Email – information about the DSSF, seeking comment on exposure draft regulation. *Consultation to 1/5/19.*	All club licensees	Ramsay Media Release – Gaming Legislation Amendment Bill – Explanatory Statement – Gaming Machine amendment Regulation 2019 – exposure draft
18 December 2019	Email – information about the DSSF, advising that the Fund is open for applications.	All club licensees, industry groups	Diversification and Sustainability Support Fund – Funding Application Form Diversification and Sustainability Support Fund – Standard Operating Procedure for Funding Applications
18 December 2019	Email – information about the DSSF, advising that the Fund is open for applications.	Industry groups and Community groups	

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QUESTION TIME BRIEF

13 March 2020	Email – DSSF – response to query regarding applications process	Rugby Union Club	
13 March 2020	Email – DSSF – response to query regarding applications process	Canberra Community Clubs	
16 March – 3 April 2020	Emails – liaison with applicants to the DSSF	Club licensees, club industry peak bodies, industry groups and community groups lodging applications for the Fund	
3 April 2020	Email – DSSF – notification that the applications process will be suspended until further notice, due to all available funds having been committed to providing emergency relief to club licensees to support their staff through the COVID-19 public health emergency.	All club licensees and club industry peak bodies	
21 – 29 July 2020	Emails – processing application to access part of available offset amount under Voluntary Surrender Agreement, for a lease variation charge.	Croatia Deakin Soccer Club	Voluntary surrender of gaming machine authorisations – Offset amounts – Access application Offset amount access application – Notice of Approval
3 August 2020	Letter – DSSF – response to query regarding required contributions	Canberra Community Clubs	ACT Club Industry Diversification Support Analysis – Findings and Recommendations – June 2018
13 August 2020	Email – notification regarding GST and voluntary surrender agreements	Club licensees party to voluntary surrender agreements with the Territory	Invoice Template – GST Component on Total Offset Amount

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QUESTION TIME BRIEF

Review of Community Contribution Scheme

Meetings

Date	Government Attendee	Club Organisation
05/11/18	JACS	Eastlake Football Club
06/06/19	JACS	Belconnen Soccer Club
06/06/19	JACS	Eastlake Football Club
11/06/19	JACS	Ainslie Football Club
12/06/19	JACS	Canberra Labor Club
17/06/19	JACS	Vikings
19/06/19	JACS	ClubsACT
05/02/20	JACS/Access Canberra	Labor Club
11/02/20	JACS/Access Canberra	Raiders

Consultation Activity

Date	Document	Club Organisations	Attachment
17 July 2018	Letter – CC Options Paper. *Consultation sought 17/7/18 to 13/8/18*	All club licensees	Link to Options Paper - Maximising the Benefits of the Community Contributions Scheme
31 October 2018	Email – announcing reforms, seeking comments on exposure draft regulation. *Consultation period 31/10/18 to 30/11/18.*	All club licensees and industry groups	Community Contributions Fact Sheet What's Next Fact Sheet Better Regulatory Tools Fact Sheet
4 June 2019	Email – advising proposed changes to exposure draft regulation, seeking feedback. *Consultation period not defined.*	Industry participants who provided feedback on exposure draft regulation.	Factsheets – Update on the Community Contributions Reforms: Overview Maintenance Costs Defining Professional Sport In-kind Contributions Individual Benefits and Specific Exclusions
25 September 2019	Email – ACT Government's guidelines for the community contribution scheme	All club licensees and industry groups	Community Contribution Scheme Guidelines
2 October 2019	Email –copy of the ACT Government's community contribution scheme summary brochure	All club licensees and industry groups	Community Contribution Scheme Brochure
3 February 2020	Email –update on proposed reforms.	All club licensees and club industry peak bodies	Report – Gaming Machine Tax Rebate Statutory Review

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2 April 2020	Email –notification of passage of the *Gaming Machine Amendment Act 2020* reforms to community contributions shortfall tax rates and reporting requirements.	All club licensees and club industry peak bodies	

Gambling Harm Reduction Reforms

Meetings

Date	Government Attendee	Club Organisation
24/05/19	JACS	Canberra Community Clubs
7/11/19	JACS	Various club Gambling Contact Officers
18/12/19	JACS	Canberra Community Clubs
25/02/20	JACS/Access Canberra	Canberra Community Clubs

Consultation Activity

Date	Document	Club Organisations	Attachment
21 August 2017	Email – invitation to ACT Government's Third Gaming Machine Harm Minimisation Roundtable	Stakeholders including gambling harm experts	
15 September 2017	Gaming Machine Harm Minimisation Roundtable	Stakeholders including gambling harm experts	Agenda papers
3 November 2017	Letter – outcomes of Gaming Machine Harm Minimisation Roundtable	Stakeholders including gambling harm experts	
10 November 2017	Gaming Machine Club Workers Harm Minimisation Roundtable	Club industry workers	
19 August 2018	Email seeking input on gambling harm reduction reforms. *Consultation period not defined.*	Licensees and stakeholders including gambling harm experts	
7 September 2018	Email – invitation to ACT Government's Third Gaming Machine Harm Minimisation Roundtable	Stakeholders including gambling harm experts	
28 September 2018	Gaming Machine Harm Minimisation Roundtable.	Stakeholders including gambling harm experts	Agenda papers – Strengthening the Code of Practice Training Self Exclusion Scheme Future Reform Opportunities

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5 October 2018	Recap Roundtable, seeking comments. *Consultation to 10/10/18.*	Roundtable participants	Agenda papers – Strengthening the Code of Practice Training Self Exclusion Scheme Future Reform Opportunities
21 December 2018	Email – seeking feedback on exposure draft regulation. *Consultation period not defined.*	Roundtable participants	Summary of proposed reforms to the Code of Practice Gambling and Racing Control (Code of Practice) Amendment Regulation 2018 – exposure draft
7 March 2019	Email – seeking feedback on proposed reforms. *Consultation to 15/3/19.*	Roundtable participants	Summary of proposed reforms to the Code of Practice Gambling and Racing Control (Code of Practice) Amendment Regulation 2018 – exposure draft
24 October 2019	Email - seeking feedback on proposed reforms.	All club licensees, industry groups, roundtable participants and Stakeholders including gambling harm experts and community groups	Summary of proposed reforms to the Code of Practice Gambling and Racing Control (Code of Practice) Amendment Regulation 2019 – exposure draft
19 December 2019	Email – acknowledging feedback received and providing update on progress of reforms	All club licensees, industry groups, roundtable participants and Stakeholders including gambling harm experts and community groups	
19 December 2019	Letter – response to Club Presidents' Forum attendees – commitment to further stakeholder consultation on how best to deliver gambling harm reduction measures	All Club Presidents' Forum attendees	
10 and 13 July 2020	Letter – in advance of Club Presidents' Forum – A-G interest in hearing about club measures to reduce gambling harm when gaming areas reopen after COVID-19 closures	All Club Presidents' Forum attendees	
6 August 2020	Letter – after Club Presidents' Forum – key		Meeting summary – 21 July 2020

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	messages, concerns and ideas shared. Information about planning review included. Indication that heavy lifing in reform is over. A-G interest in how COVID-safe measures might work to support self-exclusion. Clubs to contact A-G's office if at risk of closure due to COVID-19.		Letter with meeting outcomes of 31 October 2019 Meeting summary – 31 October 2019

Gaming Machine Tax Rebate

Consultation Activity

Date	Document	Club Organisations	Attachment
23 September 2019	Email – Statutory review of the gaming machine tax rebate - Issues Paper. *Consultation sought 23/9/19 to 7/10/19 (extended to 9/10/19.*	All club licensees, industry groups and stakeholders including gambling harm experts	Issues Paper – Gaming Machine Tax Rebate Statutory Review
29 November 2019	Email – statutory review of the gaming machine tax rebate – Report, setting out the Government's position on the rebate.	All club licensees, industry groups and stakeholders including gambling harm experts	Report – Gaming Machine Tax Rebate Statutory Review
3 February 2020	Email – providing update on proposed reforms.	All club licensees and club industry peak bodies	Report – Gaming Machine Tax Rebate Statutory Review
2 April 2020	Email – providing notification of passage of the *Gaming Machine Amendment Act 2020* reforms to the gaming machine tax rebate.	All club licensees and club industry peak bodies	

Liquor Licensing Fee Review for Small/Medium Clubs

Consultation Activity

Date	Document	Club Organisations	Attachment
7 February 2020	Email – seeking input: review of liquor licensing fees for	Small/medium club	

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	small/medium clubs (*Supporting Local Community Clubs Policy*). *Consultation sought 7/2/20 to 19/2/20).*	small/medium club group licensees, club industry peak bodies, industry groups and community groups	

COVID-19 Support Measures

Consultation Activity

Date	Document	Club Organisations	Attachment
20 March 2020	Email – notification of Government's announcement of a support package for ACT clubs	All club licensees and club industry peak bodies	
24 March 2020	Email – seeking information to support the distribution of funds from the Diversification and Sustainability Support Fund	All club licensees and club industry peak bodies	
25 March 2020	Email – requesting that ACT clubs complete the supplier registration smart form	All club licensees and club industry peak bodies	Supplier registration smart form
27 March 2020	Email – seeking additional information to support the distribution of funds from the DSSF	All club licensees and club industry peak bodies	
2 April 2020	Email – providing notification of the passage of the *COVID-19 Emergency Response Act 2020*.	All club licensees and club industry peak bodies	
3 April 2020	Email – providing information on Government support measure – surrender of gaming machine authorisations.	All club licensees and club industry peak bodies	
Approx. 8 April – 7 May 2020	Emails – distribution of funds from the DSSF	Club licensees	
14 April 2020	Email – information about gaming machine authorisation surrender initiative.	All hotel licensees	
Approx. 15-30 April 2020	Telephone calls – raising awareness of gaming machine authorisation surrender initiative.	All club and hotel licensees	

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Approx. 22 April – 19 May 2020	Emails – discussing implementation of Government support measure – gaming machine tax refund.	Club licensees	
29 May 2020	Email – information about gaming machine authorisation surrender initiative. *Deadline for completed forms by 11:59pm 30 June 2020.*	All club and hotel licensees and club industry peak bodies	Gaming Machine Authorisation Surrender Incentive form; and Surrender of Licence, Authorisation Certificate or Authorisations – Notification form
15 June 2020	Email – information about – Emergency Community Purpose Contributions Declaration	All club licensees and club industry peak bodies	
22 June 2020	Email – reminder about gaming machine authorisation surrender initiative. *Deadline for completed forms by 11:59pm 30 June 2020.*	All club licensees and club industry peak bodies	Gaming Machine Authorisation Surrender Incentive form; and Surrender of Licence, Authorisation Certificate or Authorisations – Notification form
24-25 June 2020	Telephone calls - about gaming machine authorisation surrender initiative.	All club and hotel licensees	
23 June 2020 – 22 July 2020	Emails – processing surrenders of gaming machine authorisations	Club licensee applicants to surrender gaming machine authorisations	Template invoice for incentive payment
14 August 2020	Email – announcement of emergency community purpose contribution declaration for local live performance industry	Club licensees	
19 August 2020	Emails – seeking feedback on draft emergency community purpose contribution declaration for local live performance industry	Club industry peak bodies and club licensees	Draft Gaming Machine (Emergency Community Purpose Contribution – Local Live Performance Industry) Declaration 2020
31 August 2020	Email – notification of extension of availability of the ACT Government *COVID-19 Economic Survival Package – Gaming Machine Authorisation Surrender Incentive*	All club and hotel licensees and club industry peak bodies	Access Canberra Notification Form for Surrender of Authorisations; and COVID-19 Economic Survival Package – Gaming Machine Authorisation Surrender Incentive Extension form
31 August 2020	Email – notification of extension of permitted uses for incentive payments under the ACT Government	Club licensees that had previously participated in	

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	COVID-19 Economic Survival Package – Gaming Machine Authorisation Surrender Incentive	the *COVID-19 Surrender Incentive*	
18 September 2020	Email – information about – Emergency Community Purpose Contributions – Local Live Performance Industry Declaration 2020	All club licensees and club industry peak bodies	*Gaming Machine (Emergency Community Purpose Contribution – Local Live Performance Industry) Declaration 2020*
25 September – 9 November 2020	Emails – processing surrender of gaming machine authorisations	Club licensee applicant to surrender gaming machine authorisations	Access Canberra Notification Form for Surrender of Authorisations; and COVID-19 Economic Survival Package – Gaming Machine Authorisation Surrender Incentive Extension form Template invoice for incentive payment

QUESTION TIME BRIEF

MIN:2020/000095-089

Portfolio/s: Special Minister of State

Attorney-General

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 MOU provides a range of economic and social benefits for the Territory, and the funding provided to the Racing Clubs is intended to contribute to the development of a well-managed, well-regulated and sustainable industry that works to ensure the ongoing welfare of its horses.
- In exchange for the Government's support under the MoU, the Racing Clubs agreed to meet a range of expectations regarding industry management, including animal welfare obligations. The MoU also expresses the Racing Clubs' commitment to adopt and participate in a retraining scheme and to cover costs associated with retraining and rehoming suitable horses following their retirement from racing.
- The Racing Clubs have agreed to maintain strong adherence to the Australian Rules of Racing and Local Rules of Racing, which include a range of provisions aimed at ensuring retired racing horses' ongoing welfare.

The Assembly e-petition

- I am aware of the e-petition 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.

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Contact Officer name:	Danielle Perks	Ext:75192
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- 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' commitment to animal welfare.

QUESTION TIME BRIEF

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, indexaction 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"*.

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QUESTION TIME BRIEF

MIN:2020/000090-091

Portfolio/s: Attorney-General

Economic Development

How the ACT Liquor Act compares to NSW changes

Talking points:

- The sale and supply of liquor in the ACT is regulated under the *Liquor Act 2010* and the *Liquor Regulation 2010*. Decision-making under the Act must have regard to the harm minimisation and community safety principles, which are listed under section 10 of the Act.
- The ACT applies a risk-based liquor licensing fee framework that links annual fees to three identified risk factors to create a consistent, scalable and transparent fee framework that reflects the relative risk of alcohol-related harms associated with particular types of licensed premises, while maintaining a vibrant ACT nightlife and associated economic benefits.
- In the ACT, annual liquor licence fees are determined on the basis of:
    - the class/subclass of the licence (i.e. the type of venue that will be operated under the licence);
    - the maximum permitted occupancy loading for the venue (i.e., the density of a venue, or how many people can be in a venue); and
    - the venue's trading hours (license times, i.e., how late they serve liquor).
- The ACT framework does not take a liquor licensee's compliance history into account when determining the licensing fees that the licensee must pay.
- The ACT liquor licensing fee framework considers the costs associated with regulatory and police enforcement at licensed premises, and alcohol-related anti-social or violent behaviour.
- Some liquor licensees have raised that the ACT's fees are significantly higher than licence fees in NSW, and that this is inequitable and inconsistent. However, the fee frameworks of the ACT and NSW are not directly comparable:
    - While both jurisdictions operate risk-based licensing fee frameworks, NSW's liquor licensing fee framework has a significant compliance history-based component. Base fees for NSW liquor licences are generally lower than those applying to the equivalent licence type under the ACT framework. However, if enforcement action is taken against a licensee, a compliance risk loading is added to their annual fee, making that fee significantly higher than the fee for the equivalent licence type in the ACT.
- The *Liquor Amendment (24-hour Economy) Bill 2020* (the Bill) was passed by the NSW Parliament on 17 November 2020. This is an omnibus bill that includes a range

of amendments to liquor, gaming and planning-related legislation. The Bill amends the *Liquor Act 2007* (NSW) and *Liquor Regulation 2018* (NSW) to:

- replace existing sanctions schemes and disciplinary systems with an integrated demerit points and incentives scheme;
- provide for cumulative impact assessments;
- regulate same day deliveries of liquor; and
- make miscellaneous amendments of an administrative or minor nature.

