



**ACT**

Government

Justice and Community Safety

## Open Access release outcome decision – Partial access granted

**Document Category:** Ministerial Briefs

**Title of document:** Attorney General – Quarter 1 2019 briefs

**Description of the information:** Question Time Briefs provided to the Attorney General between 12 February and 21 March 2019.

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

### Grounds for decision to withhold disclosure

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

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

#### 1.2 Information subject to legal professional privilege

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

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

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

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

#### 2.1 Factors favouring disclosure in the public interest

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

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

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

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

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

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

## **2.2 Factors favouring non-disclosure in the public interest**

- (b) *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 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:

The ACT Ombudsman  
Attention: ACT Strategy and FOI Section  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **Further assistance**

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

### **Authorised by**



Naveen Wijemanne  
Information Officer  
2 April 2024

**OPEN ACCESS Q1 2019 SCHEDULE**  
**PORTFOLIO: ATTORNEY-GENERAL**

No.	Folio	Description	Date	Status	Reason for non-release or deferral
<b>Question Time Briefs - Sitting Weeks 12-14 &amp; 19-21 February 2019</b>					
1	1	Question Time Briefs Index - 12-14 & 19-21 February 2019	February	Full release	
2	2-6	Gaming Machine Harm Reduction Measures	February	Full release	
3	7-9	Community Club Contributions	February	Full release	
4	10-11	Thoroughbred Racing Developments	February	Full release	
5	12-14	Community Club Grants	February	Full release	
6	15-16	DPP Resourcing	February	Full release	
7	17-19	Resourcing of Magistrates and Coroner's Courts	February	Full release	
8	20	Reforms to the Operation of the Coroners Court	February	Full release	
9	21-23	Drug and Alcohol Court	February	Full release	
10	24-26	Law Courts Progress	February	Full release	
11	27-28	Bail Laws	February	Full release	
12	29-30	Eastman Trial Update	February	Full release	
13	31-32	Courts Coat of Arms	February	Full release	
14	33-34	Judicial Council Complaints	February	Full release	
15	35-38	National Security Issues	February	Full release	
16	39-42	Criminal Motorcycle Gang Incidents	February	Full release	
17	43-47	Serious and Organised Crime Response	February	Full release	
18	48-50	Child Abuse Royal Commission - Criminal Justice Reforms	February	Full release	
19	51-54	Commonwealth Redress Scheme for Survivors of Institutional Sexual Abuse	February	Full release	
20	55	Residential Tenancies	February	Full release	
21	56-58	Standing Committee on Justice and Community Safety Report on Inquiry into the Crimes (Consent) Amendment Bill 2018	February	Full release	
22	59-63	Electoral Amendment Bill 2018	February	Partial release	Schedule 1, s1.2
23	64-65	Government Position on Drugs of Dependence (Personal Cannabis Use) Amendment Bill	February	Full release	

No.	Folio	Description	Date	Status	Reason for non-release or deferral
<b>Question Time Briefs – Sitting Week 19-21 March 2019</b>					
24	66	Question Time Briefs Index - 19-21 March 2019	March	Full release	
25	67-69	Gaming Machine Harm Reduction Measures	March	Full release	
26	70-72	Community Club Contributions	March	Full release	
27	73-74	Thoroughbred Racing Developments	March	Full release	
28	75-78	Community Club Grants	March	Full release	
29	79-81	DPP Resourcing	March	Full release	
30	82-84	Resourcing of Magistrates and Coroner's Courts	March	Full release	
31	85	Reforms to the Operation of the Coroners Court	March	Full release	
32	86-88	Drug and Alcohol Court	March	Full release	
33	89-91	Law Courts Progress	March	Full release	
34	92-94	Bail Laws	March	Full release	
35	95-96	Eastman Trial Update	March	Full release	
36	97-100	Bail/Parole & Mr Isa Islam	March	Partial release	Schedule 2, s2.2(a)(ii)
37	101-102	Courts Coat of Arms	March	Full release	
38	103-104	Judicial Council Complaints	March	Full release	
39	105-110	National Security Issues	March	Full release	
40	111-117	Criminal Motorcycle Gang Incidents	March	Full release	
41	118-122	Serious and Organised Crime Response	March	Full release	
42	123-126	Child Abuse Royal Commission - Criminal Justice Reforms	March	Full release	
43	127-131	Commonwealth Redress Scheme for Survivors of Institutional Sexual Abuse	March	Full release	
44	132-133	Residential Tenancies	March	Full release	
45	134-136	Electoral Amendment Bill 2018	March	Partial release	Schedule 1, s1.2
46	137-139	Government Position on Drugs of Dependence (Personal Cannabis Use) Amendment Bill	March	Full release	

# ATTORNEY-GENERAL

## QUESTION TIME BRIEFS

12-14 & 19-21 February 2019

Racing and Gaming	
1.	Gambling Harm Reduction Measures (to include Government Response to Stevens Report)
2.	Community Club Contributions (to include timeframes and next steps)
3.	Thoroughbred Racing Issues (update to include point of consumption tax, new master plan)
4.	Community Club Grants – include who has used the grants and what for
QTBs – Judicial / Courts	
5.	DPP Resourcing
6.	Resourcing of Magistrates and Coroners Court (include TP on age of retirement)
7.	Coroner’s Court Reform
8.	Drug and Alcohol Court
9.	PPP Law Courts Progress
10.	Bail Laws (include TPs on issues raised re: HR compatibility with coronal process – following Cook Coronial)
11.	Eastman Update
12.	Courts Coat of Arms
13.	Judicial Council Complaints and Oversight
Security and Crime	
14.	National Security Issues
15.	OMCG Incidents – Taskforce Nemesis (Copy of ACT P Brief only)
16.	Serious and Organised Crime Response (Policy)
General	
17.	Child Abuse Royal Commission
18.	Redress
19.	Residential Tenancies
20.	Crimes (Consent) Amendment Bill 2018
21.	Electoral Amendment Bill
22.	Cannabis
23.	
24.	
25.	

**Portfolio:** Attorney-General & Business and Regulatory Services

**ISSUE: GAMING MACHINE HARM REDUCTION MEASURES  
(to include Government Response to Stevens Report)**

**Talking points:**

- The Government will deliver on our commitment to implement strong gambling harm reduction measures while supporting a sustainable, diverse and vibrant club industry that continues to make a valuable contribution to the ACT community.
- The 'Pathway to 4000' project is currently being administered by the Justice and Community Safety Directorate and Access Canberra.
- 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 earlier this year.
- A two-stage approach will be taken to achieve this reduction; voluntary and compulsory surrender of gaming machine authorisations. The steps will incentivise early voluntary surrender, providing financial and non-financial support for clubs in diversifying their business models.
- The pathway includes financial and non-financial incentives for clubs to voluntarily surrender gaming machine authorisations by end January 2019.
- If a reduction to 4,000 authorisations cannot be achieved by voluntary surrenders, compulsory surrender of authorisations will occur in April 2019 and April 2020.