- Provisions of this nature do not exist in the *Liquor Act 2010* or *Liquor Regulation 2010* (ACT). Due to inherent differences between the ACT and NSW liquor licensing fee frameworks, the integrated demerit points and incentives scheme and cumulative impact assessment framework introduced in NSW would not be easily subsumed into the current ACT framework. Significant legislative and regulatory reform would be required to introduce similar systems in the ACT.
- The NSW *Liquor Amendment (24-hour Economy) Bill 2020* was the subject of a significant and extensive consultation process. In considering any similar reform proposals, the ACT would also need to undertake stakeholder consultation to ensure that any such proposals are suitable for our jurisdiction.

Key Information

- The table below illustrates scalability of licence fees under the ACT framework:

Licence class	Occupancy loading of 80 or less trading at standard licence times[1]	Occupancy loading of 80 or less trading until 5.00 am	Occupancy loading of 350 or more trading at standard licenced times	Occupancy loading of 350 or more trading until 5.00 am
Nightclub on licence	$3,363.00	$7,473.00	$8,969.00	$31,404.00
Bar general licence/ club licence	$2,240.00	$4,981.00	$5,977.00	$20,935.00
Restaurant and café on licence	$1,117.00	$2,488.00	$2,986.00	$10,465.00

[1] *Standard license times*: no later than 12.00 am.

- While a nightclub on licence has the highest 'base' annual fee of the three licence classes, a nightclub on licence with a small occupancy loading, trading at standard licence times will pay less than a restaurant/café licence with a large occupancy loading and trading until 5.00 am.
- Under the NSW liquor licensing fees framework, all licensees pay a base fee (which varies according to licence type). Licensees trading after midnight also pay a trading hours risk loading. Compliance history risk loadings are triggered where enforcement action for a liquor-related offence has been taken against a licensee within the previous 12 months. If compliance history loadings are engaged, licensees will also be required to pay an additional patron capacity loading and location risk loading (location risk loading is only applicable to Sydney CBD and Kings Cross-based venues).
- For example, a club licensee in Queanbeyan would generally be required to pay a base annual fee of $552.00. However, if compliance history risk loadings are engaged, the annual fee payable by that licensee would increase to up to $19,252.00.

Liquor Amendment (24-hour Economy) Bill 2020

Integrated demerit points and incentives scheme

- The *Liquor Amendment (24-hour Economy) Bill 2020* (NSW) introduces single, integrated system based on demerit points. The new system seeks to reward and incentivise well-run venues. Venues that maintain a clear record with no demerit points will be entitled to discounts on their annual liquor licence fees. Venues where demerit points have been incurred or imposed will not be eligible for the discount and will have to pay additional licence fees as part of the pre-existing annual compliance risk loadings.
- As detailed above, the ACT's current licensing fee framework links fees to three identified risk factors. Licensed venues' history of compliance with the framework is not taken into account when determining the licensing fees that licensees must pay. The ACT framework aims to reflect the relative risk of alcohol-related harms associated with types of licensed premises, while maintaining a vibrant ACT nightlife and associated economic benefits.

Cumulative impact assessments

- The *Liquor Amendment (24-hour Economy) Bill 2020* (NSW) introduces a new framework for issuing cumulative impact assessments.
- The framework is intended to help manage the density of licensed premises in areas of concern and aims to address related cumulative impacts that may arise in the community, including the risks of alcohol-related violence and antisocial behaviour.

- The NSW Bill empowers the Independent Liquor & Gaming Authority to publicly issue a cumulative impact assessment if, due to the existing issues or risks, it considers that granting further licenses or late-night trading in that area is likely to be inconsistent with its existing duty under the *Liquor Act 2007* (NSW) to ensure community wellbeing.
- Issuing a cumulative impact assessment will create a strong presumption against the Authority granting applications for new licenses or improving more late-night trading in any identified cumulative impact areas, but the Authority is not automatically prevented from approving these applications.
- The ACT Liquor Act and Liquor Regulation do not contemplate a framework for cumulative impact assessments.

Regulation of same-day liquor deliveries

- The *Liquor Amendment (24-hour Economy) Bill 2020* (NSW) introduces a range of restrictions on same-day liquor deliveries, including:
    - interstate liquor licensees (including ACT liquor licensees) will be required to hold a NSW liquor licence if delivering alcohol stored in NSW to NSW residents on the same day that the order is placed;
    - same-day delivery providers must not make a same-day delivery, or permit their employees/agents to make a same-day delivery, unless the customer produces evidence of their identity and age;
    - same-day deliveries must not be made after midnight (or 11pm on a Sunday);
    - same-day alcohol deliveries must not be left unattended;
    - same-day alcohol must not be delivered to an intoxicated person;
    - all people making same-day deliveries must complete responsible supply of alcohol training (unlike RSA training, a specific course is not prescribed, allowing industry to create its own training courses); and
    - customers must be able to self-exclude from receiving same-day alcohol deliveries.
- The ACT Liquor Act does not expressly contemplate online liquor sales and same-day deliveries. It includes a range of offences relating to the supply of liquor to children, young people and intoxicated people and supply without a current Responsible Service of Alcohol (RSA) certificate. However, these offence provisions currently only capture conduct at licensed premises and may not apply to online liquor sales, where the supply occurs away from the licensed premises.

- Access Canberra (Licensing and Registrations) represents the ACT on an inter-jurisdictional working group examining options for policy reform, chaired by Liquor & Gaming NSW, and at the Australasian Liquor Licensing Authorities Forum (ALLAF). ALLAF is considering jurisdictions' regulation of online liquor sales and aims to facilitate consistency. The COVID-19 public health emergency has impacted both forums and the groups have not met for some time.
- JACS and Access Canberra have previously recommended that any reform in relation to online liquor sales should be informed by the work undertaken by these interjurisdictional working groups. However, most Australian jurisdictions have now moved ahead and are pursuing their own policy reforms in relation to online liquor sales and delivery.

Miscellaneous amendments

- The *Liquor Amendment (24-hour Economy) Bill 2020* (NSW) automatically removes certain licence conditions that limit music and performance. This includes restrictions on the genre of music that may be played or performed, the number of musicians on stage, or the types of instruments used.
    - These types of restrictions do not exist in the ACT. Licensed premises must abide by the applicable noise standards. Noise is regulated by the *Environment Protection Act 1997* and the *Environment Protection Regulation 2005*, which aim to protect people from undue noise while facilitating business and social activities.
- The *Liquor Amendment (24-hour Economy) Bill 2020* (NSW) enables small bars to offer family-orientated and diverse services for customers. Small bars that regularly provide meals in seated areas from their opening time until 10pm will be permitted to have minors in the company of a responsible adult during those times.
    - This is not an issue in the ACT. Under the ACT Liquor Act, areas within licensed premises can be designated 'adults only areas'. It is an offence for a child or young person to be in an adults-only area unless they are in the care of an adult (parent or guardian etc.).
- The *Liquor Amendment (24-hour Economy) Bill 2020* (NSW) streamlines the application process for the low-risk small bar licence by introducing an interim small bar authorisation, to reduce the level of public consultation required.
    - Under the ACT Liquor Act, a public consultation period of 30 days is required when an application is made for a new liquor licence.

Background Information

ACT liquor licensing fees framework

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:76244
Contact Officer name:	Danielle Perks	Ext:75192
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000090-091	

- The ACT's current liquor licensing fee framework was introduced in 2010-11 as part of a significant package of reforms.
- The risk-based licence fee framework applied under the Act aims to reflect the relative risk of alcohol-related harms associated with particular types of licensed premises, while maintaining a vibrant ACT nightlife and associated economic benefits.
- The framework drew on ACT Policing data that allowed a comparison of alcohol-related incidents at restaurants and cafes, clubs, bar and taverns, and nightclubs. The data showed that the highest number of alcohol-related incidents occurred at nightclubs, followed by clubs, bars and taverns and, after that, restaurants and cafes. The data also showed that the majority of alcohol-related incidents occurred at larger venues (61 percent of incidents occurred at venues with occupancy loadings of more than 350 people) and during late-night trading (80 percent of incidents occurred at venues trading to 4.00 am or 5.00 am).
- The ACT Government was clear, in establishing the fee framework, that a factor in fee levels was the cost associated with regulatory and police enforcement associated with licensed premises and alcohol-related anti-social or violent behaviour. In particular, the reforms introducing the new framework were accompanied by the establishment of an additional ACT Policing capability. ACT liquor licensing fees support the cost of ACT Policing's Territory Targeting Team (formerly known as the Regional Targeting Team), which enforces the ACT's liquor laws and provides policing in the ACT's nightlife precincts.
- The effectiveness of the 2010 liquor reforms was the subject of review in 2013 and 2016. The first review was undertaken by ACIL Allen Consulting and concluded that:
    - most stakeholders consider the reforms have made a positive contribution to community safety; and
    - the adoption of the risk-based approach was a positive step.
- The second consultative review presented a series of proposals for further reforms in the *Building on Liquor Reform: White Paper*. The White paper retained the risk-based license fee framework and delivered a 25 percent annual fee reduction for licensees with an occupancy loading of 150 people or less and licensed times of 2am or earlier, to encourage small bars and restaurants.
- A further review of liquor licensing fees for small and medium clubs was undertaken in 2019-20. Following this review the Chief Minister agreed to a 25 percent reduction in annual fees for club licensees trading within standard license times and with occupancy loadings of over 150 people. This reduction took effect under a the *Liquor (Fees) Determination for 2020*, noting that all on-licence liquor fees are currently waived as part of the Government's COVID emergency support measures.

- The ACT's liquor licence fee framework does not appear to have had an adverse effect on the size of the industry. The number of on-premises licensees in the ACT has increased from 446 in April 2011 to the current figure of 563.

Liquor Advisory Board

- The Liquor Advisory Board (the Board) is established under section 215 of the Act to provide advice to the Minister on matters associated with the Act, including measures that support the harm minimisation and community safety principles. Its members represent a broad range of liquor stakeholder groups, including government, industry, and community organisations.
- Section 218 of the Act requires that the Board must meet at least twice each year. The Board met three times in 2020 and its next meeting is currently scheduled for 12 November 2020.

QUESTION TIME BRIEF

MIN:2020/000095-028

Portfolio/s: Attorney-General

ISSUE: RESOURCING OF MAGISTRATES AND CORONER'S COURTS

Talking points:

- The ACT Government is committed to providing the ACT Magistrates Court with the resources it needs to meet increasing demand.

Recent Magistrate appointments

- Magistrate Bernadette Boss has taken up a temporary 12-month appointment with the Commonwealth in the role of interim National Commissioner for Defence and Veteran Suicide Prevention. Dr Boss commenced in the role on 16 November 2020. I would like to congratulate Dr Boss on this significant appointment.
- To cover Dr Boss' 12-month absence from the Magistrates Court, a new Special Magistrate will be appointed. The appointment process is currently underway and will be finalised shortly.
- Ms Louise Taylor has been sitting as the Territory's eighth full-time resident magistrate since 10 September 2018. This appointment supports the efficiency of the justice system and the timeliness of proceedings in the Magistrates Court.
- In addition to resourcing the new Magistrate position, in 2018-19 Legal Aid ACT received an additional $1.297 million over four years and the Director of Public Prosecutions (DPP) received $987,000 for additional staff to support the increased capacity of the Magistrates Court.

Dedicated Coroner

- Decisions about the organisation of the Magistrates and Coroner's Court, and how resources are allocated for coronial hearings, are ultimately a matter for the Chief Magistrate.
- The Government is conscious of the benefits that could come from building specialist coronial expertise among the Magistrates who all hold an active coronial case load.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-028	

- The Government is also committed to exploring options for establishing full-time coronial resources to help reduce delays in the inquiry process and allow more focus for developing and trialing therapeutic and restorative practices in the coronial process.
- The Government is actively considering opportunities to integrate restorative practices into the coronial process, and enhance the operation of the Coroner's court.
- The *Coroners Amendment Bill 2020* was passed in the Assembly in July 2020. The Bill amends the *Coroners Act 1997* to enhance our framework to better respond to the justice needs of families engaging in the coronial system and to make it easier for the Coroner's Court to implement restorative approaches in its daily practice.
- The new Family Liaison Officer role commenced in the Coroner's Court on 25 June 2020. The role is critical in providing support to families and friends of loved ones who have passed, as they progress through the coronial system.

Dedicated full time ACT Forensic Pathologist

- The 2018-19 Budget also provided $1.9 million over four years for the recruitment of a resident full-time ACT Forensic Pathologist which will ensure efficient and dedicated provision of pathology services to support the Coroner's Court.

Key Information

Full-time dedicated Coroners Court

- The Parliamentary and Governming Agreement for the 10th Legislative Assembly provides that an Executive reform priority is to '*Explore the establishment of a dedicated full time Coroners Court'* (Appendix 2, Executive Reform no. 5).

Operational issues

- COVID-19 led to a range of measures being implemented by the ACT Courts and Tribunal to support social distancing and reduce the spread of the virus. Where feasible, essential court and tribunal operations continued by using a range of technologies such as video and telephone conferencing.
- The pandemic led to a slowing of the court and tribunal operations and a slowing of finalisation rates. The Chief Magistrate has publicly stated that a significant backlog has accumulated which will take many months to address. Funding has been provided to assist the Magistrates Court with reducing this backlog.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-028	

QUESTION TIME BRIEF

Background Information

Recent Magistrate appointments

- Magistrate James Stewart agreed to work full-time for a 12 month period commencing 1 August 2019 until 31 July 2020. A further agreement was recently finalised for Magistrate Stewart to continue full-time work from 1 August 2020 to 31 December 2020. This extension will support the Court to address the backlog of matters caused by the COVID-19 pandemic.
- Ms Margaret Hunter OAM was re-appointed as a Special Magistrate for a further year from January 2020 to support the Court. This appointment was recently extended and will now end on 28 February 2021. This extension was requested by the Chief Magistrate, in order to allow Ms Hunter to finalise a significant matter over which she is currently presiding.
- Magistrate Boss has been engaged by the Commonwealth for appointment as interim National Commissioner for Defence and Veteran Suicide Prevention for a term of 12 months. She commenced in the role on 16 November 2020. An appointment process for a Special Magistrate is underway to backfill Dr Boss' absence at the Court. The appointment is scheduled to be finalised before 11 January 2021, as requested by the Chief Magistrate.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-028	

QUESTION TIME BRIEF

MIN:2020/000095-045

Portfolio/s: Attorney-General

ISSUE: REFORMS TO THE OPERATION OF THE CORONER'S COURT

Talking points:

- The Government is focused on improving the coronial system to ensure that cases are finalised as quickly and as sensitively as possible and that the benefits to the community of coronial recommendations for public health and safety improvements are realised effectively.
- Coronial reform is part of a broader initiative to build Canberra as a Restorative City – one where we value relationships, treat each other with care and respect, and seek to solve problems collectively.
- The 2018-19 Budget provided $1.9 million over four years for the recruitment of a resident full-time ACT Forensic Pathologist. This will support the timely provision of manner and cause of death information to expedite the release of the deceased to their family and the making of findings by the Coroner.
- The 2018-19 Budget also included $3.1 million in funding over the next four years for an eighth full time resident magistrate.