Code of Practice Reforms

- Recent experiences – such as that of Professor Laurie Brown's – demonstrate that significant reform is needed to ensure the Territory's harm reduction framework is robust and fit for purpose.

Cleared as complete and accurate:	19/02/2019	
Cleared by:	Deputy Executive Director	Ext: 70674
Information Officer name:	Richard Glenn	Ext: 53504
Contact Officer name:	Julie Beddoe	Ext: 74264
Lead Directorate:	Justice and Community Safety	

- I have carefully considered the outcomes of this case and will be strengthening the Territory’s gaming regulations to ensure they offer meaningful and effective harm minimisation measures and that the Gambling and Racing Commission has the tools it needs for effective enforcement.
- The Government is progressing work to amend the *Gambling and Racing Control (Code of Practice) Regulation 2002* in a number of ways:
  - by improving the definition of gambling harm
  - the signs of gambling harm in the Code of Practice will provide less room for interpretation by club staff
  - club staff will need to undertake better training more often, in recognition of the crucial role they play in identifying signs of harmful gambling
  - club board members will be also trained to foster a culture where gambling harm reduction and consumer protection is the priority
  - we are looking at changes to enhance the operation of self-exclusion, and a Gambling Contact Officer will need 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
- I have discussed these proposed changes with representatives of workers, clubs and community representatives, including those with lived experience of gambling harm, at the Gaming Machine Harm Reduction Roundtable, on 28 September 2018 and have circulated a draft regulation to the group for comment.
- In November 2018 the Government’s Bill to strengthen enforcement mechanisms and penalties under the *Gaming Machine Act 2004* was passed in the Legislative Assembly. The changes enhance the compliance framework for gaming machines and ensure the Gambling and Racing Commission has the tools it needs for effective enforcement.
- We are going to keep consulting, and keep delivering on this Government’s commitment to a safer, stronger, and more connected city where our clubs industry is diverse and sustainable, and provides robust protections against gambling harm.

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Lead Directorate:	Justice and Community Safety	

### Government Response to Stevens Report

- On 21 August 2018 I announced the suite of incentives to reduce gaming machines in the territory which included facilities to allow all clubs which voluntarily surrender authorisations to access offsets for land-related fees and charges, including lease variation charges, to make it easier for them to redevelop their land for activities other than running pokies.
- Clubs had until 30 January 2019 to access these incentives. To support clubs' consideration of their options for incentives for voluntary surrender of gaming machine authorisations the Government engaged Mr Stevens to meet with clubs in the lead up to the deadline of 31 January 2019.
- The voluntary surrender process has seen the number of authorisations in the ACT reduce to 4,012. There will now be a two-stage compulsory surrender of authorisations process – in April 2019 and April 2020, to reduce the number of authorisations to 4,000.
- The small number of authorisations needed to be compulsorily surrendered is a testament to the success of the voluntary surrender scheme and the willingness of the club industry to support this Government initiative.
- The total number of authorisations may decrease further as clubs engage in trading. The authorisation trading scheme requires 1 authorisation to be surrendered out of every 4 traded. Any trading activity will bring the ACT closer to the goal of 4,000 authorisations.
- As part of the Government's reforms, clubs will also have access to a new Diversification Support Fund, which will be jointly funded by industry and Government to help clubs pursue a future away from gaming machines and support club staff to develop new skills. Legislation establishing this fund will be brought in the coming months.

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Lead Directorate:	Justice and Community Safety	



*If asked about the amount of time clubs had to review agreements*

- All clubs were provided the Pathway to 4,000 timeline on 23 August 2018 which included the date by which agreements must be entered into. Clubs were provided with a draft of the Voluntary Surrender Agreement on 21 December 2018 to allow them to review the agreement before agreements with the clubs particular details.

## Key Information

- There are **44** licensed venues in the ACT who hold authorisations to possess gaming machines.
- Gaming machine licensees have until 31 January 2019 to give the Minister a voluntary surrender notice outlining the number of authorisations or authorisation certificates to be surrendered by the licensee.
- To access incentives, a licensee in relation to the surrender of authorisations must have entered into a voluntary surrender agreement with the Territory by 8 February 2019.
- As at 31 December 2018 there are 4917 authorisations and 4335 electronic gaming machines in the Territory.
- Not all licensed clubs may choose to engage in the voluntary surrender process.

## Background Information

- The ACT Gambling and Racing Commission (the Commission) is an independent body established under section 5 of the Gambling and Racing Control Act 1999.
- As at 25 January 2019, 4 licensees have signed voluntary surrender agreements.
- At this date 23 licensees have expressed an interest in participating in the voluntary surrender stage of the Scheme.

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Cleared as complete and accurate:	04/02/2019	
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Lead Directorate:	Justice and Community Safety	

TRIM Reference: MIN:2019/000034-046

**Portfolio/s:** Attorney-General

**ISSUE: COMMUNITY CLUB CONTRIBUTIONS**

**Talking points:**

- The Government's changes to the community contributions scheme were debated and passed in the last week of the November 2018 sittings.
- These changes increase the funds available to the broader community, including by providing more guidance to clubs about appropriate distribution, and to increase transparency about how those funds are allocated.
- The Government has redefined allowable contributions so that there is clearer guidance on what does and does not count as a contribution.
- The minimum amount of contributions that must be made from net gaming machine revenue will increase by 0.8 per cent for clubs and hotels. This funding will be distributed through two funds that provide support to people in the community:
  - 0.4 per cent will go to gambling harm prevention and mitigation; and
  - 0.4 per cent will go to community charitable causes.
- Clubs may apply to the Minister to seek a lower minimum contribution rate where they can demonstrate that meeting the overall 8.8 per cent requirement would seriously affect the club's viability.
- Large clubs and large club groups' claims for in-kind contributions will be restricted to 2 per cent of a club's net gaming machine revenue. For these clubs, 6 per cent of net gaming machine revenue will need to be paid as money.
- 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 last year. The Government will now consider these views received before the final regulation is made.