<u>Improvements to support families</u>

- The Government is continuing to consider reforms to improve the accessibility, timeliness and transparency of the coronial process for families involved by building restorative practices into the coronial system. These reforms will help to better meet the justice needs of families, affected people and the community through the coronial process.
- A forum was held on 19 November 2019 which reflected upon the experiences of families who had engaged with the coronial system, and explored opportunities for restorative coronial reform, in alignment with the recommendations of the LRAC Inquiry into Canberra as a Restorative City. I would like to acknowledge and thank the families who participated in the forum and courageously shared their stories. You have my commitment, and the Government's commitment, that this work will continue.

Cleared as complete and accurate:	27/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext: 71764
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/0000995-045	

QUESTION TIME BRIEF

- I would also like to acknowledge and thank the Coroner's Court for their willingness to engage in this conversation. The Government recognises that work is ongoing within the Coroner's Court to support families experiencing the coronial process, and is committed to working with the Court to explore prospects for a more restorative coronial system.
- In July 2020, the Legislative Assembly passed the Coroners Amendment Bill 2020 which is part of a package of reforms to better respond to the justice needs of families engaging with the coronial system and to make it easier for the Coroners Court to implement restorative approaches in its daily practices.
- Feedback from families with lived experience in the coronial system significantly informed the amendements to the Coroners Act, which will commence in early 2021.
- A new Family Liaison Officer role commenced in the Coroner's Court on 25 June 2020. The role is critical in providing support to families and friends of loved ones who have passed, as they progress through the coronial system.

Key Information

Full-time dedicated Coroners Court

- The Parliamentary and Governming Agreement for the 10th Legislative Assembly provides that an Executive reform priority is to 'Explore the establishment of a dedicated full time Coroners Court' (Appendix 2, Executive Reform no. 5). This is under active consideration.

Background Information

Law Reform Advisory Council (LRAC) Report

- The LRAC report, *Canberra – Becoming a Restorative City,* recommended that restorative practices be trialled within the coronial system. LRAC's report was released on the Justice and Community Safety Directorate's (JACS) website on 15 November 2019, as a part of the launch of the 'Canberra as a Restorative City' website. The website includes a vision document about Canberra as a Restorative City initiative, which notes coronial reform as a priority.
- Several initiatives are being progressed as part of the Restorative City initiative to strengthen the use of restorative practice in the Coroners Court, including:
    - Developing Ministerial guidelines for Government responses to coronial reports to promote transparent, respectful, and sensitive engagement between families and coronial staff during the preparation of Government responses.
    - Exploring the use of restorative conferencing to complement current and completed coronial inquiries.

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Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext: 71764
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/0000995-045	

- Developing information materials to help bereaved families navigate the coronial system.
- Facilitating discussions between religious and cultural leaders in the ACT and Coroners, Coroners Court staff and Forensic Medicine Centre staff on different practices around death, autopsy, and burial.
- Supporting opportunities for Coroners to discuss restorative approaches with colleagues across jurisdictions.

Restorative coronial legislative reform

- The Justice and Community Safety Legislation Amendment Bill 2019 (JACS Bill), passed in June 2019, made a number of amendments which highlight the Government's commitment to accountability and transparency in the coronial system. These amendments clarify that the Judicial Council can receive and examine complaints about a magistrate performing the coronial role and require a government response to be presented to the Legislative Assembly following the release of coronial findings which identify matters of public safety.
- The Coroners Amendment Bill 2020 was passed in the Assembly on Thursday 23 July 2020. The reforms commence on 29 January 2021. Implementation work by the ACT Courts and Tribunal is scheduled to be undertaken in December 2020 and January 2021.

Family Liaison Officer (FLO)

- The trial of the FLO position in the Coroners Court commenced on 25 June 2020, with the recruitment of Ms Corinne Vale to the role. The role is currently funded up to December 2021.

National Commissioner for Defence and Veteran Suicide Prevention

- The ACT is participating in national level discussions led by the Commonwealth Attorney-General's Department about the establishment of a National Commissioner for Defence and Veteran Suicide Prevention, and National Coronial Centre. The ACT's coronial reform program is of interest to the Commonwealth as a key focus of the Commissioner's role will be engagement with affected families using restorative and trauma-informed principles.
- ACT Magistrate, Dr Bernadette Boss has been appointed as the interim National Commissioner for the Defence and Veteran Suicide Prevention for 12 months. Dr Boss commenced in this role on 16 November 2020.

Coronial Reform Group (CRG)

- Mrs Eunice Joliffe, Ms Rosslyn Williams, and Ms Ann Finlay (Fennessy) are collectively known as the Coronial Reform Group (CRG). Members of the CRG experienced the coronial system following the death of their sons, Mark Joliffe, Benjamin Williams and Paul Fennessy in 2010.
    - Mark Joliffe died on or about 15 February 2010. Coroner Dingwall's findings were delivered on 30 June 2015.
    - Benjamin Williams died on 28 September 2010. The Chief Coroner's findings were delivered on 17 October 2013.
    - Paul Fennessy died on 6 January 2010. Coroner Hunter's findings were delivered on 16 December 2016. The Health Minister's response to the Coroner's recommendations was tabled in the Legislative Assembly in August 2017.

Cleared as complete and accurate:	27/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext: 71764
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/0000995-045	

QUESTION TIME BRIEF

- The CRG was awarded the ACT's Mental Health Volunteer of the Year Award in 2018 for their work to support a more timely, supportive and effective coronial system and better lives for people affected by mental illness through service improvements.
- Ten family representatives attended the Restorative Coronial Reform forum on 19 November 2019.

Cleared as complete and accurate:	27/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Amie Gunawan	Ext: 71764
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/0000995-045	

QUESTION TIME BRIEF

MIN:2020/000095-018

Portfolio/s: Attorney-General

ISSUE: DRUG AND ALCOHOL COURT/DRUG AND ALCOHOL SENTENCING LIST

Talking points:

- The Government committed to establishing a Drug and Alcohol Court (DAC) in the Parliamentary Agreement for the 9th Assembly. The ACT DAC commenced operations on 3 December 2019.
- On 1 July 2020, former judge of the ACT Supreme Court, Justice Richard Refshauge was appointed as an Acting Judge to oversee the ACT's Drug and Alcohol Court, which is referred to by the Courts as the Drug and Alcohol Sentencing List (DASL).
- The first Drug and Alcohol Treatment Order (DATO) was made on 15 January 2020.
- The Sentencing list commenced with an intake of 10 participants and this will increase to up to 35 participants by June 2021.
- As of November 2020, there have been 44 referrals to the DAC, with 13 on Drug and Alcohol Treatment Orders and 10 currently undergoing assessment for suitability.
- The Sentencing List sits each Friday and as required on Monday and Wednesday mornings.
- The model is based on proposals that were developed by the DAC Supreme Court Working Group which was led by Justice John Burns and included representatives from key agencies.
- A wide range of community services including health, housing, treatment programs, counselling and mental health complement and support the DAC to achieve positive outcomes for offenders and the community.
- The DAC aims to deliver a range of outcomes including reduced offending, improved health outcomes, reduced incarceration rates and improved community safety.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Philippa Spence	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-018	

QUESTION TIME BRIEF

Purpose and nature of the DAC

- The ACT DAC operates in the jurisdiction of the Supreme Court. The fitout of the court room and urinalysis suite for the DAC were included as part of the Courts Building project.
- Offenders are carefully assessed for eligibility and suitability for DAC participation. Criteria include that they must have pleaded guilty to an eligible offence, and be dependent on alcohol or a controlled drug that substantially contributed to their offending.
- Their sentence of imprisonment (between one and four years) will be suspended.
- Participants have individualised treatment and sentence management plans that include intensive judicial supervision, frequent drug and alcohol urine and breath testing, and regular and ongoing contact with health and corrections staff.
- Case management is undertaken by both Health and ACT Corrective Services staff, with agencies working closely together to support the offender throughout the order.
- Justice Refshauge leads a team of representatives from various health and justice agencies to guide the participant through the DAC process.
- The DAC Team includes members from Canberra Health Services, ACT Corrective Services, the Director of Public Prosecutions, and Legal Aid ACT. Importantly, the Team may also include an Aboriginal and Torres Strait Islander Guidance Partner and policing and housing support as required.
- A scheme of rewards and sanctions supports compliance. Progress is rewarded, and breaches are sanctioned through a system of swift, certain and proportionate consequences. This sends a strong message about the consequences of continued criminal or antisocial conduct.
- The DAC deals with offences that relate to serious drug and alcohol use. It provides a unique response to a group of high risk and high need offenders in the form of an alternative to full-time imprisonment.

- The DAC will promote community safety and decrease the impact of criminal activity in the Territory by reducing the likelihood of drug dependant people resorting to offending behaviour, and particularly repeat offending.
- The evidence shows that drug courts are effective at achieving long-term behavioural change in offenders.

Participant requirements and cooperation

- An offender may be referred for consideration of eligibility for a DATO if they plead guilty to an eligible offence, if drugs and or alcohol was a factor in the commission of the offence and the offender is facing a sentence of one to four years.
- The offender will be assessed for eligibility and if eligible, will be referred for a suitability assessment. This involves judicial supervision, primary case management by Health staff in conjunction with Corrective Services staff and frequent drug testing or breath testing.
- The offender must give informed consent to be assessed for a Drug and Alcohol Treatment Order (DATO).
- Once an offender is sentenced to a DATO, the DAC Team manages the participant through targeted multidisciplinary treatment programs.
- All participants commence on phase one of the program. Progress through the three phases will depend on the participant and their progress on the DATO.
- Intensive supervision ensures that offenders are doing the right thing for themselves and for the community.
- By promoting the reintegration of eligible offenders into the community and taking a holistic approach to addressing key risk factors related to offending, the DAC can reduce recidivism.
- For example, when a DAC participant stops using drugs, and has stable housing and re-engages with their community, some of the risk factors for re-offending are lessened.

- This ultimately helps to reduce the burden on our health and justice systems caused by drug use and offending, and helps to maintain safety in the community.

- Drug courts in NSW, Queensland and Victoria have demonstrated the long-term cost-effectiveness of a therapeutic approach which is able to achieve continuing behavioural change.

Background Information

- The Parliamentary Agreement for the 9th Assembly committed to establishing a Drug and Alcohol Court and associated support programs as part of a goal to reduce recidivism by 25 percent by 2025.
- $6.83 million over 2.5 years was allocated to the DAC in the 2018-19 mid-year budget appropriation.
- Justice Richard Refshauge replaced Justice Loukas-Karlsson, who was temporarily overseeing the Drug and Alcohol Court following the resignation of former Acting Justice Lorraine Walker on 9 April 2020 as a result of the COVID-19 public health emergency and who had served in the role from 1 August 2019.

QUESTION TIME BRIEF

MIN:2020/000099-005

Portfolio/s: Chief Minister

Special Minister of State

Police and Emergency Services

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 welcomes the Australian Government's focus on strengthening the security of Australia's critical infrastructure.
- The ACT submitted feedback on the consultation paper released in August 2020 and remains engaged to progress these important 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.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Bren Burkevics	Ext: 78628
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000099-005	

QUESTION TIME BRIEF

- 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.
- The ACT welcomes the significant cyber security investment in the 2020-21 Federal Budget.
- 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.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Bren Burkevics	Ext: 78628
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000099-005	

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.
- The government remains ready as restrictions ease to host safe and enjoyable public events.
- We will continue to use CCTV, vehicle protection barriers and other measures 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 moreinformation.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Bren Burkevics	Ext: 78628
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000099-005	

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 toreduce 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.

QUESTION TIME BRIEF

- 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).

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Bren Burkevics	Ext: 78628
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000099-005	

QUESTION TIME BRIEF

MIN: 2020/000092-019

Portfolio: Minister for Police & Emergency Services

Attorney-General

ISSUE: CRIMINAL OUTLAW MOTORCYCLE GANG INCIDENTS

TALKING POINTS:

- The ACT Government and ACT Policing are committed to countering serious and organised crime by criminal gangs, and maintaining public safety.
- Taskforce Nemesis is focussed on combating criminal motorcycle gang behaviour in the ACT. The taskforce often collaborates across whole-of-government to create innovative strategies to disrupt criminal gang behaviour.
- In 2016, the ACT Government provided $6.4 million over four years for the expansion of Taskforce Nemesis to target organised crime syndicates including Criminal Motorcycle Gangs. This funding included eight staff: four investigators, two intelligence officers, one Forensic Accountant and an Investigative Assistant.
- In the 2018-19 Budget, ACT Government committed a further $1.594 million over four years to bolster the capability of Taskforce Nemesis in providing funding for one Forensic Accountant, one Surveillance Team Member and associated equipment and training.
- ACT Policing will continue to ensure an appropriate police response to target and disrupt those seeking to cause harm in our community.
    - ACT Policing is also in a unique position as it can call on specialist and surge capabilities from the broader AFP to meet changing operational environments.
- In 2017, the Federal Government provided funding to combat organised crime through the National Anti-Gangs Squad (NAGS). Taskforce Nemesis has an embedded NAGS member, enabling interoperability and liaising on matters of operational and strategic importance. NAGS bring together the resources and expertise of Federal and state/territory agencies to cooperate and share information to identify, target, disrupt and deter gang-related crime.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Sch 2, s2.2 (a)(ii)	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000092-019	

QUESTION TIME BRIEF

Recent operational activity

- On Thursday 19 November 2020, Taskforce Nemesis conducted a search warrant on a member of the Rebels Criminal Bikie Gang and seized approximately 300 grams of cocaine, cash, paraphernalia associated with the sale and supply of illicit substances, and two firearms.
- **Michael Wayne Clark, National President of the Nomads Criminal Bikie Gang,** was arrested during a joint ACT Policing/NSW Police operation on 19 August 2020.
    - On 20 August 2020 NSW Police successfully applied for his extradiction. He remains remanded in NSW and is expected to apply for bail in the NSW Supreme Court in December.
    - Mr Clark has been accused of supplying guns used in three shootings in the Bateman Bay area in 2019. Investigations are still ongoing in relation to ACT specific offences.
- The investigation into the death of **Comanchero Commander Pitasoni Ulavalu** at a Civic nightspot early on Sunday 19 July is ongoing. The investigation will include any links to Criminal Motorcycle Gang activity.
    - ACT Policing has charged one male with murder and five males with affray. Four defendants have been bailed with two remaining in custody.
    - One defendant is set to appear before court on 15 December 2020, with the remaining five defendants set to appear before court on January 12, 2021.

Operational successes

Taskforce Nemesis Criminal Motorcycle Gang related figures (at 22 Nov 20)	**2018**	**2019**	**2020**
Criminal gang members charged *(person may be charged on numerous occasions)*	27	37	21
Offences charged	78	85	48
Search warrants executed	100	37	12
Firearms seized	20	12	5

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Sch 2, s2.2 (a)(ii)	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000092-019	

QUESTION TIME BRIEF

- ACT Policing has established a whole-of-government interagency working group, with representatives from a number of local and Commonwealth government agencies to consider all aspects of criminal gang behaviour in the ACT. The group is based on the Commonwealth NAGS model that brings a whole-of-government approach to addressing this issue.
- An example of the results achieved through close collaboration with partner agencies to disrupt Criminal Motorcycle Gang activity was in August 2019 when Taskforce Nemesis and ACT Worksafe conducted a compliance operation at a building site. The formwork company at the building site was operated by the ACT chapter Commander of the Comanchero Motorcycle Gang. This operation resulted in the issuance of a compliance notice and ensured no employee of the company could work on a construction site until all compliance issues were rectified.
- The confiscation of criminal assets is an effective tool to assist in the prevention and disruption of serious and organised crime and prevents the reinvestment of illegally obtained wealth into criminal activity.
- It is anticipated additional agencies will be invited to future working groups to further drive Taskforce Nemesis' ambitions to disrupt Criminal Motorcycle Gang activities.