Cleared as complete and accurate:	05/02/2019	
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Information Officer name:	Richard Glenn	
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Lead Directorate:	Justice and Community Safety	

*If asked about the impact of the capping of in-kind contributions on charities and community groups:*

- In-kind contributions from large clubs will be restricted to 2 per cent of a club's net gaming machine revenue. For these clubs, 6 per cent of net gaming machine revenue will need to be paid as money. This is comparable to the 20 per cent restriction on in-kind support in NSW's ClubGRANTS scheme.
- Large clubs/club groups are those receiving over \$4 million in gross gaming machine revenue each year.
- 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.
- These reforms limit (but do not stop) the ability of large clubs to make their community contributions on an 'in-kind' basis. As part of clubs' social licence the Government has set a minimum community contribution of 8.8 percent of net gaming machine revenue, but clubs are free to contribute as much of the remaining approximately 90 per cent of net gaming machine revenue as they wish to support their objectives.
- 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.
- I can assure the Assembly that the focus of these reforms is for the community to get more, rather than less, out of the community contributions scheme, and I am confident that the changes the Government has developed will achieve this goal.

Cleared as complete and accurate: 05/02/2019  
Cleared by: Deputy Director-General Ext:53504  
Information Officer name: Richard Glenn  
Contact Officer name: Julie Beddoe Ext:74264  
Lead Directorate: Justice and Community Safety

*If asked about the definition of professional sport proposed in the Exposure Draft Gaming Machine Amendment Regulation 2018:*

- The intention is that a ‘professional sports person’ would include a sports person who makes their living primarily from playing sport, and likewise a team which was filled with people that earn a livelihood from training for, and playing, sport will be a professional sport team.
- Claims would be permitted for:
  - support to amateur sports people, that receive no remuneration or reward for playing;
  - a youth soccer team travelling interstate to compete in a national competition; and
  - sponsorship of a high performing junior sports person.
- The Regulation specifically allows for claims for professional women’s sports including those towards player and coach wages.
- I recognise that there can be different interpretations of what constitutes professional sport and that is exactly why I have sought feedback from industry about what they consider to fall within the ambit of this term.
- The feedback that has been received on this issue will inform Government’s final decision about what will, and won’t be, included in the final regulation.

Cleared as complete and accurate:	05/02/2019	
Cleared by:	Deputy Director-General	Ext:53504
Information Officer name:	Richard Glenn	
Contact Officer name:	Julie Beddoe	Ext:74264
Lead Directorate:	Justice and Community Safety	

**ISSUE: THOROUGHBRED RACING DEVELOPMENTS****Talking points:**

- The Racing Memorandum of Understanding (MoU) between the ACT Government and Canberra Racing Club (CRC) and Harness Racing Club, includes a commitment for the establishment of a Joint Racing Industry and Government Committee with a focus on the development and sustainability of racing in the ACT.
- The Committee has met on five occasions since February 2018, and discussed a range of issues including ACT Racehorse Trainers Workers Compensation, the introduction of Point of Consumption Tax, Industry Funding Arrangements, and potential land development opportunities at Thoroughbred Park.
- The CRC has raised with me the impact that increased prizemoney in country NSW races is having on its ability to attract quality fields.
- The ACT Government is committed to the ongoing development and sustainability of the thoroughbred racing industry in the ACT. Discussions have been occurring through the Joint Racing Industry and Government Committee and I understand this important conversation is continuing.
- The Chief Minister and I met with the CRC in late January and it shared a masterplan of the Thoroughbred Park precinct which includes exploration of future development options.
- The Government is excited to engage with the Club as part of the development of the City and Gateway Urban Design.

## Key Information

- The MoU between the ACT Government and the CRC and Canberra Harness Racing Club provides for funding to the CRC of approximately \$6.4 million (plus annual CPI – 0.5 per cent adjustment) until 2020-2021.
- The *Betting Operations Tax Act 2018* took effect from 1 January 2019
  - All wagering operators with relevant revenues above a tax free threshold of \$150,000 per annum are liable to pay the tax, at a rate of 15 per cent of net wagering revenue (player loss) for bets placed in the ACT.
- Ian Mackay is the new chairman of the Canberra Racing Club. Mr Mackay is also the chief executive of the Canberra Southern Cross Club. Stephen Heppenstall is the new vice chairman, and Les Boag is the new treasurer.
- Peter Stubbs has retired from his position as chief executive, former chief financial officer Andrew Clark has been appointed to the role of CEO.

Cleared as complete and accurate:	05/02/2019	
Cleared by:	Deputy Director-General	Ext:76244
Information Officer name:	Daniel Ng	Ext. 70674
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Lead Directorate:	Justice and Community Safety	

**ISSUE: COMMUNITY CLUB GRANTS**

**Talking points:**

- The Government is dedicated to supporting small and medium clubs to diversify their revenue streams away from gaming machines, through viable and long-term measures to help clubs move their operations out of gaming.
- The Government has implemented a range of measures to assist small and medium clubs, including to help them to diversify their income streams. These include, from 2017-18:
  - a. introducing a small and medium club gaming tax rebate to allow smaller clubs to keep 50 per cent of their gaming taxes on up to \$4 million of gross gaming machine revenue to re-invest into their organisation
  - b. the option to make quarterly (rather than monthly) gaming machine tax and Problem Gambling Assistance Fund (PGAF) payments
  - c. the availability of a \$10,000 community club grant for the purpose of diversification towards alternative income streams.
- The 2017-18 Budget includes \$200,000 for Community Club Grants (the Grant). As part of its *Supporting Local Community Clubs Policy*, the ACT Government invited small and medium clubs and club groups (defined as having Gross Gaming Machine Revenue [GGMR] less than \$4m in 2016-17) to apply for a \$10,000 grant to help them to diversify their income streams away from gaming revenue.
- A panel from the ACT Government assessed the applications for the grant and determined that 14 clubs met the eligibility criteria for the Grant. Uses proposed for the grant have included: new, and refurbishments to kitchens, function areas, and entertainment spaces such as dance floors; and consultancy fees for alternative land use applications.

Cleared as complete and accurate: 05/02/2019  
Cleared by: Deputy Executive Director  
Information Officer name: Daniel Ng Ext: 70674  
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Lead Directorate: Justice and Community Safety



- Deeds require each club to provide evidence of expenditure with a final report confirming the use of the funds for the agreed purpose, including receipts and invoices, and information on any related matters. These reporting provisions will help the Government evaluate the use of the grants and acquit any funds not spent on eligible purposes.
- A list of Community Club Grant recipients and stated purpose is available within the table at [Appendix A](#).