<u>OMCGs in Canberra</u>

- As at 19 November 2020:
    - There are four known Criminal Motorcycle Gangs, two of which have increasingly limited influence, operating in the ACT.
    - The total number of members associated with ACT chapters of these Criminal Motorcycle Gangs is estimated at approximately 30-40 people.
    - This is a decrease from the previously reported numbers of approximately 70 members in 2018-19 and is as a result of members being deported, imprisoned or fleeing insterstate.
- Criminal Motorcycle Gang membership has traditionally been relatively stable, however, changes to criminal gang membership in recent years highlight a shift towards more fluid concepts of membership.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Sch 2, s2.2 (a)(ii)	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000092-019	

QUESTION TIME BRIEF

- Serious and organised crime is not limited to openly-identifiable criminal gangs and ACT Policing will continue to proactively target, prosecute and disrupt those involved in serious and organised crime in the ACT - regardless of their individual affiliations.

Background information

- While 'patch-overs' have been known to occur from time to time, large numbers of patch overs have occurred in recent years. These changes to club numbers can affect the structure and strength of a Criminal Motorcylce Gang, and has had a significant impact upon the strength and rivalry between Criminal Motorcycle Gangs in the ACT.
- Appropriate legislative frameworks are an essential component to enable police to effectively disrupt and dismantle criminal organisations. A number of legislative amendments have been made to increase the tools available to police and enhance the response capacity of police officers. Most recently, these have included legislation passed on fortifications, drive-by shootings and crime scene powers.
- ACT Policing has had additional powers available since 2017 that have enhanced its ability to respond to and prosecute criminal gang-related acts of violence after the fact.
- Recent legislative amendments to help equip ACT Policing in combating criminal motorcycle gang activity has included:
    - Laws providing powers to remove fortification from dwellings;
    - Laws enabling police to establish crime scenes;
    - A tiered regime of affray offences;
    - Laws allowing police to apply to exclude individuals from working in certain industries or attending licensed premises.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Sch 2, s2.2 (a)(ii)	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000092-019	

QUESTION TIME BRIEF

MIN:2020/000095-025

Portfolio/s: Attorney-General

ISSUE: SERIOUS AND ORGANISED CRIME RESPONSE

Criminal gangs are involved in illegal activities across Australia, including serious drug offences, fraud and property crime, vehicle rebirthing, firearms offences, money laundering, extortion and serious assaults.

TALKING POINTS

- Countering serious and organised crime and maintaining public safety is a primary focus for the ACT Government.
- Outlaw motorcycle gangs (OMCGs) have been identified as having high involvement in serious criminal activities. A February 2020 report by the Australian Institute of Criminology found that violent and profit-motivated offending is common among members of OMCGs, and that there is evidence that joining an OMCG increases a person's propensity to commit crime.
- As at 19 November 2020, there are four known OMCGs operating in the ACT. The total number of members associated with the ACT chapters of these gangs is approximately 30-40 people. This is a decrease from previously reported numbers of approximately 70 members in 2018-2019 and is a result of members being deported, imprisoned or fleeing interstate.
- Between January 2019 and September 2020, in the ACT, 57 OMCG members were charged with a total of 124 offences. In this period, 46 search warrants were executed and 17 firearms seized.

Key Taskforce Nemesis figures (Criminal Motorcycle Gang related figures)	**2018**	**2019**	**2020***
Criminal gang members charged**	27	37	20
Offences charged	78	85	39
Search warrants executed	100	37	9
Firearms seized	20	12	5

**As of 30 September 2020*

***A person may be charged more than once in a year

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Stephanie Johns	Ext: 59908
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-025	

- The ACT Government is strongly committed to targeting, disrupting, and prosecuting organised criminal gang members and ensuring the safety of all Canberrans.
- ACT Policing'sTaskforce Nemesis continues to focus on operational and investigative responses to criminal gang activity. Through the Taskforce, ACT Policing continues to proactively disrupt criminal gang members to deter and detect criminal activity. The Government has provided continued investment to ensure that ACT Policing has the resources it needs to combat criminal gangs in the ACT.
- In the 2018-19 Budget, $1.6 million over four years was provided to Taskforce Nemesis. These resources fund two specialist officers – a forensic accountant and surveillance team member – to bolster the ability of the taskforce to combat organised crime, strip criminal wealth and improve surveillance capability to monitor the activity of criminal gangs.
- The 2019-20 Budget delivered a further $2.8 million over four years to the ACT Director of Public Prosecutions to assist with efforts to combat serious and organised crime including to strip criminals of their criminal profits.
- During the 2019-20 financial year, almost $1.5 million was forfeited to the Territory under the *Confiscation of Criminal Assets Act 2003*. These funds came from the seizure of cash, 16 motor vehicles and 6 real estate properties and mostly involved offenders convicted of serious drug offences. The funds will be used by the ACT Government to fund projects related to criminal justice activities, crime prevention and assistance to victims of crime.

<u>Recent legislative reform</u>

- The *Confiscation of Criminal Assets (Unexplained Wealth) Amendment Act 2020* was passed on 23 July 2020. The Act introduces an ACT-specific unexplained wealth scheme to more effectively prevent and investigate organised crime and target the criminal profits of organised crime groups.

- The new scheme complements existing confiscation of criminal assets laws in the ACT. The new unexplained wealth scheme allows the police and Director of Public Prosecutions (DPP) to intervene when there is a suspicion that part of a person's wealth was not lawfully acquired. The court must make an unexplained wealth order if it is satisfied that there are reasonable grounds to suspect that a person's total wealth exceeds the value of the person's wealth that was lawfully acquired and that the whole or any part of the person's wealth was derived from serious criminal activity.
- The unexplained wealth scheme allows ACT Policing and the DPP to more effectively target those involved in drug trafficking or other serious organised criminal activity and those masterminding or directing criminal activity at arms-length.
- The Commonwealth *Unexplained Wealth Legislation Amendment Act 2018* passed Parliament on 19 September 2018. The Act extends Commonwealth unexplained wealth orders to certain ACT offences.
- The *Crimes (Disrupting Criminal Gangs) Legislation Amendment Act 2019*, which was passed in November 2019, introduced a range of measures to improve public order and safety in the Territory including:
    - New tiered offences of serious affray;
    - Increased penalties for offences of fighting (section 391 of the *Crimes Act 1900*) and offensive behaviour (section 392 of the *Crimes Act 1900*);
    - Increased maximum penalties for specified offences committed in connection with a criminal group or by a person associated with a criminal group;
    - A civil exclusion order scheme under the *Liquor Act 2010* that allows the Chief Police Officer to apply to the court for an order to prohibit a certain person from entering or remaining on licensed premises for a stated period; and
    - A licence cancellation scheme under the *Liquor Act 2010* and the *Construction Occupations (Licensing) Act 2004* that allows the Chief Police Officer to make an application for the cancellation of a person's licence on the basis of their criminal activity.

- These measures address serious public safety concerns about the risk to community safety posed by organised crime.
- The *Crimes (Fortification Removal) Amendment Act 2017* commenced on 1 September 2018. The Act introduced provisions that allow the Chief Police Officer to apply to the Magistrates Court for an order that an occupier remove fortifications from their premises. The Act also introduces provisions which prohibit the establishment of fortifications on certain premises.
- These laws work to make the ACT a hostile environment for criminal gangs by preventing the establishment of fortified premises such as criminal gang club houses.
- The *Crimes (Police Powers and Firearms Offence) Amendment Act 2017* commenced on 8 December 2017. The Act introduced statutory crime scene powers to allow police officers to preserve evidence in a timely manner at crime scenes in both public and private places while taking the least restrictive approach to limiting a person's right to privacy.
- The Act also creates a new offence of 'drive by shooting' which deals with people shooting at a building, including a home, whether from a car or otherwise. The offence is punishable by a maximum of 10 years imprisonment.

Background

A review of the effectiveness of ACT policing powers to target, disrupt, investigate and prosecute criminal gang members in conjunction with a statutory review of the ACT crime scene powers was undertaken by Dr Terry Goldsworthy of Bond University in late 2019. The Report on this review was tabled in the Assembly on 20 February 2020. The Report highlights that the ACT Government has successfully implemented legislative responses to combat serious and organised crime to date, and that these legislative tools are effective and proportionate. The Report does not indicate a need for further significant legislative reform, other than an ACT-specific unexplained wealth scheme which has now been introduced.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Stephanie Johns	Ext: 59908
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-025	

QUESTION TIME BRIEF

MIN:2020/000095-058

Portfolio: Police & Emergency Services

ISSUE: ASSAULTS ON POLICE AND FRONTLINE COMMUNITY SERVICE PROVIDERS

Talking points:

- Police and frontline community service providers are regularly exposed to a risk of assault and injury as an unfortunate reality of their jobs.
- Assaults on police and emergency services personnel warrant a strong response from Government.
- The *Crimes (Protection of Frontline Community Service Providers) Amendment Act 2020* commenced on 10 June 2020. The Act creates a new offence specifically for assaults against frontline workers including:
    - Police officers;
    - Protective service officers and special protective service officers;
    - Corrections workers;
    - Paramedics
    - Firefighters and volunteer firefighters; and
    - Emergency services employees and volunteers.
- This new standalone offence sends a clear message that violence against workers providing critical frontline services will not be tolerated.
- Previously, offenders have been charged with common assault when an assault has been committed against a frontline worker. The new standalone offence will improve accountability by ensuring that the true nature and seriousness of the crime is described on a criminal record.
- The Amendment Act also creates new offences for driving at police and ramming police vehicles to send a clear signal that those who engage in this dangerous behaviour will be held to account.
- Emergency first responders are required to step forward to face risks that others are expected to step away from, and it is appropriate for the law to specifically reflect this and support them.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Stephanie Johns	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-058	

- The Government is also committed to ensuring a safe and healthy work environment through policies, procedures, and strategies to mitigate the risk of assault and injury. This includes training all of our emergency services personnel, to assist in identifying and managing potentially high risk situations.

Key Information

Background information

Prior to the passage of the The *Crimes (Protection of Frontline Community Service Providers) Amendment Bill 2020*, there were no specific ACT offences for assaulting police or emergency service workers while executing their duties.

All other jurisdictions in Australia have introduced specific offence provisions for assaulting police.

Between 30 June 2011 and 16 March 2020, ACT Policing recorded 374 instances of assaults upon police.

The Queensland Sentencing Advisory Council recently conducted a review of penalties for assaults on police and other emergency service workers, corrective services officers and other public officers. Terms of Reference were issued by the Queensland Attorney-General and Minister for Justice, the Honourable Yvette D'Ath MP in early December 2019. The Council publicly released the Final Report on 1 October 2020 (https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/657742/final-report-assault-public-officers.pdf).

QUESTION TIME BRIEF

MIN:2020/000095-048

Portfolio/s: Justice, Consumer Affairs & Road Safety and Minister for Police and Emergency Service

ISSUE: OUTSMART THE OFFENDER CAMPAIGN

Talking points:

- The bicycle theft campaign, 'Lock it or lose it' was launched on Friday 17 July 2020. ACT Government and ACT Policing have partnered with Pedal Power ACT to promote the messages of this campaign.
    - Lock it - don't leave your bike unsecured, whether you are at home, or out and about a secured bike is much harder to steal.
    - Use a heavy duty lock and fasten your wheels, make it hard work for your bike to be stolen.
    - Lock your frame and wheels to fixed objects like purpose-built bike racks.
    - Be smart about where you park. Park in places that are well lit and secure
- The ACT has some of the lowest property crime rates in Australia, but we need to remain vigilant because property crime can affect any one of us.
- The 'Outsmart the Offender' campaign supports the Government's Property Crime Prevention Strategy 2016-2020 which focuses on preventing crime from occurring by reducing opportunities for offenders to commit crime.
- The first theme for the campaign 'Motor Vehicle Theft' was launched in November 2019 through social media and radio advertising. The second theme 'Home Burglary' was released in December 2019 via social media only. The third theme 'Apartment Theft' was released in February 2020 via social media only.
- The final themes to be released are 'Tradie tool theft and Small Business Theft. These were delayed to keep communication channels clear for important health messages around COVID 19.

Cleared as complete and accurate:	29/09/2020	
Cleared by:	Executive Branch Manager	Ext: 62619
Contact Officer name:	Kym Copeman	Ext:53749
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Jennifer McNeill	
TRIM Ref:	MIN:2020/000095-048	

QUESTION TIME BRIEF

- The key messages are based on what our police officers have told us about the tactics offenders are using to steal cars and our valuables, and break into our homes and businesses.
- Our aim is to increase community awareness about how these crimes usually occur and the steps we can all take to 'outsmart offenders' and reduce our risk of becoming a victim to property crime.
- Ideally people wouldn't need to worry about becoming a victim of property crime, and our police officers do a great job at keeping Canberra safe, tracking down and arresting car thieves.
- However, we all have a role to play and can take steps to reduce the likelihood of our cars being broken into or stolen and our homes being burgled.

'Lock and hide to protect your ride' and 'Keep out a break in'

- Having your car stolen or your house burgled can be a huge inconvenience, cost you time and money, not to mention the stress it can cause for people.
- We know that often stolen cars are used to commit other crimes, so it is important to raise awareness about how cars are being stolen and what we can do to reduce the risk of it happening to us.
- While some offenders are resorting to breaking into houses to steal car keys, they also look for easy targets like open windows, unlocked doors and cars left running in the driveway.
- By keeping your car keys in a safe place, closing all your windows and locking your doors, you can 'outsmart the offender' by making it harder to steal your car. And don't tempt them by leaving valuables in your car either.
- Equally to discourage and 'keep out a break in' you should lock your doors and windows, keep valuables where no one would look, maintain your yard so there's nowhere to hide and get to know your neighbours.

Cleared as complete and accurate:	29/09/2020	
Cleared by:	Executive Branch Manager	Ext: 62619
Contact Officer name:	Kym Copeman	Ext:53749
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Jennifer McNeill	
TRIM Ref:	MIN:2020/000095-048	

QUESTION TIME BRIEF

‘Lock up, Cover up’

- Apartment buildings are just as vulnerable to break-ins and theft as other homes, so you need to ensure all doors, including balcony doors, are locked at all times.
- We know storage areas are a key target for offenders. By keeping your valuables covered up and using heavy duty locks you can ‘outsmart the offender’ by making it more difficult to identify items of value and make it harder for them to break the lock.
- Be aware of any suspicious people hovering around that may follow you into your building as you enter your complex, including the garage.

‘Lock it or Lose it’

- Hundreds of bicycles are stolen across Canberra every year. Bike thieves are often opportunistic, meaning that if a bike is unsecured and unattended, it could be gone in seconds.
- Common places bikes are stolen from are front yards, apartment balconies and car bike racks.
- To reduce the likelihood of having your bike stolen lock it – don’t leave your bike unsecured, whether at home or out and about. When locking it make sure to use a heavy duty lock and park it in places that are well lit and secure.

Key Information

- Overall the number of property offences in the ACT has decreased over the last three years since the Property Crime Prevention Strategy 2016-2020 was introduced.
- In 2018-19 there were 19,637 recorded property offences, which is 2,033 less than three years ago in 2015-16.
- After spiking in 2017-18, motor vehicle theft did decrease again in 2018-19, down from 1,486 to 1,224 offences.

Cleared as complete and accurate:	29/09/2020	
Cleared by:	Executive Branch Manager	Ext: 62619
Contact Officer name:	Kym Copeman	Ext:53749
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Jennifer McNeill	
TRIM Ref:	MIN:2020/000095-048	

QUESTION TIME BRIEF

Background Information

- The main challenge for the ACT in relation to property crime continues to be motor vehicle theft. While it is encouraging that motor vehicle theft decreased in the ACT 2018-19, we remain above the national rate.
- JACS and ACT Policing have been working collaboratively on this campaign which aims at improving community awareness about what people can do to safeguard their property.
- Neighbourhood Watch and Crimestoppers have partnered with us on the campaign to help promote the key messages. Pedal Power has partnered with ACT Government and ACT Policing to assist promoting the 'lock it or lose it' bicycle theft campaign.

Cleared as complete and accurate:	29/09/2020	
Cleared by:	Executive Branch Manager	Ext: 62619
Contact Officer name:	Kym Copeman	Ext:53749
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Jennifer McNeill	
TRIM Ref:	MIN:2020/000095-048	

QUESTION TIME BRIEF

MIN:2020/000095-050

Portfolio: Attorney-General

ISSUE: 2019-2028 ABORIGINAL AND TORRES STRAIT ISLANDER AGREEMENT/JUSTICE ACTION PLAN

Talking points:

- The Whole of Government *Aboriginal and Torres Strait Islander Agreement 2019-2028* represents a commitment by the ACT Government to recognise self-determination as a key platform to progress initiatives that are important to Aboriginal and Torres Strait Islander people.
- The Agreement enables Aboriginal and Torres Strait Islander peoples to exercise self-determination and to be able to contribute solutions to challenging and complex issues in our local community.
- The Agreement is a 10 year plan that sets the direction in Aboriginal and Torres Strait Islander affairs to ensure all stakeholders work together to deliver equitable outcomes for Aboriginal and Torres Strait Islander peoples in the ACT.

Justice Action Plan

- Under the terms of the Agreement, Directorates, including the Justice and Community Safety Directorate, have developed Action Plans with reportable actions aligned with the specific focus areas.
- The Justice Action Plan contains 10 Core Focus Areas and 20 'measures'.
- Key targets under the Justice Action Plan are to:
  - reduce the over-representation of Aboriginal and Torres Strait Islander people in the ACT criminal justice system;
  - increase the number of staff undertaking cultural competency training;
  - increase procurement from Aboriginal and Torres Strait Islander community organisations; and
  - deliver improved health outcomes for detainees in the Alexander Maconochie Centre /AMC.

Cleared as complete and accurate:	30/11/2020	
Cleared by:	Executive Branch Manager	Ext:51451
Contact Officer name:	Andrew McIntosh	Ext: 53715
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	MIN:2020/000095-050	

QUESTION TIME BRIEF

- Implementation of the Justice Action Plan, under the Agreement, is well underway.
- The Aboriginal and Torres Strait Islander Justice Caucus supports the implementation of the Justice Action Plan in a monitoring and oversight role.
- The Caucus provides an opportunity for Aboriginal and Torres Strait Islander people to discuss issues related to the Justice Action Plan and to support shared ownership by the local community of the ongoing development of the Agreement.
- Progress against the Action Plan was addressed in the October 2020 release of the Elected Body Hearings Report.
- Noting that COVID–19 restrictions have resulted in some impediments for the Justice and Community Safety Directorate in implementing measures under the Justice Action Plan, the Directorate, like all other Directorates, is now reviewing the Report from the Elected Body and recent impediments and is pushing for accelerated progress on the Justice Action Plan.
- Preparations are underway for an audit and acquittal process to be completed by end of 2020, to inform the development of a Phase One (extension) Plan by end of January 2021 and accelerated progress efforts against the Agreement.

Key Information

- The Justice Action Plan was developed in 2018 by a Steering Committee with Aboriginal and Torres Strait Islander representatives from across the Directorate and portfolio, including with:
    - JACS - ACT Corrective Services (ACTCS)
    - JACS - ACT Courts and Tribunals (ACTCT)
    - JACS - ACT Policing (ACTP)
    - CSD – Children and Young People Services (CYPS)
    - CSD – Victim Support ACT
- The Steering Committee focused on identifying specific, measurable, achievable and relevant targets aimed at improving service outcomes for the ACT Aboriginal and Torres Strait Islander community.

Cleared as complete and accurate:	30/11/2020	
Cleared by:	Executive Branch Manager	Ext:51451
Contact Officer name:	Andrew McIntosh	Ext: 53715
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	MIN:2020/000095-050	

ACT Government

QUESTION TIME BRIEF

MIN:2020/000095-011

Portfolio: Attorney-General

ISSUE: RESTORATIVE JUSTICE

Talking points:

- Ensuring that people affected by crime have the opportunity to access restorative justice if and when they need it is a Government priority.
- Since Phase three of the Restorative Justice Scheme commenced on 1 November 2018, victims of any offence, including family violence and or sexual offences, have been able to access restorative justice.
- The disruptions to the community through bushfire and COVID-19 events have significantly impacted the usual operations of the Restorative Justice Unit (RJU). All staff are working from home and using mostly indirect methods of contact, assessment and preparation for conferencing.
- Face to face client contact has occurred only where a Covid-19 specific safety assessment and approval process have been conducted.
- Overall referrals have dropped by around 20% since last year and overall conferences have dropped 14%.

<u>Comparing the two halves of the 2019/20 financial year for Covid-19 disruption effect</u>

- In the 2019/20 financial year we can see that referrals in the second half of the year dropped by 40% compared with the first half of the year (from 131 to 81) which reveals the truer extent of bushfire/smoke and Covid-19 impact on restorative justice referring entity activities.
- Comparing conferencing activity we can see that in the first half of the year 51 conferences were managed to completion whereas only 20 conferences were completed in the second half of 2019/20. This is a drop of 60% and shows the effect of disruption on RJU productivity.
- The 3rd Quarter (January to March) involved the greatest disruption with staff transitioning to working from home resulting in only seven conferences being completed.

Cleared as complete and accurate:	24/07/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Amanda Lutz	Ext: 70041
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-011	

QUESTION TIME BRIEF

Referral statistics in more detail comparing 2019/20 with 2018/19

- In the 2019/20 financial year, the RJU received 212 referrals involving 357 victims, 234 offenders and 491 offences.
- For comparison, in the 2018/19 financial year the Restorative Justice Unit (RJU) received a total of 264 referrals involving 439 victims and 294 offenders and 594 offences.
- The current statistics show a 20% drop in referrals, a 19% drop in victims referred, a 20% drop in offenders referred and an 17% drop in offences referred. In other words, around a 20 % drop overall when comparing 2018/19 to 2019/20.
- In 2019/20 the RJU managed 71 conferences to completion compared with 83 conferences for the previous financial year. This involves a 14% drop in the number of conferences completed.
- Of the 71 conferences completed in 2019/20 there were 45 face to face conferences and 26 indirectly facilitated conferences.
- Of the 83 conferences completed in 2018/19 there were 56 face to face conferences and 27 indirect conferences.
- Of 81 people responsible for offences, 42 fulfilled their responsibility to people harmed by complying with a formal RJ agreement, two substantially complied with a formal RJ agreement and 37 satisfied the needs of the person harmed during their participation in the conference itself.

Aboriginal and Torres Strait Islander related stats

- 48 Aboriginal and/or Torres Strait Islander people were included in referrals in 2019/20, (21) from ACT Policing (19 young people and two adults); 1 from ACT Corrective Services; 13 from the Magistrates Court; two from the Supreme Court and eleven from the Galambany Court (11).
- In 2018/19, 52 Aboriginal and/or Torres Strait Islander people were included in referrals, including 16 from ACT Policing (13 young people and three adults); ten from the Magistrates Court; four from the Childrens Court; 20 from the Galambany Court and two from the Supreme Court.

- Only two (6%) of Aboriginal and/or Torres Strait Islanders referred to RJ participated in conferences this financial year compared with eight (21%) in the 2018/19 financial year.
- The drop in participation rates is disappointing and the RJU will be reviewing all procedures and practices in relation to Indigenous referrals to consider ways to lift participation.
- The Covid-19 related reduction in face to face client contact has probably impacted most on Aboriginal and Torres Strait Islander clients as prior to this the RJU Indigenous staff were able to rely on short notice and spontaneous meetings to connect and engage.
- Including stats for Indigenous people who were referred late in the previous financial year, nine complied with formal RJ agreements (3) or satisfied the needs of the person harmed during the conference (6).

Referring entity activity in 2019/20 compared with 2018/9 FY.

- ACT Policing were the highest referring entity (110 referrals involving 101 young people and 31 adults). This was down by 15% compared with ACT Policing referrals in 2018/19 (129 referrals involving 118 young people and 37 adults).
- The ACT Magistrates Court was the second highest referring entity with 55 referrals. This was down 29% compared with 2018/19 when 78 referrals were received.
- The Childrens Court made 17 referrals compared with 21 the previous year, the Galambany Court made 11 referrals compared with 20 the previous year and the Supreme Court made 10 referrals, compared with nine the previous year.
- The Drug and Alcohol Court made two referrals.
- ACT Corrective Services made five referrals and Child and Youth Protective Services made two referrals.

Family Violence and sexual offence referrals

Family violence and sexual offence matters are often complex and sensitive, power imbalance can be high and the impacts of offending traumatic for

primary and secondary victims. For these reasons many such offences are not suitable proceed to conference.

- In the 2019/20 financial year 39 referrals involved family violence offences and five were related to sexual offences.
- 14 offences involved 'intimate partner violence' (11 being a current partner and 3 involving ex partners).
- In 2018/19 financial year, 48 referrals involved family violence offences and five were related to sexual offences.

Family Violence (type)

- 24 offences related to parents as victims;
- Ten related to 'other family member'.
- Two related to a 'non intimate partner'.
- Family violence related referrals dropped by 18% while sexual offences remained static.

Family Violence conferences

- Nine family violence related referrals were managed to completion of conference.
- Eight were conducted face to face and one was completed using an indirect facilitation.
- Compliance figures for family violence related conference agreements include matters that were referred in the previous financial year. Seven young people either complied with their formal RJ agreements (3) or their participation in the conference itself fulfilled the needs of the person harmed (4). Four adults either complied with their formal RJ agreements (3) or their participation satisfied the needs of the person harmed (1).

Referrals for sexual offences

- Of the five sexual offence related referrals, three related to a family member and two were non-familial.

- Two conferences were managed to completion, both involved non-familial circumstances.
- One sexual offence related conference itself satisfied the needs of the person harmed and no formal RJ agreement was deemed necessary,
- One sexual offence related conference resulted in a formal RJ agreement which is still being monitored.

Agencies supporting restorative justice

- The RJU is working with local support agencies such as DVCS, Everyman Australia and Victim Support ACT to strengthen restorative justice processes. The role of these service providers is to help prepare victims and offenders to participate in restorative justice conferences in ways that are safe and satisfying for all participants.
- Participants in restorative justice are asked, through a survey administered by an independent agency, to provide feedback on the experience and their satisfaction with the process. Rates of satisfaction have remained very high at 94 per cent in the 2019/20 financial year for general participants in restorative justice conferencing.
- Survey design and implementation has been adjusted to strengthen compatibility with broader research initiatives and to ensure we are using sensitive methods to understand participants' experience. For example, surveys for family violence and or sexual offences are handed to key participants or posted to them when safe to do so. These surveys contain stamped self-addressed envelopes to allow participants to respond privately. Further offers of telephone support to fill in surveys and conduct a wellbeing check are to be provided by survey volunteers.

QUESTION TIME BRIEF

Background Information

- Between 2005 and 2016 the Restorative Justice Scheme involved only referrals for young people and less serious offences. In late February 2016, the scheme was approved to move into phase two and the RJU began accepting referrals for adult offenders and serious offences for adults and young people. On 1 November 2018, Phase three was declared by the Minister for Justice and Consumer Affairs and Road Safety.
- Phase three commencement completed the rollout of the ACT's Restorative Justice Scheme as it was originally envisioned by the Restorative Justice Sub-Committee of the ACT Sentencing Review Committee in 2003.
- Any person who has been impacted by any category of offence, including where an offence has resulted in the death of a victim, can seek a referral to restorative justice at the appropriate point in the system.
- The *Crimes (Restorative Justice) Sexual and Family Violence Offences Guideline 2018*, is a disallowable instrument which outlines the application of RJ for sexual and family violence offences embedding the unique implications of these matters for victims, offenders, the criminal justice system and the community.
- The RJU employs twelve staff, one Director, two Senior Convenors, six convenors, including one Indigenous convenor, two operational support officers and an Indigenous Guidance Partner.
- The dedicated Indigenous workers, a convenor and a guidance partner, strive to promote confidence in the RJ process within the local community, cultural competence and safety.

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Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Amanda Lutz	Ext: 70041
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-011	

QUESTION TIME BRIEF

MIN:2020/000095-037

Portfolio: Attorney-General

ISSUE: REDUCING RECIDIVISM THROUGH BUILDING COMMUNITIES NOT PRISONS

Talking points:

- Like all Australian states and territories, the ACT is also experiencing an increased rate of incarceration, overcrowding and rising over-representation of Aboriginal and Torres Strait Islander people in our justice system.
- We must turn this around.
- For this reason, the ACT Government has committed to reducing incarceration of Aboriginal and Torres Strait Islander women and men to match non-indigenous incarceration rates by 2030.
- Experience elsewhere in the world has shown that recidivism reduction targets are unlikely to be met within existing programs or through business-as-usual activities.
- Developing a plan to achieve recidivism reduction requires a new package of work to effectively change the life trajectories of some of Canberra's most vulnerable citizens who have complex needs, including for Aboriginal and Torres Strait Islander women and men.
- It requires a shared responsibility across the justice and human service system and continued close work with government stakeholders, the community sector, academia and those with lived experience.
- The ACT's Reducing Recidivism Plan (RR25by25) is based on recidivist-based Building Communities Not Prison (BCNP) initiatives and is informed by relevant data. Its key pillars are:
    1. reducing the over-representation of Aboriginal and Torres Strait Islander people in custody;
    2. responding to justice housing needs;
    3. supporting people with substance use disorders in the justice system;
    4. supporting people living with a mental illness or disability in the justice system;

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Cleared by:	Executive Branch Manager	Ext: 51451
Contact Officer name:	Kym Lindeman	Ext: 71476
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	MIN:2020/000095-037	

5. supporting detainee reintegration;
6. developing community capacity; and
7. responding to women in the justice system.

- A key component of the RR25by25 Plan is a Reducing Recidivism Research Collaboration (Research Collaboration) with the ANU to examine and evaluate the impact of initiatives and how the ACT is tracking against targets related to RR25by25. The Research Collaboration with the ANU was signed in August 2020.
- The Reducing Recidivism Research Collaboration is overseen by an Advisory Committee which is made up of representatives from the ANU Centre for Social Research and Methods (CSRM) and relevant Directorates. The Advisory Committee's role is to inform, direct and make recommendations to the Director-General of the Justice and Community Safety Directorate on research and evaluation of recidivist based initiatives.
- Driving RR25by25 forward is the Reducing Recidivism Advisory Group that consists of a cross section of critical stakeholders from government, the community and academia, and the Executive Coordination Group and Human Services Cluster Inter-Directorate Committee, comprised of key government executives.
- The RR25by25 Plan further expands on the ACT's nation leading justice reinvestment efforts to Build Communities Not Prisons (BCNP). The ACT-based commitment to justice reinvestment for those coming in and out of the prison system marks some of the most ambitious justice work underway in Australia.
- Justice Reinvestment is about developing a smarter, more cost-effective approach to improving criminal justice outcomes by reducing crime and diverting offenders, and those at risk of becoming offenders, from the criminal justice system.
- The ACT Government provided an initial $14.6 million of funding for new and expanded community programs as part of the 2018-19 ACT Budget Review. This funding included:
    1. a family-centric model of support for Aboriginal and Torres Strait Islander families in contact with the justice system;
    2. a bail accommodation transition support service;

3. sustaining and expanding an on-the-ground service support model to public housing residents;
4. supporting victims of crime.