## Key Information

- [Appendix A](#): Community Club Grant recipients and identified purpose for use of the grant

	<b>Applicant</b>	<b>Purpose</b>	<b>Amount (\$)</b>
1.	Austrian-Australian Club	Restoration of dance floor in club auditorium.	10,000
2.	Belconnen Magpies Sports Club	Consultancy fees for planning and development advice to explore alternate land use at Kippax site.	10,000
3.	Belconnen Soccer Club	Consultancy costs towards development of a childcare centre at Mackellar site.	10,000
4.	Canberra Bowling Club	Replace carpet and install a dance floor in function space.	10,000
5.	Canberra Club	Replace old kitchen equipment with updated appliances.	10,000
6.	Canberra Highland Society and Burns Club	Consultancy fees for planning and development advice to explore alternate land use.	10,000
7.	Canberra North Bowling Club and Rugby Union Club	Installation of a grease trap in the club's kitchen.	10,000
8.	Croatia Deakin Soccer Club	Update the furniture in the club's function room.	10,000

Cleared as complete and accurate: 05/02/2019  
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 Lead Directorate: Justice and Community Safety

9.	Harmonie German Club	Contribute towards refurbishment of club's auditorium (bathrooms and fixtures and fittings).	10,000
10.	Italo Australian Club	A new large marquee for outdoor functions; new kitchen equipment; additional beverage delivery system; and lit signage.	10,000

11.	Murrumbidgee Country Club	Consultancy fees to progress development of residential land on surplus club land; our kitchen refurbishment; or new outdoor furniture.	10,000
12.	National Press Club	Development of additional private function and dining facilities.	10,000
13.	Spanish Club	A new custom made marquee for outdoor events and construction of a new six lane petanque court.	10,000
14.	Canberra Irish Club	Consultation fees to investigate redevelopment of site improve food area; Upgrade equipment for live music performances; upgrade bar fridges; or purchase of new Point of Sale equipment.	10,000

## Background Information

- Activities that contribute towards diversifying a club's revenue streams away from electronic gaming towards alternative income streams will be eligible for the Grant.
- Grant funds cannot be used for:
  - any gambling-related activity, such as improvements to gaming areas, gaming equipment or gaming facilities;
  - the purchase of stock, consumables or payment of ongoing club operating costs (including payroll, utilities etc); or
  - payment of government fees, charges, taxes or fines.
- Recipient clubs were required to provide expenditure reports or to remit to the ACT. Government any grant funds not spent by 30 June 2018.
- Expenditure reports were due on 31 July 2018. JACS has received 10 expenditure reports and is following up on the outstanding four. The reports will contribute to the evaluation of the program.

Cleared as complete and accurate: 05/02/2019  
 Cleared by: Deputy Executive Director  
 Information Officer name: Daniel Ng Ext: 70674  
 Contact Officer name: Julie Beddoe Ext: 74264  
 Lead Directorate: Justice and Community Safety

**ISSUE: DPP RESOURCING**

**Talking points:**

*Immediate resourcing following the NOUS Strategic Review in 2018-19 Budget review*

- The Government is committed to supporting the vital work of the Director of Public Prosecutions (DPP).
- This commitment can be seen in the increases in funding immediately following the NOUS Group Strategic Review of the DPP and in recent announcements of baseline funding increases coming into effect over the mid to long term.
- The Government announced in the 2018-19 Budget that an extra \$6.922 million funding will be provided over four years for additional prosecutorial and paralegal staff.
- This staffing increase will be supplemented by a one off capital injection of \$350,000 for expanded accommodation and is in addition to resource allocations for four full-time additional staff in 2017-18 and 2018-19 to support the work of the Confiscation of Criminal Assets scheme
- I am confident that the appointment of an eighth magistrate, the additional funding for Legal Aid and the DPP, the re-appointment of a special magistrate, and recent amendments to justice legislation across the statute book will improve the efficiency of the justice system and the timeliness of proceedings in the Magistrates Court.

*If asked about separate administration and direct appropriation for the DPP*

- NOUS consulting recommended the DPP should be directly appropriated rather than as part of the Justice and Community Safety Directorate (JACS).
- The Government's approach to date has been to use the administrative resources of JACS to offer economies of scale to smaller, independent agencies. Services like human resources and finance are provided by a centralised team in JACS to other agencies, including the Human Rights Commission and the ACT Emergency Services Agency.

Cleared as complete and accurate: 04/02/2019

Cleared by: Daniel Ng Ext: 70674

Information Officer name: Kelly Williams

Contact Officer name: Adele Banks Ext: 59553

Lead Directorate: Justice and Community Safety

- The Government is considering the NOUS recommendation and will work with the DPP to ensure that our model of appropriation and funding is as efficient as possible, and appropriate to the DPP's working environment.

**Key Information***If asked for specifics about the 2018-19 baseline business case*

- Base level funding: \$6.922 million over four years plus \$350,000 one off capital injection for accommodation
- Full Time equivalent (FTE) additions
  - One Prosecutor Grade 4; two Prosecutors Grade 3; one Paralegal Grade 4; two Paralegals Grade 3 ongoing from 2018-19
  - One Prosecutor Grade 5; one Administrative Officer Grade 5 ongoing from 2019-20
  - Two Executive (Crown Prosecutors) ongoing from 2020-21
  - One Prosecutor Grade 4; one Paralegal Grade 3 ongoing from 2021-22
- The NOUS review recommended a 30 per cent increase in grade 3, 4 and 5 prosecutors within 12 months. Nous' basis for concluding that FTE positions for prosecutors will need to increase by 30 per cent at a minimum, is unclear.
- The additional baseline FTE in 2021-22 will represent an increase of new prosecutors plus new executives of 17.4 per cent on 2016 -2017 FTE levels (according to Agency Profile Table, DPP Annual Report 2016-17, p 49).

**Background Information***DPP appointment process*

- You appointed Mr Shane Drumgold as the new Director of Public Prosecutions for a period of seven years commencing on 1 January 2019.

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TRIM: 2019/000034-026

**Portfolio:** Attorney-General

**ISSUE: RESOURCING OF MAGISTRATES AND CORONER'S COURTS**

**Talking points:**

Magistrate terms and conditions

- A bill supporting Magistrates by making the terms and conditions of their office more inclusive was passed on 20 September 2018.
- The amendments will increase the retirement age of Magistrates from 65 to 70.
- The amendments will also introduce a mechanism for Magistrates to be appointed or to work part-time.
- These changes will provide greater flexibility for the Court to manage its business and will support Magistrates who wish to transition to retirement or temporarily reduce their working hours, for example, to accommodate family or carer responsibilities.
- These reforms are expected to commence towards the end of March 2019, when arrangements to support the changes in the Bill have been put in place.

Eighth Magistrate

- Ms Louise Taylor has been sitting as the Territory's eighth full-time resident magistrate since 10 September 2018.
- Ms Taylor's appointment reflects the ACT Government's commitment to provide the ACT Magistrates Court with the resources it needs to meet increasing demand. It will also help improve the efficiency of the justice system and the timeliness of proceedings in the Magistrates Court.
- In addition to resourcing the new Magistrate position, Legal Aid ACT received an additional \$1.3 million and the Director of Public Prosecutions (DPP) will be provided with \$987,000 for additional staff to support the increased capacity of the Magistrates Court.
- An eighth Magistrate means our courts can build on their excellent work from recent years.

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*If asked about the recruitment of the 8<sup>th</sup> Magistrate*

- This process was conducted in accordance with the requirements of the Magistrates Court (Magistrates Appointment Requirements) Determination 2009.
- Nominations were sought from the local legal profession, including the Law Society of the ACT and the ACT Bar Association, community legal centres, and also from my counterparts interstate.

*If asked about the Chief Magistrate's views*

- I acknowledge the Chief Magistrate's view that further resources are needed for the Magistrates Court.
- As Attorney-General, I will continue to consider resourcing of the justice system as a whole, and to make sure that each component is working effectively to support an effective justice system in the ACT.

*Recruitment*

- A recent recruitment process for Magistrate and Special Magistrate positions closed on 25 January 2019 and the Government expects that appointments will occur in the next few months.
- The Government recently re-appointed Ms Margaret Hunter as a Special Magistrate to continue sitting within the Court as required until the end of June 2019.
- The eighth Magistrate combined with the re-appointment of the special Magistrates expands the Magistrates Court capacity from its current levels.

*Dedicated full time ACT Forensic Pathologist*

- The 2018-19 Budget also provided \$1.9 million 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.
- The Government is confident this new capability 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.

Cleared as complete and accurate: 04/02/2019  
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### Dedicated Coroner

- It is important to recognise that decisions about 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.
- The Government is also continuing to consider reforms to better deliver the justice needs of families, affected people and the community through the coronial process, as well as supporting the operation of the Coroner's court.

### **Key Information**

- The criminal jurisdiction of the Magistrates Court has experienced a significant increase in demand, with a 15 per cent increase in lodgements leading to a 23 per cent increase in pending matters and 15 per cent increase in cases pending for more than 12 months (excluding failure to vote charges resulting from the 2016 ACT election).
- There was a very slight increase in coronial cases lodged in 2017/18 to 308 from 299 in 2016/17, but the Government's suite of legislative reforms in 2014 continues to mean this is much lower than the more than 1100 cases lodged per year in 2013/14 and 2012/13.
- The workload of the Coroner's Court can fluctuate depending on the circumstances of particular cases. For example the Court received two uncommon notices relating to deaths in the Jervis Bay and Australian Antarctic Territories that it will deal with by agreement with the Commonwealth Government.
- Just as workload can fluctuate, some complex or sensitive cases take longer to hear and resolve. In 2017/18 the median number of days to finalise a case was 92, down from 94 in 2016-17, but up from 75 in 2018/16. This has exceeded the target of 85 days. This was in part due to a number of long and complex coronial matters being finalised.

### **Background Information**

- You have asked the Justice and Community Safety Directorate to explore options to improve the support provided to the operations of the Coroner's Court, in particular, to better focus on and meet the needs of families affected by a death subject to an inquiry.

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**ISSUE: REFORMS TO THE OPERATION OF THE CORONERS COURT**

**Talking points:**

Budget Announcement

- 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.
- The 2018-19 Budget provided \$1.9 million 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.

Improvements to support families

- The Government is also continuing to consider reforms to better deliver the justice needs of families, affected people and the community through the coronial process, as well as supporting the operation of the Coroner's court.
- As part of this consideration, the Government is working with families to make sure that any reforms to coronial processes support the needs of people affected by a death.

**Background Information**

- The Law Reform Advisory Council report on its inquiry into Canberra as a restorative city recommended that restorative practices should be trialled within the coronial system.
- You have directed the Justice and Community Safety Directorate to prepare proposals for reform of the coronial system that will incorporate restorative practice and align with the Restorative Cities work being progressed by the Government.

Cleared as complete and accurate: 04/02/2019  
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TRIM Ref: 2019/000034-030

**Portfolio:** Attorney-General**ISSUE: DRUG AND ALCOHOL COURT****Talking points:**

- The Government committed to establishing a Drug and Alcohol Court (DAC) in the Parliamentary Agreement for the 9<sup>th</sup> Assembly.
- The DAC and associated support programs aim to reduce the criminogenic risks of drug and alcohol dependence within a therapeutic framework, and targets high-risk high-needs offenders whose criminal activity is associated with drug or alcohol dependence.
- The effectiveness of DACs in achieving long-term behavioural change in offenders is supported by a substantial body of research. Results include reductions in re-offending (recidivism), reduced incarceration rates, and improved community safety outcomes.
- A DAC requires a range of services both in the court context and to provide treatment, supervision and support in the community. As such this is a complex program of work and requires the planning phase to be very carefully considered.
- Alcohol and other drug treatment services in particular need to be planned to ensure appropriate therapeutic treatment pathways are clearly identified for DAC participants. The Government has held consultation workshops with the alcohol and other drug service sector to support this planning process.
- The problem-solving approach taken by drug courts involves key principles to achieve the best outcomes including: an integrated approach by all parts of the justice system; prompt access to treatment and related services and a high level of judicial intervention.
- The Supreme Court has developed proposals to Government in relation to the model, assisted by a working group of key stakeholders, chaired by Justice John Burns. These proposals are under consideration by Government.

Cleared as complete and accurate: 29/01/2019  
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- The Government is working to finalise an appropriate model for the Territory's DAC, including drafting Bill and developing policies and operating procedures for the DAC.

### **Funding allocated for the development of the Drug and Alcohol Court**

- Across the 2017-2018 and 2018-2019 financial years, a total of \$2.151m has been appropriated to support the development of the Drug and Alcohol Court (DAC).
- The 2017-2018 Budget allocated \$477,000 over five months for the model and design costing of the DAC.
- The 2017-2018 mid-year appropriation allocated \$1.049m for another six months (January to June 2018) to continue the development of the DAC.
- The 2018-2019 Budget allocated a further \$625,000 for ongoing development work for six months.
- As a result of the allocation of these funding, JACS has commenced drafting the Bill and the criminal justice policies and operating procedures for the DAC, ACT Health has engaged a consultant to evaluate the cost and the impact the DAC will have on the ACT alcohol and other drug sector, and JACS has also completed work on the first stage of the Criminal Justice Cost Model.
- Funding for an operational DAC was sought through the 2018/19 mid-year budget cycle.