- A further $70.9 million was allocated in the 2019-20 ACT Budget to bring together strengths-based supports and inclusive pathways that lead to better life outcomes for people in and out of prison. This includes:
    1. providing more supported housing for better justice outcomes—especially for women and Aboriginal and Torres Strait Islander detainees;
    2. expanding the ACT Bail Support Programs to support accused people to comply with bail to keep them and the community safe;
    3. improving rehabilitation options for detainees at the Alexander Maconochie Centre, including through a purpose built Reintegration Centre that will support inmates transitioning back to the community; and
    4. boosting staff capacity at the Alexander Maconochie Centre to strengthen our focus on rehabilitation.
- This further investment is a smarter, more cost-effective approach to our justice system that helps keep families together, reduces crime and builds a safer and more secure ACT community.

Key Information

The ACT's recidivism rate

- Recidivism is one of the most critical measures in criminal justice. In the context of RR25by25, given the initial focus on adult detainees, the most obvious indicator to measure success is the rate at which adult detainees return to custody. The Australian Government Productivity Commission reports annually on the rate at which adult detainees return to custody within two years of previous incarceration as a key indicator of the success of the criminal justice system is effective in rehabilitating offenders and reducing the incidence of unlawful activity. Nevertheless, this is not the only relevant indicator of success of the RR25by25 initiative.
- In 2018-19, the percentage of adults released from prison who were re-sentenced and returned to prison within two years was 42.4% down 1.8% from 44.2% in the previous year. The recidivism rate for offenders in 2025 will not be measurable until 2026/27. Achieving the target measurement of a reduction in the recidivism rate by 2025 would mean a reduction of the recidivism rate from 42.4% to 31.7%; a reduction of 146 detainees returning to custody.

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Cleared by:	Executive Branch Manager	Ext: 51451
Contact Officer name:	Kym Lindeman	Ext: 71476
Lead Directorate:	Justice and Community Safety	
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- However, this headline figure is a crude indicator for measuring success as it does not take into consideration, for example, reductions in the seriousness or frequency of offending. The ACT Government is not just interested in measuring the number of prisoners who return to custody each year as an overarching indicator of the performance of correctional services, but focusing on ensuring we use prison to keep our community safe and creating an inclusive and safer Canberra by providing strength-based support and inclusive pathways that lead to better life outcomes for people cycling in and out of prison.
- The recidivism rate for those who have been released from prison and have returned to corrective services (prison or community corrections) is 71.3% in 2018-19 up 1.4% from 69.9% in 2017-18.
- The recidivism rate for offenders returning to correctives services is 19.1% in 2018-19 up 2.3% from 2017-18, and the recidivism rate for offenders returning to community corrections is 2016.9% in 18-19 up 2% from 2017-18.

Building Communities Not Prisons (BCNP)

- The overall aim of BCNP is to deliver a number of initiatives that are designed to reduce reoffending, reduce the prison population as appropriate, improve the lives of those individuals and their families, and improve community safety.
- The BCNP package focuses on areas including housing, alcohol and other drug services, mental health and disability, as well as family and other group services for Aboriginal and Torres Strait Islander peoples.
- Initiatives are intersecting and overlapping with initiatives that address key opportunities in the human services system to reduce recidivism and incarceration, and align with the ACT Government's strategic priorities.
- BCNP aims to:
    1. reduce trauma and costs for victims and their families associated with crime and related costs for government and the broader community
    2. reduce overcrowding at the Alexander Maconochie Centre (AMC)
    3. use restorative, cultural and evidence informed approaches that change people's contact with the justice system, particularly prison
    4. address a number of the recommendations of the Australian Law Reform Commission Report Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples
    5. reinvest funds from the criminal justice system that might be otherwise used for detaining people in a correctional centre, into homes and community supports, making the ACT a safer and more inclusive city.

QUESTION TIME BRIEF

Data

- Key ACT data driving the RR25by25 commitment includes:
  - 60% increase in the ACT prisoners between December 2012 (268 detainees) and December 2019 (429 detainees).
  - 10% increase in adult prisoners in ACT prisons in 2018 (from 449 in 2017 to 493 in 2018).
  - Three-quarters of prisoners had previously been imprisoned (75% or 369 prisoners). This was the largest proportion of any state or territory (the national average was 57%).
  - 36.3% (177 prisoners) of the adult prisoner population comprised of un-sentenced prisoners. This was the highest proportion of un-sentenced prisoners across all states and territories (which was 33.5% nationally).
  - 1.9 % of the ACT population is Aboriginal and Torres Strait Islander but they make up 22 per cent of the ACT's prison population.
  - Aboriginal and Torres Strait Islander people are 14.6 times more likely to be incarcerated than non-Indigenous people in 2018 in the ACT (11.3 times nationally).
  - 91% of the ACT Aboriginal and Torres Strait Islander male detainees at the AMC have a previous history of incarceration in ACT (77.3% nationally).
  - 92% (454 prisoners) of the total prisoner population of ACT is male in 2018.
  - 95% increase in the female population at the AMC between 2015 and June 2018, while the other jurisdictions saw increases of between 23.5% and 27%.
  - 48.1% increase of female prisoners in comparison to an increase of 24.5% of males from 2016 to 2018.
  - 64.1% of female prisoners were un-sentenced, compared to 35.7% of male detainees in ACT.
  - 80% of Indigenous women in the AMC were on remand and two-thirds of these women had been there for less than two months.

Cleared as complete and accurate:	30/11/2020	
Cleared by:	Executive Branch Manager	Ext: 51451
Contact Officer name:	Kym Lindeman	Ext: 71476
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	MIN:2020/000095-037	

QUESTION TIME BRIEF

MIN:2020/000095-079

Portfolio/s: Attorney-General

ISSUE: CRIMES (OFFENCES AGAINST VULNERABLE PEOPLE) LEGISLATION AMENDMENT ACT 2020

Talking points:

- The *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* is due to commence on 21 April 2021, having passed the Legislative Assembly in August 2020.
- The delayed commencement of the Act is to allow for community education, and the establishment of relevant training and processes for affected stakeholders.
- When it commences, the Act will:
    - amend the *Crimes (Sentencing) Act 2005* to introduce new factors for the Court to consider when sentencing if the victim of a crime was a vulnerable person; and
    - introduce three new offences to the *Crimes Act 1900*, being:
        - abuse of a vulnerable person;
        - failure to protect a vulnerable person from a criminal offence; and
        - neglect of a vulnerable person.
- A vulnerable person has been defined to mean:
    - an adult of any age with a disability as defined under the *Disability Services Act 1991*; or
    - someone 60 years old or older to whom one of the following additional elements of vulnerability applies:
        - a disorder, illness or disease that affects the person's thought processes, perception of reality, emotions or judgement or otherwise results in disturbed behaviour;
        - an intellectual, psychiatric, sensory or physical impairment and that impairment results in a substantially reduced capacity of the person for communication, learning or mobility; or

- the person is, for any other reason, socially isolated or unable to participate in the life of the person's community.

- The purpose of the Act is to provide additional protections for vulnerable adults in the ACT and ensure that those who abuse vulnerable people are subject to appropriate criminal sanctions.
- The Justice and Community Safety Directorate has established two stakeholder groups to support the implementation of the Act, including the identification of any unanticipated issues or unforeseen consequences.

How do the offences interact with existing laws?

- The Act complements existing legislative and non-legislative protections for vulnerable people.
- The new offences do not prevent the use of any other existing criminal offences if those offences better capture the scope of the offending.
- The penalties have regard to the seriousness of the new offences, relative to existing offences and the continuum of penalties for ACT offences.

Background Information

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- In 2019, the ACT Government invited public submissions on the potential for legislative reform to address elder abuse in response to the 'A Proposed Response to Elder Abuse in the ACT' discussion paper. Community feedback highlighted the need for a range of protections (including legislative protections) not only for older people, but also adults who have vulnerabilities arising from non-age related factors, such as disability.
- The Crimes (Offences Against Vulnerable People) Legislation Amendment Bill 2020 (the Bill) was introduced to the Legislative Assembly on 7 May 2020.
- As a result of stakeholder feedback, the Bill was amended to:
    - include an eight-month delay in the commencement of the new provisions; and
    - bring forward the requirement for a statutory review mechanism to 12 months post-commencement.
- On 13 August 2020, the Bill was debated and passed (as amended) by the Assembly.
- The *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* was notified as an amending Act on 20 August 2020. It will commence on 21 April 2021.

Cleared as complete and accurate:	26/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Sophie Harrison	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-079	

QUESTION TIME BRIEF

- JACS has established an Implementation Working Group and a Reference Group to support implementation of the Act, including the identification of any unanticipated issues or unforeseen consequences. The Implementation Working Group comprises representatives of: relevant government agencies; ministerial advisory bodies; and the Reference Group. The Reference Group is comprised of representatives of community stakeholder organisations and individuals with an interest in contributing to the implementation arrangements for the new legislation.
- Initial feedback from members of the Implementation Working Group has highlighted the need for a range of information material to be developed, including material in Easy English and other languages. JACS is investigating options for the development of this material ahead of the Act commencing.

Cleared as complete and accurate:	26/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Sophie Harrison	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-079	

QUESTION TIME BRIEF

MIN:2020/000095-025

Portfolio/s: Attorney-General

ISSUE: RESIDENTIAL TENANCIES

Talking points:

COVID-19 Updates

<u>Implementation of Eviction Moratorium and post moratorium support measures</u>

- Since April 2020, a range of temporary changes have been made to the *Residential Tenancies Act 1997* **to protect tenants impacted by COVID-19** and to assist landlords. These changes include:
    - a 6 month moratorium on evictions for non-payment of rent for COVID-19 impacted households and related social distancing restrictions in relation to inspections and repairs which was in place from 22 April to 22 October 2020;
    - a transition or grace period which commenced at the end of the moratorium on 23 October 2020 and will operate until 31 January 2021 which prevents tenants who were COVID-19 impacted from being evicted on the basis of arrears that accrued before or during the moratorium on the condition that they pay rent as it falls due during the transition period;
    - a requirement for ACAT to consider making a payment order rather than ordering an eviction for tenants that have been COVID-19 impacted if a tenant is unable to meet their rent payments as they fall due during the transition period (23 October 2020 – 31 January 2021);
    - the ability for landlords andtenants to negotiate reduced rent (to operate 31 January 2021);
    - restrictions on negative listings being made about COVID-19 impacted persons on tenancy databases (to operate until 31 January 2021);
    - the ability for COVID-19 impacted tenants to terminate their fixed-term tenancy agreements early, without penalty (to operate until 31 January 2021);

- the ability for all tenants on pre-6 April 2020 fixed term tenancies to be able to pay just two weeks' rent in advance to assist to manage cost of living pressures (to operate until 31 January 2021). All other fixed term and periodic tenancies are already able to pay just 2 weeks' rent in advance; and
- the ability for a tenant from a COVID-19 impacted household who had previous ACT Civil and Administrative Tribunal (ACAT) orders suspended during the moratorium to apply to ACAT to vary or set aside those orders.

- The Government has also extended rates and land tax rebates (which have been offered since April 2020) for landlords who reduce their tenants rent by 25% until the end of the December tax quarter. The Government will continue to match 50% of the rent reduction by offering rebates to a maximum of $1300 per tax quarter (roughly $100 per week).

Further Detail on the Transition Period

- The transition or grace period provides tenants who are in arrears at the end of the moratorium with a longer period to repay these rent arrears before they can face eviction.
- The transition period will be in place from the 23 October 2020 - 31 January 2021 (unless extended).
- Where a COVID-19 impacted household is in rent arrears at the end of the moratorium period, their landlord will not be able to evict them on the basis of those arrears during the transition period so long as they pay rent as it falls due throughout the transition period.
- Where a COVID-19 impacted tenant does not pay rent as it falls due during the transition period, their landlord will be able to take the usual steps under the *Residential Tenancies Act 1997* to end the tenancy. However, if the landlord applies to ACAT for a termination and possession order during the transition period, ACAT must consider making a payment order before they make a termination and possession order.

QUESTION TIME BRIEF

Mediation service

- The Government has establised a mediation service to assist tenants and landlords reach agreements regarding rent reductions and related matters in the COVID-19 period;
- The Conflict Resolution Service commenced providing this service on 11 May 2020 and will be offered until 31 January 2021.
- CRS is a long-standing, trusted provider of mediation services in our community and has a panel of qualified mediators that they can draw upon.
- CRS can provide restorative, impartial support to both landlords and tenants to deal with the difficult issues COVID-19 has caused for our residential tenancies landscape

Residential Tenancies Amendment Act 2020 (No 1)

- The *Residential Tenancies Amendment Act 2020 (No 1)* passed the Assembly in February 2020 and is now in force.
- The Amendment Act was developed in consultation with key stakeholders and addresses outstanding issues from the 2016 review of the *Residential Tenancies Act 1997*.
- The amendments include:
    - Reducing the maximum amount of rent that can be charged in advance from 4 weeks to 2 weeks. This reduces the upfront costs of entering a new tenancy and smooth payment amounts during the tenancy;
    - Increasing the amount of notice a landlord must give to the tenant where want to end a tenancy so they (or a person close to them) wants to move into the property from 4 weeks to 8 weeks;
    - a head of power for the introduction of minimum standards;
    - assisting tenants to break fixed term tenancies in order to move into social housing or aged care (this commenced on 5 May 2020);
    - streamlining the provision that allows a landlord to terminate a tenancy when the tenant uses the property for an illegal purpose.

Cleared as complete and accurate:	26/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Heather McAulay	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-025	

- There will be further consultation with the community prior to any minimum standards for rental properties being introduced.

Residential Tenancies Amendment Act 2020 (No 2)

- The Residential Tenancies Amendment Act 2020 (No 2) was introduced into the Assembly on 13 February 2020 and passed on 27 August 2020.
- Prior to the Bill's introduction a Public Exposure Draft of the Residential Tenancies Amendment Bill 2019 (No 2) was tabled on 28 November 2019 and public comment was sought over a 2 month period. Significant additional consultation occurred between when the Bill was first introduced in the Assembly and when it was debated and passed, with the Government moving several amendments in response to stakeholder concerns.
- The Act significantly increases protections for occupants, including by:
    - clarifying the difference between an occupancy agreement and a residential tenancy agreement, so that occupants and grantors have greater certainty about their rights and obligations
    - introducing mandatory minimum principles for occupancy agreements, including:
        - protections against unreasonable evictions
        - entitlements for access to communal areas
        - tighter rules around when a grantor can enter the premises
        - requirements for grantors to provide occupants with information, and
        - limitations on penalties that may be charged
    - creating a new obligation for grantors to lodge security deposits with the ACT Revenue Office (an exception applies for universities), and
    - providing more dispute resolution options for occupants and grantors, by giving them access to free, informal and enforceable conciliation through the ACT Human Rights Commission.

- In addition, the Act resolves some issues specific to owner-occupiers in residential parks (where a person owns their dwelling but has an occupancy agreement in relation to the site their dwelling is on).
- The Act also substantially reforms the law on share housing to better reflect modern community behaviours and expectations. People living in share houses deserve clear laws that are adapted to their circumstances.
- The reforms:
    - introduce a legal framework into the RTA for co-tenancies, which is a common way to set up a share house, where all tenants have equal rights and responsibilities
    - provide clear processes for co-tenants to move in and out of share houses, including managing transfers of interest in the bond, and
    - ensure that the ACT Civil and Administrative Tribunal can be used to resolve disputes between co-tenants as well as between co-tenants and landlords.