### **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.
- The ACT Courts and Tribunal (ACTCT) Corporate Plan 2017-2020 indicates that exploring the potential for a DAC in the Territory is a priority for 2017-2018.
- To date, four business cases have been developed to seek funding for the development of the DAC. Including, a 2017-2018 business case; a 2017-2018 mid-year appropriation business case; a 2018-2019 business case; and a 2018-2019 mid-year appropriation business case recently progressed through the 2018-2019 mid-year budget appropriation process.

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- Following the Government's decision not to fund the operational business case for the DAC in the 2018-2019 budget, JACS Legislation Policy and Programs completed work on the first stage of the Criminal Justice Cost Model.
- The model costs the individual components of the current ACT criminal justice system from the point of apprehension to post-sentence; it includes data up until 2016-2017, and projects costs to 2025-2026.
- The cost benefit analysis includes detailed ACT criminal justice data developed as part of the Criminal Justice Cost Model project and it includes publicly available data for other parts of the human services system.
- The cost benefit analysis estimates that the DAC will achieve a positive return on investment in the first full year of operation. Over 10 years it is estimated that the return on investment will be a return of \$3.14 for every dollar invested.
- The DAC and the cost modelling were presented to the Human Services and Social Inclusion Subcommittee of Cabinet for consideration on 28 September 2018.
- On 23 January 2019, the Attorney General and the Minister for Health and Wellbeing attended the Parramatta Drug Court in Sydney, New South Wales to witness the Drug Court proceedings.

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Safety

TRIM Reference MIN:2019/000033-002

**Portfolio/s** Attorney-General**ISSUE: Law Courts Progress****Talking points:**

- Stage 1 reached Technical Completion on 25 September 2018.
- The Courts moved into the new Stage 1 facilities on the weekend of 13/14 October 2018. A smoking ceremony was held prior to the Courts commencing operations on 15 October 2018.
- Stage 1 includes a new four-story building fronting Vernon Circle, refurbishment and reconfiguration works in the existing Magistrates Court building and a new entrance foyer linking the two existing buildings. Stage 1 will deliver six courtrooms (including five jury courtrooms).
- Stage 1 completion was achieved with a number of minor outstanding items remaining to be completed. The Project Team is working closely with Juris and Laing O'Rourke to complete these items. Many of these items have now been completed including the façade to Vernon Circle.
- Works on Stage 2 (the refurbishment of the existing Supreme court) commenced on 15 October 2018.
- The Territory project team anticipates completion of Stage 2 during the forth quarter of 2019.
- Monthly Service Payments (MSP) to Juris Patnership are only payable following completion. The MSP for Stage 1 has commenced and will step up to the full MSP on completion of Stage 2.
- The end date of the PPP contract is fixed based on a 25-year period following the contracted date for completed of Stage 2 (i.e. 28 August 2018 plus 25 years). Therefore, the operational period during which payments are made by the Territory is truncated to the same extent as the delay to completion. This results in a saving to the Territory compared to the payments that would have been made had the project been completed on time.

Cleared as complete and accurate:	05/02/2019	
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Lead Directorate:	Chief Minister, Treasury and Economic Development	

- These savings are greater than the project management and other costs that the Territory will incur as a direct result of the prolonged period of construction.

## Key Information

### The ACT Law Courts Project

- Stage 1 reached Technical Completion on 25 September 2018. Commercial Acceptance was achieved on 8 October 2018.
- At completion of Stage 1 the new facilities were fully fit for purpose for the Court functions. However, some minor areas of work remained to be completed, for example:
  - cosmetic cladding to the ‘hood’ structures to the Vernon Circle façade;
  - landscaping (planting) to the Vernon Circle frontage; and
  - installation of commissioned artwork.
  - Under the PPP contract Stage 1 was due to be completed by 24 November 2017 and Stage 2 by 28 August 2018.
- The Territory entered into contract with Juris Partnership (Juris) in December 2015 to design, build, finance and maintain the ACT Law Courts under a Public Private Partnership (PPP) arrangement (the Project). The Project represents a capital investment in the ACT Law Courts of over \$160 million.
- The Juris Partnership consortium includes Laing O’Rourke Australia Construction Pty Ltd, Macquarie Capital Group Limited and Programmed Facility Management Pty Ltd.
- The Project is being delivered in two main stages. Stage 1 includes a new four-story building fronting Vernon Circle, refurbishment and reconfiguration works in the existing Magistrates Court building and a new entrance foyer linking the two existing buildings. Stage 2 completes the project with the refurbishment of the existing Supreme Court building. Stage 1 will deliver six courtrooms (including five jury courtrooms) and Stage 2 will deliver the remaining two non-jury courtrooms.

### Progress of the Project (delays)

- Stage 1 of the construction phase has experienced significant delays. The delay to Commercial Acceptance of Stage 1 was just over ten and a half months.
- Stage 2 of the project is expected to be completed in Quarter 4 of 2019 – in excess of twelve months later than the original contract dates.

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## Operational consequences of the delay

- During the construction phase for the new facilities the Court has retained use of the same number of courtrooms (both jury and non-jury) as were available prior to commencement of the project. The Court has been kept fully appraised of the delay and took this into account when listing matters during 2018.
- Consistent with past practice, the Court has continued to utilise the Queanbeyan courthouse and the Military Court at Fyshwick to provide additional jury trial capacity when required.
- The delays have not had a direct detrimental affect on the capacity and functioning of the Court.

## Financial consequence of the delay

- Under the PPP contract arrangements, except for certain exceptional circumstances, Juris assumes full risk for the time it takes to complete the works. Accordingly, the contractor is not entitled to any additional payments due to completion being later than the dates set out in the contract.
- Payments to Juris do not commence until completion of Stage 1 has been achieved and, as the end date of the contract is fixed, the 25-year operational phase of the PPP contract is truncated to the same extent as the delay to completion. This results in a saving to the Territory compared to the payments that would have been made had the project been completed on time. These savings are greater than the project management and other costs that the Territory will incur as a direct result of the prolonged period of construction.
- The cost (and value-for-money) of the project to the Territory is measured as a Net Present Cost (NPC) of the future payments to be made to Juris over the term of the contract. At the date of entering into the contract, the NPC was calculated at \$250.4 million as set out in the published Contract Summary.
- Due to the delays in construction the NPC of the future payments due to be made by the Territory will reduce compared to the amount initially expected. The extent of this reduction will not be calculated until after both Stages have been completed.

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**ISSUE: BAIL LAWS**

**Talking points:**

Purpose of bail laws

- Bail allows, in appropriate cases, accused people to remain in the community until their charges can be determined by a court of law. The ACT *Bail Act 1992* (Bail Act) is designed to: balance competing rights, interests and expectations; ensure accused people attend court; and ensure the accused does not interfere with witness or evidence and does not reoffend.

Decisions to grant bail

- Deciding to grant bail requires an assessment of a range of factors under our bail laws including through: presumptions against bail for certain offences; conditions of bail that can be imposed; and the role of ACT Policing (ACTP) and ACT Corrective Services can play in ensuring that offenders comply with their bail conditions.
- There is no data available about the number of instances where a person offends on bail, but the ACT Government is satisfied on the basis of available information that the mechanisms currently in place to determine the issue of bail and management of people on bail are satisfactory.

Bail Support Program

- The ACT Government commenced a two year trial Bail Support Program in December 2017 to contribute to the Government's commitment to reduce recidivism. The Program is designed to support Aboriginal and Torres Strait Islander people released on bail. As at December 2018, 84 people had participated in the Program.

Review of bail laws

*Section 44 of the Bail Act*

- From May 2019, a review will be undertaken as required by legislation of the operation of section 44 of the Bail Act which provides an own-motion bail review power to the Director of Public Prosecutions (DPP).

Cleared as complete and accurate:	31/01/2019	
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Lead Directorate:	Justice and Community Safety	

This power provides a right to apply to the Supreme Court for review of a magistrate's bail decision.

- The DPP has given oral notice of a proposed application twice and on both occasions did not ultimately proceed to make an application to the Supreme Court.
- I will present a report of the review to the Legislative Assembly within six months after the day the review is started.

### *Section 56A of the Bail Act*

- In November 2018, the ACT Court of Appeal delivered a decision considering the interpretation of section 56A of the Bail Act and the question of whether the power to arrest for breach of bail permits entry to premises without a warrant to effect the arrest.
- The Court of Appeal found that section 56A should be interpreted to permit a right of entry having considered the legislative history and intent of the legislature in combination with the common law right of entry.
- An application for special leave has been made to the High Court by the respondent to the original proceedings, Ms Thomson, seeking leave to appeal from the decision of the Court of Appeal.

### **Background Information**

#### Matter of *Andrews v Thomson*: interpretation of section 56A of the Bail Act

- The Court of Appeal matter was an appeal from a decision of the ACT Supreme Court which was itself the determination of an appeal from a decision of the ACT Magistrates Court. The background to the matter is that police officers attended the home of a person on bail because they believed she had breached a condition of her bail order not to use illicit drugs. The issue was whether or not the police officers were entitled to enter the premises to make the arrest.
- In the Response to the Application filed with the High Court on your behalf by the ACT Government Solicitor, reference has been made to the ACT Government considering legislative amendments to confer an express statutory power to enter premises and identify the circumstances in which it may be lawfully exercised.

Cleared as complete and accurate:	31/01/2019	
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TRIM Ref: 2019/000034-040

**Portfolio:** Attorney-General

**ISSUE: EASTMAN TRIAL UPDATE**

**Talking points:**

- The retrial of Mr David Harold Eastman demonstrated that the ACT judicial system is functioning independently and appropriately. The system has upheld the defendant's right to an open, transparent, and fair trial.
- I thank the jury for its service on this matter.
- The interests of justice have been served and it is not appropriate to comment on either the outcome or the antecedents of the trial.
- The murder of Colin Winchester has had a profound impact on our community. Our thoughts are with the Winchester family.

*If asked -*

*Was this a waste of taxpayer money?*

- We have a responsibility to provide our community with transparent, accessible, and timely court services. As a Government we have and will continue to invest the necessary resources to meet that obligation.
- The ACT Government provided funding for the ACT Courts and Tribunal, Legal Aid, the Director of Public Prosecutions and ACT Policing for the retrial of Mr David Eastman.

*Why was Eastman retried when there were so many doubts?*

- Everyone affected by a crime – victims, family members, the person accused, and the whole community – is entitled to a fair trial.
- The Government's role in this process is to support the justice system to afford fair trials. Decisions about whether to prosecute, appeal, or take any other legal action in relation to crime are properly within the remit of the Director of the Public Prosecutions.

Cleared as complete and accurate: 23/11/2018  
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Safety

*What about compensation for Mr Eastman?*

- At this juncture, it would not be appropriate to discuss the question of any compensation to Mr Eastman as he has legal proceedings on foot arising from the circumstances of the original trial.

*Will the Government hold an inquiry into ACT Policing's investigation of the Eastman matter?*

- Our justice system depends on an open and transparent trial, and this has occurred. This has been a lengthy and complex trial.
- The government acknowledges the jury's decision and will not make further comment at this time.

**Background Information**

The re-trial of Mr Eastman was completed on 22 November 2018 with the jury returning a verdict of not guilty.

Total additional funding provided for the Eastman matter since 2012-13 is approximately \$29m (as detailed below). This amount relates to the additional funding provided, not the expenditure, for the Eastman matter.

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TRIM Reference MIN:2019/000085-001

**Portfolio/s:** Attorney-General

*Updated by COS 31/10/18*

## **ISSUE: COURTS COAT OF ARMS**

### **Talking points:**

- The question on whether to develop a new Coat of Arms for the Territory has been referred by the Assembly to the Standing Committee on Environment and Transport City Services to commence an inquiry.
- The Government worked with the judiciary on the design of the new Courts building and will continue to do so.
- There are currently no plans to install a Coat of Arms at the new combined entry to the ACT Law Courts or behind the bench in the courtrooms or hearing rooms in the new building.
- The wording “Law Courts of the Australian Capital Territory” is placed over the entry.
- There is an existing Commonwealth Coat of Arms which will be restored and remain in place at the former entrance to the Supreme Court building. This was agreed to as an appropriate heritage consideration.
- The existing Coat of Arms used in the ACT is not, in fact, for the Territory as a whole but only for the City of Canberra, and was commissioned in 1928 in response to the Department of Defence practice of naval ships being named after cities needing to display that city’s coat of arms.
- The Committee holding an inquiry into a possible ACT Coat of Arms will consult with the community, and including the legal profession and ex - service community.