Commencement of the *Residential Tenancies Amendment Act 2020 (No 2)*

- The changes in relation to share housing and most of the changes in relation to occupancy agreements will commence on 3 March 2021.
- The changes in relation to occupancy agreements offered by education providers (such as universities) will commence on 30 January 2022 in line with the commencement of the 2022 academic year.
    - Education provider occupancy agreements will be covered by transitional provisions until the education provider occupancy provisions commence on 30 January 2022.

Exemptions for universities

- The Bill includes a number of provisions that apply specifically to occupancy agreements provided by universities. These include:
    - an exemption from the requirement to lodge any security deposit taken in respect of occupancy premises with the Territory;

- clarifying that the currently existing university disciplinary requirements and medical leave rules established under statute will not be displaced by the occupancy principles in the event of any inconsistency between the disciplinary requirements or medical leave rules and the occupancy principles;
- requiring parties of occupancy agreements who have a dispute to which to which a university dispute resolution procedure applies to exhaust internal dispute resolution procedures (within a reasonable time) prior to making an application to the Tribunal;
- a clarification that occupancy agreements can be terminated under university disciplinary requirements and medical leave rules and that agreements terminated in these circumstances are not subject to the requirement that the termination is reasonable having regard to the nature of the occupancy agreement; and
- delayed commencement and transitional provisions that apply to education provider occupancy agreements, including universities.

- Universities were exempted from the requirement to lodge security deposits after the universities provided feedback that they currently manage thousands of occupancy agreements for students living on on-campus which would be administratively difficult to lodge all at once. In addition, when invested collectively, the interest gained from the investment of students' security deposits generates significant income which is then used to help cover the administration costs of student accommodation.
- Other exemptions ensure that occupancy law do not conflict with the universities' pre -existing disciplinary procedures or internal dispute resolution procedures (which are established under the university governing statues).

QUESTION TIME BRIEF

MIN:2020/000095-017

Portfolio/s: Attorney-General

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 acceptance 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.

Cleared as complete and accurate:	30/11/2020	
Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Jessica Ng	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-017	

- 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.

QUESTION TIME BRIEF

Constitutional issues

- The Bill was presented in the context of an evolving set of legal principles around the country. 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 has considered closely 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.

QUESTION TIME BRIEF

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.

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 that 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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Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Jessica Ng	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-017	

ACT Government

QUESTION TIME BRIEF

MIN:2020/000095-042

Portfolio: Attorney-General

ISSUE: REVIEW OF CHILD PROTECTION DECISIONS IN THE ACT

Talking points:

Government review of decision-making by CYPS

- The Government is continuing to progress its review of child protection decisions in the ACT.
- A public consultation process on the discussion paper, *Review of child protection decisions in the ACT* was undertaken from May to June 2019, seeking views from the community, and in particular those who provide support and advocacy for children and young people. An independent consultant was engaged to report on the key themes from submissions.
- The report, titled *Stakeholder Feedback on the Discussion Paper: Review of Child Protection Decision in the ACT* (the Report) was finalised in October 2019 and can be found on the JACS website.
- In April 2020, the Minister for Children, Youth and Families provided an update to the Assembly on the progress and outcomes of the Report, in line with the Assembly motion on 18 September 2019 which called on the Minister to address the Assembly on this matter.
- In the update to the Assembly, the Minister noted that the the Report had highlighted three over-arching pieces of work that are currently being progressed in order to strengthen and ensure a robust child protection decision review framework:
    - working to improve internal decision-making processes
    - working to provide a more transparent and consistent internal merits review processes
    - consideration of an external merits review process for child protection in the ACT
- On 30 July 2020, the Standing Committee on Health, Ageing and Community Services tabled in the Assembly its report on its Inquiry into information sharing in the child protection system. The Government welcomes the outcomes of the Inquiry and is considering the recommendations.

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Cleared for public release by:	Deputy Director-General	Ext:
Contact Officer name:	Richard Montano	Ext: 51140
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-042	

- JACS will continue to work collaboratively with CSD on the report.

Sharing of information in the child protection system

- Concerns have been raised recently about the legal regime for the disclosure of sensitive information relating to children and young people in the care and protection system.
- The Government is conscious of striking the right balance between ensuring transparency of Government decisions, and protecting information that is highly sensitive in nature.
- In June 2019, the Legislative Assembly passed a law which made a minor amendment to the *Freedom of Information Act* to ensure that there is a single set of rules governing access to sensitive information in child protection cases.
- This was a minor 'technical amendment'. It does not change the way in which information about child protection cases can be accessed in practice.

Key Information

<u>Update on CSD work on the government review of CYPS decisions</u>

- Work is underway to improve internal decision making processes within Child and Youth Protection Services (CYPS) in response to stakeholder feedback about what needed to change to improve the consistency and transparency of decision making.
- There are a variety of views expressed about the best way forward for external review. Meetings have been held between Minister Stephen-Smith, the Human Rights Commission (HRC) and representatives from CSD to discuss the work currently underway and to continue discussions about a constructive and collaborative way forward.
- In partnership with the ACT Human Rights Commission, CYPS are consulting with targeted stakeholders through the hosting of rountables. JACS officers have collaboratively participated in two roundtables to date, to discuss:
    - On 22 July 2020, the experiences of other jurisdictions in establishing external merits review of child protection decisions. Guests included local ACT stakeholders and colleagues from Queensland and Victoria.
    - On 17 September 2020, the principles that will underpin the external merits review and the types of decisions that should be reviewable. Guests included local ACT stakeholders.

QUESTION TIME BRIEF

Information sharing and amendment to the FOI Act

- Separately to the review, minor changes to the *Freedom of Information Act 2016* (FOI Act) concerning sensitive information held by CYPS were passed in the *Justice and Community Safety Legislation Amendment Act 2019*, which commenced on 21 June 2019.

Background Information

Government review of CYPS decisions

History of the government review

- In April 2016, the *Report of the Inquiry: Review into the system level responses to family violence in the ACT* (the Glanfield Report) made a number of recommendations relating to the operations of Child and Youth Protection Services (CYPS). Recommendation 12 of the Glanfield Report was that a review should be undertaken (chaired by JACS) "of what decisions made by CYPS should be subject to either internal or external merits review." The review is being conducted at present.
- In December 2016 a working group with representatives from JACS and CSD was established to address this recommendation. In May 2019, a discussion paper, 'Review of child protection decisions in the ACT' was published for public consultation until 28 June 2019.
- On 16 October 2019, a report was finalised by an independent consultant based on the submissions received. JACS published the report and submissions where consent had been given to do so. Some parts of submissions were redacted to comply with secrecy provisions in the *Children and Young People Act 2008* (ACT), and the right to privacy in the *Human Rights Act 2004* (ACT).

Assembly motion

- On 18 September 2019 the Assembly passed a motion calling on the Minister for Children, Youth and Families to update the Assembly no later than March 2020 regarding:
    a) How the voices of children and young people are included in this consultation process;
    b) The progress and outcomes of this review and the consultation process; and
    c) What steps will follow, and when these are expected to conclude.
- The ministerial statement in response to this motion was noted by the Assembly on 2 April 2020.

Information sharing in the child protection system

Standing Committee Inquiry

- On 16 May 2019, the ACT Legislative Assembly asked the Standing Committee on Health, Ageing and Community Services to inquire into CYPS, and specifically:
    - first, "to provide an analysis of the decisions of the ACT Court of Appeal in the case of *CP v Director-General of Community Services Directorate* (ACTA 32) and to identify potential systemic issues that may need to be addressed", and

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Contact Officer name:	Richard Montano	Ext: 51140
Lead Directorate:	Justice and Community Safety	
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- secondly, "to inquire into the ability to share information in the care and protection system in accordance with the *Child and Young People Act 2008*, with a view to maintain community confidence in the ACT's care and protection system."

- The Committee's final report was tabled in the Assembly on 30 July 2020. The report provides 44 recommendations, including the following specific to the Attorney-General.
  - Recommendation 15: that the Attorney-General should remind all directorates that any amendment(s) to legislation that removes a fundamental right should not be brought forward in an omnibus bill; and
  - Recommendation 33: that the Attorney-General update the Assembly by the last sitting day in August 2020 on the identification of specified proposals as to how a therapeutic justice approach in the care and protection jurisdiction would work in the ACT
- CSD will be coordinating a government response to the report during the caretaker period and will seek input from JACS, including for the above recommendations.

FOI Act amendment

- The amendment to the FOI Act made through the *Justice and Community Safety Legislation Amendment Act 2019* makes clear that a person can not apply for the release of "protected information" that is also "sensitive information" under the *Children and Young People Act 2008* (CYP Act). This fixed a drafting anomaly in the FOI Act. The disclosure of sensitive information is regulated by the CYP Act, and its release other than in limited circumstances is prescribed to be an offence under that Act.
- The amendment ensures the FOI Act operates consistently with the CYP Act. In practice, the amendment will see no change to the way in which CYPS processes FOI requests, as CYPS has always interpreted the FOI Act consistently with the CYP Act, and so did not release sensitive information under the FOI Act prior to the amendment.

QUESTION TIME BRIEF

MIN:2020/000095-057

Portfolio/s: Attorney-General

ISSUE: TENANTS ADVICE SERVICE

Talking points:

- On 28 February 2020, the Justice and Community Safety Directorate (JACS) entered into a contract with Legal Aid ACT to provide the Tenants Advice Service ACT (TAS) until 30 June 2023.
- Canberrans are actively accessing and seeking support from the TAS. Over 2,370 calls were taken on the Tenants Advice Line between 1 March and 30 September 2020.
- As a part of the TAS, Legal Aid ACT also provides a weekly clinic to support tenants and occupants to understand their rights and obligations under the law and respond to the legal problems that they are facing.
- If you need support to respond to a tenancy or occupancy law issue, the TAS service is available to help you. The Tenancy Advice Line is open and taking calls from 8.30 am – 7pm four nights a week (Monday to Thursday) as a result of COVID-19.

If asked how you can access the TAS:

- The TAS can provide free and confidential support for all tenants and occupants in the ACT.
- You can find out more about the service through its website www.tasact.org.au
- The phone number of the Tenancy Advice Line is 1300 402 512.
- Legal Aid ACT have been providing tenancy advice services for many years.

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Contact Officer name:	Kelly Lokan	Ext:
Lead Directorate:	Justice and Community Safety	
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If asked about community legal education and campaigning for tenants rights:

- The contract requires Legal Aid ACT to undertake law and policy reform activities. Since the contract commenced, Legal Aid ACT has provided comprehensive and detailed submissions to government about matters affecting tenants and occupants in the ACT.
- Legal Aid ACT's TAS has been an active participant in all stakeholder consultations with JACS in relation to residential tenancies reform since the service commenced. This includes several consultations in relation to COVID-19 residential tenancy response measures and in relation to amendments to the *Residential Tenancies Amendment Bill 2020.*
- Independent of consultation invited by JACS, Legal Aid ACT's TAS service also provided a submission to and appeared before the Select Committee on the COVID-19 pandemic response.
- Legal Aid ACT is conducting an extensive social media program about rights and responsibilities under tenancy law, focusing on the COVID-19 pandemic. You can access this information through Legal Aid ACT's Facebook page.

Key Information

General

- JACS signed a contract with Legal Aid ACT to provide the TAS on 28 February 2020. The contract will run until 30 June 2023. The contract price for this period is $1,621,995 (GST exclusive) which includes an additional payment of $40,000 which supported Legal Aid ACT to commence providing the service in March 2020 as a result of the closure of the Tenants Union ACT's office on 28 February 2020.
- The TAS ACT is a weekday advice and information service for tenants and occupants, which assists them to understand their rights and obligations under the Residential Tenancies Act 1997, understand the legal problems they are facing and the steps they can take to resolve them, and where appropriate assist in the resolution of those legal problems.
- Legal Aid ACT also provides casework and legal representation services as a part of the TAS service. These services will be targeted towards those persons who would be considered priority clients under the National Partnership Agreement on Legal Assistance Services.

- Legal Aid ACT and JACS will have quarterly operational meetings to discuss and review the operation of, and reporting about, the service. This will include six monthly reviews to assess the delivery of the service and consider what improvements could be made to enhance the TAS.

Matters involving Tenants Union ACT

- The Tenants Union ACT closed their offices on 28 February 2020.
- Their final report was provided to JACS on 10 June 2020.
- The Tenants Union's most recent grant to provide the Tenants Advice Service was signed on 10 September 2019. This grant funded the Tenants Union ACT **$348,171** (GST exclusive) from the ACAT Trust to provide the Tenants Advice Service from July 2019 – March 2020.
- Whilst operated by the Tenants Union ACT, the Tenants Advice Line was closed for new calls on 67 per cent of working days between 1 January and 14 November 2019. This data was sourced from the Tenant's Union's Twitter Feed on 15 August, 24 September, 23 October and 14 November 2019.
- The Justice and Community Safety Directorate has invited the Tenants Union ACT to participate in consultation about residential tenancies reform. The Tenants Union ACT has provided written input in response to a stakeholder consultation paper and has also appeared before the Select Committee on the COVID-19 pandemic response.
- The Tenants Union ACT has recently relaunched its website as a subscriber only service which provides information resources for tenants and occupants in the ACT.

QUESTION TIME BRIEF

MIN:2020/000095-043

Portfolio/s: Attorney-General

ISSUE: AGE OF CRIMINAL RESPONSIBILITY

Talking points:

- As part of the Parliamentary and Governing Agreement, the ACT Government has agreed that raising the minimum age of criminal responsibility is a legislative reform priority for the 10th ACT Legislative Assembly.
- The minimum age of criminal responsibility in the ACT, and across all Australian jurisdictions, is 10 years old, but a child aged under 14 years cannot be held criminally responsible unless the prosecution proves they knew what they were doing was wrong.
- The ACT Government is committed to building Canberra as a Restorative City, and supports the integration of preventative and rehabilitative approaches into our justice system.
- Keeping children and young people out of the criminal justice system is a hallmark of this commitment, as we know the detrimental and lasting effects that facing the courts and spending time in detention can have on children.
- Work is ongoing to consider how a higher minimum age of criminal responsibility would be implemented in the ACT, with regard to the specific needs of the Territory's at-risk children and young people, and their families, and the specific characteristics of our criminal justice, and youth and family service sectors. This includes preparation for a proposed gap analysis review, which is expected to include stakeholder consultation.

<u>Council of Attorneys-General Working Group</u>

- In November 2018, the Council of Attorneys-General agreed to establish a working group to review the age of criminal responsibility in Australia. The ACT is represented on the working group by the Justice and Community Safety Directorate.
- In December 2019, the working group undertook public consultation to inform the review. The Justice and Community Safety Directorate reached out directly to ACT stakeholders to invite submissions.

Cleared as complete and accurate:	26/11/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Sophie Harrison	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-043	

QUESTION TIME BRIEF

- At the Council of Attorneys-General meeting on 27 July 2020, Attorneys-General noted that the working group had identified the need for further work to ensure appropriate support measures were in place for children who exhibit offending behaviour. This further work aims to ensure that any changes to the law could be implemented successfully, and that young people who engage in harmful behaviours would receive appropriate supports.
- Along with other states and territorites, the ACT is working with the Commonwealth to consider how all the work arising from the Council of Attorneys-General should be progressed following the outcome of the Conran Review of Former COAG Councils and Ministerial Forums.
- The ACT has been and will continue to be an active participant in national conversations on the minimum age of criminal responsibility.

Background Information

Consideration at the national level

- The minimum age of criminal responsibility (MACR) was being considered at the national level through the Council of Attorneys-General (CAG). To inform consideration of the issue, CAG agreed at its meeting on 23 November 2018 to establish a working group (the Working Group) to examine the MACR and to report back within 12 months.
- The Working Group is chaired by Western Australia, with representatives from all jurisdictions. The ACT is represented by the Justice and Community Safety Directorate (JACS).
- At the 29 November 2019 CAG meeting, participants considered an interim report finalised by the Working Group and noted that there was significant interest in the Working Group's review. It was agreed the Working Group would undertake public consultation before providing a final report with recommendations to CAG in 2020.
- Public consultation on the issue was then undertaken from 16 December 2019 to 28 February 2020. JACS engaged with ACT Government Directorates and key ACT non-government stakeholders as part of the Working Group's consultation process.
- In June 2020, the Working Group finalised a report on MACR reforms, including findings and recommendations, for presentation at the July 2020 CAG meeting.
- Despite revisions to the report that attempted to address the concerns of some jurisdictions, the Working Group did not reach a consensus on all the findings and recommendations. The Working Group did agree that the MACR could not be raised without a clear framework for implementation and support first being in place. A majority position was determined to allow the report to be settled for discussion at CAG Senior Officials Group (CAGSOG).

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QUESTION TIME BRIEF

- The Working Group's final report was discussed at the CAGSOG meeting of 19 June 2020 and members agreed that the report should go to CAG for discussion, noting that the report was not supported by all jurisdictions (the Commonwealth, New South Wales and Queensland did not endorse the report).
- On 7 July 2020, the Western Australian Attorney General, as the sponsor of the MACR CAG agenda item, had withdrawn the Working Group's report and it would not be considered at CAG on 27 July 2020. Instead, he recommended CAG agree that the Working Group undertake "*further work on the need for adequate processes and services for children who exhibit offending behaviour.*"
- At the CAG meeting on 27 July 2020, CAG participants noted the Working Group's work to date and that the Working Group had identified the need for further work to occur. It was agreed that the Working Group would provide a progress report within 12 months.
- It was unclear exactly what work the Working Group was expected to complete and no further work has taken place to date. However, the Chair of the Working Group sought feedback from Working Group members in September on a proposed two-tier model to progress work on this issue (inter-agency working groups in each jurisdiction, and a national panel to oversee the work of the jurisdictional groups and to coordinate reporting back to CAG) and invite ideas for alternative approaches. No further advice has been received from the Chair the Western Australian Attorney General.
- On 23 October 2020, National Cabinet agreed to the new ministerial forums structure as part of the recommendations of the Conran Review of Former COAG Councils and Ministerial Forums. As a result, CAG would be replaced with a 'time-limited' and 'when neeeded' forum.
- On 20 November 2020, Attorneys-General met to discuss the future of the work that was previously progressing through CAG, including the minimum age of criminal responsibility. It was agreed that the first meeting of the CAG successor body would be in March 2021. It was also agreed that this meeting would include one more discussion on MACR, but it would not be an ongoing item. Neither the meeting itself or the outcomes of the discussion are publicly known.
- Therewas been substantial stakeholder and media interest in this issue following the CAG decision of 27 July, both in the ACT and Australia-wide.The ACT Government was subject to specific criticism from both individuals and larger professional bodies, such as the ACT Law Society and Aboriginal Legal Service (NSW/ACT), for not committing in an increase in the MACR and for failing to lead reform in this area.
- The Northern Territory is the only other jurisdiction to publicly commit to raising the age of criminal responsibility (to 12), in response to a recommendation of the Royal Commission into the Protection and Detention of Children in the Northern Territory.

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Contact Officer name:	Sophie Harrison	Ext:
Lead Directorate:	Justice and Community Safety	
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QUESTION TIME BRIEF

ACT-specific work

- On 20 August 2020, the ACT Legislative Assembly passed a motion which called on the Government to:
    - support raising the minimum age of criminal responsibility to 14 years of age, taking into account medical and other relevant evidence, and with consideration given to exemptions for serious offences;
    - ensure that reform in this complex area engages with and enhances support services identified through a gap analysis, noting that keeping young people safe and diverting them from the justice system is a whole-of-government and whole-of-community responsibility; and
    - continue to progress policy work, and consider programs and resources that may be required in order for the tenth Assembly to consider legislation raising the age.
- The motion was reported on favourably in media across Australia.
- As part of the Parliamentary and Governing Agreement, the Government has agreed that raising the minimum age of criminal responsibility is a legislative reform priority for the 10th ACT Legislative Assembly.
- JACS is working with other Directorates (primarily the Community Services Directorate) to consider how a higher minimum age of criminal responsibility would be implemented in the ACT.
- To assist in this work, the previous Attorney-General Gordon Ramsay MLA approved the use of $500,000 from the Confiscated Assets Trust Fund to work towards increasing the minimum age of criminal responsibility. Of this, $120,000 is to support a proposed gap analysis review by an external consultant, which is expected to include stakeholder consultation.
- The remaining $380,000 is to support a 12-month pilot of a family-centric therapeutic program, to be led by the Community Services Directorate, that will work with children and young people coming into contact with the criminal justice system.

Cleared as complete and accurate:	26/11/2020	
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Contact Officer name:	Sophie Harrison	Ext:
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-043	

QUESTION TIME BRIEF

MIN:2020/000095-059

Portfolio/s: Attorney-General

ISSUE: CANNABIS PROSECUTION ASSISTANCE

Talking points:

Can the ACT intervene in a Commonwealth prosecution for personal possession of cannabis in the ACT?

- In an ACT Court, if a defendant prosecuted under a Commonwealth law for cannabis possession, seeks to rely on the position under ACT law, or there is a challenge to the interpretation or validity of a law, the ACT Attorney-General may intervene in the proceedings as of right. This is on the basis that it is an issue of "the interpretation or validity of a law of the Territory or Commonwealth" as provided for under section 27 of the *Court Procedures Act* 2004 (ACT).
- Whether such an intervention is justified or appropriate will depend on the circumstances of the case.

If asked

Q - *Are police arresting and charging adults for possessing personal amounts of cannabis in the ACT? Are charges being prosecuted?*

- ACT Policing advises that no charges have been laid since 31 Jan 2020.
- In 2019, 146 offences of cannabis possession in the ACT became known to ACT Policing.
- ACTP advice that since the new laws came into effect there had been a small number of 'incidents' involving the possession of cannabis. Those that related to juveniles possessing a personal amount were diverted accordingly. Others, involving offences of possessing more than the prescribed amounts, were dealt with in accordance with relevant offence provisions.

Q – *Has anyone challenged the ACT or Cth cannabis laws?*

- ACT Policing advises they are unaware of any challenge to the interpretation or validity of the ACT law since the new provisions commenced.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Victor Martin	Ext: 50245
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-059	

QUESTION TIME BRIEF

Q - *Do the new provisions make it easier for children to get cannabis?*

- No. Criminal penalties remain in place for the offence of supplying another person (including children) and for using cannabis in public places or around children.
- Further, it remains an offence for a person under 18 years of age to possess a small amount of cannabis.

Q – *Do the new cannabis laws apply in the Jervis Bay Territory?*

- Each of the provisions allowing a person over 18 to possess or cultivate cannabis is limited to the geographical confines of the Australian Capital Territory.
- A person in possession of cannabis outside the ACT to whom ACT criminal law applies, for example in the Jervis Bay Territory, may be issued with a simple cannabis offence notice under sections 171A (Offence notices) or charged with the offence at section 171AA(1) (possession of less than 50 grams of cannabis).

Key Information

- A challenge by the Commmonwealth Director of Public Prosecutions or Australian Attorney-General to the validity or interpretation of an ACT law may only arise in a criminal prosecution:
    - if a person is charged with a Commonwealth offence and raises a defence under division 313 of the *Criminal Code Act 1995* (Cwlth) relying on the ACT law;
    - *and* the CDPP challenges either:
        - the validity of the ACT law; or
        - whether the ACT law meets the description of the kind of law that could amount to an excuse or justification for the Commonwealth offence.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Victor Martin	Ext: 50245
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-059	

QUESTION TIME BRIEF

Background Information

- Defences to Commonwealth drug offences are provided for in div 313 of the *Criminal Code Act 1995* (Cwlth) including that the offences do not apply to conduct that is "justified or excused" by or under a law of the State or Territory in which the conduct occurs or if a person was "under a mistaken but reasonable belief" that the conduct was so justified.
- Where there is state or territory law that deals with the same conduct, the Commonwealth law allows police and courts to apply the law of that state or territory when deciding how to deal with an offender. This is how the ACT and other jurisdictions have been able to decriminalise personal cannabis possession; it also provides the basis of our current Simple Cannabis Offence Notice scheme (SCON).
- If the ACT removed an offence for cannabis possession from ACT law entirely the prohibitions on possession of cannabis in the Cth criminal code would then apply as the primary law here putting Canberrans at risk of being arrested and prosecuted under Commonwealth law without a legal defence.
- To deal with this, the new provisions of the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (the Act), which commenced 31 January 2020, maintains the offence of cannabis possession but removes penalties for adults cultivating and possessing a personal amount of cannabis in the ACT.
- This approach maintains an ACT-specific legal framework for dealing with cannabis possession, and therefore provides an alternative to the Commonwealth law being applied.
- This does not entirely remove the risk of people being arrested under Commonwealth law. The ACT is the first jurisdiction in Australia to have made these reforms and there is still some uncertainty about how these changes will unfold given the complex legal environment.
- The ACT laws aim to provide a legal defence to adults who possess small amounts of cannabis in the ACT, who may be prosecuted under a Commonwealth law but cannot stop an arrest and charge if an ACT Policing member is minded to do so, or prosecution if the Commonwealth DPP considers it appropriate– the defence provided by ACT law would then be a matter for the Court.

Cleared as complete and accurate:	01/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Victor Martin	Ext: 50245
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-059	

QUESTION TIME BRIEF

MIN:2020/000095-085

Portfolio/s: Attorney-General

ISSUE: REVIEW INTO WHOLE OF JUSTICE SYSTEM INTERACTIONS WITH ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

Talking points:

- The ACT Government considers reducing incarceration of First Nations women and men to match non-indigenous incarceration rates by 2030, and ensuring people are safe when in custody, to be an extremely important and pressing matter.
- The ACT Aboriginal and Torres Strait Islander Agreement 2019-28 includes justice as a significant focus area. The ACT Government is committed to building on our justice reinvestment approach to deliver on the targets of the Agreement. The ACT Government has also set a target to reduce recidivism in the Territory by 25 percent by 2025 and released a plan to achieve this outcome.
- On 23 July 2020, Julie Tongs CEO of Winnunga Nimmityjah wrote to the Attorney General seeking a:

  "detailed, comprehensive and independent inquiry into the effectiveness of all these arms of the justice system in their contact with and response to members of the Aboriginal and Torres Strait Islander community".
- On Friday 14 August 2020, the Attorney General and Minister for Aboriginal and Torres Strait Islander Affairs replied to this letter and, in addition to continuing the current work, committed to commence consultation and planning for a community led review into the over-representation of Aboriginal Torres Strait Islander people in the ACT justice system.
- The death of the review is still up for decision and it is recognised from communications including Ms Tongs, that the issues are fairly understood in community and through available literature, and the community is demanding action now; however, further consultation is required first with the Aboriginal Torres Strait Islander community before Government is locked into a formal review process.

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Contact Officer name:	Kathryn Johnson	Ext: 51451
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-085	

QUESTION TIME BRIEF

- Justice and Community Safety Directorate has begun work on scoping a potential review and are in the process of finalising a Statement of Requirement to seek an independent research group to conduct a smaller Academic Review. This will include a desktop analysis of available reports, literature, and data to identify the key causes of incarceration for Aboriginal and Torres Strait Islander people, and improve better practice responses to reduce incarceration rates. This approach will allow for a faster response to the implementations of key findings to inform improvements to practice, programs, and policy across the intersecting key focus areas (Corrective Services, Policing, Education, Health or Housing), while supporting a cross-directorate approach. Outcomes and information gathered from the Academic Review could be used to assist a potential larger process.

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QUESTION TIME BRIEF

MIN:2020/000095-092

Portfolio/s: Attorney-General

POSITIVE DEFINITION OF CONSENT

- The ACT Government is committed to protecting people from sexual abuse and ensuring that those who commit sexual offences are appropriately held to account.
- A strong criminal justice response to sexual offending is important, not just for victims and survivors but also for the entire community.
- The Parliamentary and Governing Agreement of the 10th Legislative Assembly includes agreement to legislative reforms to sexual offence laws, including consideration of a positive definition of consent.
- The ACT Government welcomes the opportunity to consider potential improvements to our criminal laws as outlined in the Government Response to the Justice and Community Safety Standing Committee's Report on the inquiry into the Crimes (Consent) Amendment Bill 2018.
- The ACT Government will also examine the findings of the NSW Law Reform Commission final report "Consent in relation to sexual offences", published on 18 November 2020, in considering how to implement the PGA.
- In considering law reform in this area, we will consult closely with key stakeholders.

Key Information

- ACT sexual offences and 'intimate image abuse' offences are contained in the *Crimes Act 1900* (Crimes Act). The ACT is the only Australian jurisdiction with no statutory definition of consent. Rather, s 67 of the Crimes Act includes a list of circumstances which 'negate' consent.
- All States and the Northern Territory have statutory definitions of consent that are variations on the concept of 'free and voluntary agreement'.

<u>Law reform commission recommendations</u>

- The 2010 Australian Law Reform Commission's *Final Report Family Violence – A National Legal Response* recommended that ACT sexual offence provisions should 'include a statutory definition of consent based on the concept of free and voluntary agreement' (recommendation 25-4).

Cleared as complete and accurate:	02/12/2020	
Cleared for public release by:	Executive Branch Manager	Ext:
Contact Officer name:	Maddie Rosenberg	Ext: 53310
Lead Directorate:	Justice and Community Safety	
TRIM Ref:	2020/000095-092	

- The NSW Law Reform Commission recently published their final report "Consent in relation to sexual offences" (NSWLRC Consent Report).

Background Information

- On 11 April 2018 a draft Private Members Bill titled *Crimes (Consent) Amendment Bill 2018* (Bill) was presented in the Legislative Assembly. The Bill sought to amend the *Crimes Act 1900* to introduce a new statutory definition of consent for certain sexual offences and the distribution of intimate images, and to exclude the application of specified child sex offences to some young people.
- On 8 May 2018 the Legislative Assembly referred the Bill to the Standing Committee on Justice and Community Safety (the Standing Committee) for inquiry and report. The Standing Committee Report recommended that the Bill should not proceed in its current form and that any enactments or legislative changes to the definition of consent should wait until consideration of the NSW Law Reform Commission final report "Consent in relation to sexual offences" (NSWLRC Consent Report). The Government Response[1] agreed to all but one aspect of the Committee Report that related to consideration of affirmative vs communicative models of consent. The NSWLRC Consent Report was published on 18 November 2020.[2]
- Many of the recommendations from the NSWLRC Consent Report link to other work done in this area, including the Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report (CARC CJ Report) as well as the joint 2010 ALRC/NSWLRC Report 'Family Violence: A National Legal Response' [Report 114] (ALRC Report).
- JACS will shortly brief the Attorney-General on options to progress the PGA commitment, including proposed engagement with key stakeholders.

[1] https://www.parliament.act.gov.au/__data/assets/pdf_file/0004/1322509/9th-JAC-03-Report-On-Inquiry-into-The-Crimes-Consent-Amendment-Bill-2018.pdf

[2] https://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_current_projects/Consent/Consent.aspx

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