### **Key Information**

- The design for the new facility was originally intended to include a large Territory Coat of Arms prominently displayed at the public entrance to the building. In

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Safety

addition, as is the convention, a Coat of Arms was to be installed behind the bench in each new courtroom.

- The Chief Justice preference is the building not be badged (either externally or internally) with the Canberra Coat of Arms. There are a number of reasons for this, including that the Coat of Arms was granted to the City of Canberra only, and is arguably therefore inappropriate for use by the courts as it does not represent all people of the ACT.
- There is an existing Commonwealth Coat of Arms which will be restored and remain in place at the former entrance to the Supreme Court building. This existing Coat of Arms will remain only as a key piece of the heritage fabric of the building.

### Attachments

Attachment A	QTON 28 November 2018
Attachment B	Correspondence – Letter from Mr Hanson to AG
Attachment C	Correspondence – AG response letter to Mr Hanson

Cleared as complete and accurate: 10/10/2018  
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Safety

TRIM Ref: MIN:2019/000034-043

**Portfolio:** Attorney-General**ISSUE: JUDICIAL COUNCIL COMPLAINTS****Talking points:***Integrity Commission coverage of judicial officers*

- The *Integrity Commission Act 2018* (the Act), as passed on 29 November 2018, provides the Integrity Commission with jurisdiction to investigate complaints made about judicial officers. The Act contains a range of provisions to ensure that the independence of the judiciary and the separation of powers is respected.
- Importantly, the Act does not provide the Integrity Commission with any disciplinary powers. In accordance with existing laws (the *Judicial Commissions Act 1994*), judicial officers may only be removed from office on a motion of the Assembly as recommended by a judicial commission.
- The Act requires the Integrity Commission to have proper regard for the preservation of the independence of judicial officers. The Commission must notify, and may consult, the Chief Justice or Chief Magistrate if it is investigating a judicial officer in their jurisdiction, unless doing so would prejudice an investigation.
- The Integrity Commission cannot investigate any complaint that directly relates to the merit of a decision of, an order made or a judgement given by, a judicial officer. The Act also includes a mechanism for complaints about judicial officers that come to the Integrity Commission to be referred to the Judicial Council.
- The Government will monitor the operation of the legislation. I note that the Act requires that a review of its provisions be conducted as soon as practicable after 1 July 2022.

*If asked about the Judicial Council's role and function*

- The Judicial Council was established to handle low-level complaints about matters relating to the behaviour or physical or mental capacity of a judicial officer, which do not warrant the appointment of a full judicial commission.

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- The Council considers complaints in private. The Council does not confirm whether complaints have been made nor comment on them. The annual reports of the Council provide information about the numbers of complaints received and their outcomes in a de-identified form.
- If the Council concludes the complaint justifies parliamentary consideration, the Council is required to make a recommendation to the ACT Executive that it appoint a judicial commission to examine the complaint further.
- If the Council considers the complaint does not justify its further consideration or does not justify parliamentary consideration, the complaint is referred to the head of the relevant jurisdiction.

### **Background**

- Since the Judicial Council commenced on 1 February 2017, it has received 15 complaints.
- The Council has dismissed 13 complaints under section 35B of the *Judicial Commissions Act 1994*. Nine of these complaints could not be substantiated after considering the relevant transcripts and audio recordings and so did not justify further consideration by the Council. Two complaints were dismissed as the person who was the subject of the complaint was no longer a judicial officer.
- The Council has found one complaint substantiated and one complaint partly substantiated. It referred both complaints to the relevant head of jurisdiction under section 35C of the *Judicial Commissions Act 1994*.
- No complaints received by the Judicial Council have gone to full examination by a Judicial Commission.

### *Integrity Commission Act 2018*

- The 2018 Select Committee on an Independent Integrity Commission recommended that judicial officers fall within the jurisdiction of an ACT Integrity Commission.
- On 15 November 2018 the Chief Justice wrote to you opposing the coverage of judicial officers by the proposed Integrity Commission.
- In November 2018 Cabinet agreed to include judicial officers in the jurisdiction of the Integrity Commission. The *Integrity Commission Act 2018* (the Act) was passed into law on 29 November 2018.
- The Act contains mechanisms as described above to protect judicial independence. It largely follows the statutory model in place in Victoria.

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TRIM Ref: 2019/000039-003

**Portfolios:** Chief Minister

Police & Emergency Services

Attorney-General

**ISSUE: NATIONAL SECURITY ISSUES (INCLUDING CROWDED PLACE SAFETY)**

## TALKING POINTS

### Counter Terrorism - General (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.
- Anyone who singles out any particular group as a target for hatred plays into the hands of terrorists.
- We as a government reject those who seek to impose their world view on others through intimidation and violence.
- We cannot eliminate entirely the risk of terrorism any more than we can eliminate the risk of any 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 partners on the national security challenges that Australia faces.
- These national security challenges continue to evolve, so we need to keep our legislation and capabilities under constant review to meet these emerging issues.
- The ACT Government is committed to ensuring the safety and security of our community, and continues to work closely with ACT Policing and other law enforcement and intelligence agencies to combat terrorism and violent extremism.

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- The ACT continues to support community leaders and activities that help promote the vibrant, inclusive and culturally diverse nature of the ACT community while maintaining the rule of law and protecting human rights.
- 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).

### **Safety in Public Places (MPES)**

- The safety of Canberrans as they go about their business in public places remains a key focus for the government.
- While the national terrorism public alert level remains at PROBABLE, there is no specific or credible threat to the ACT. The ACT Government in conjunction with ACT Policing continually reviews its security arrangements within the current risk environment.
- In 2017, the Commonwealth Government launched *Australian's Strategy for Protecting Crowded Places from Terrorism*. The Strategy provides a consistent, national approach to protecting crowded places which can be applied flexibly to suit local circumstances.
- The ACT Government continues to work in partnership with ACT Policing and other law enforcement and intelligence agencies to implement the Strategy and provide for the safety of resident and visitors who enjoy Canberra's public places.
- While ultimate responsibility for event security always lies with event organisers, ACT Policing are proactively engaging with organisers to provide appropriate advice and guidance in accordance with the strategy through both direct engagement and regular crowded places forums.
- From 2019, ACT Policing will deliver a consistent schedule of two crowded places forums per year. These forums will focus on encouraging different sectors to come together and present their strategy alignment considerations, location or event risk mitigation

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strategies as well as any learning outcomes from the implementation of risk mitigation they may have experienced.

- Additional resourcing for ACT Policing, provided in the 2016-17 ACT Budget over two financial years, has further assisted in the delivery of the crowded places strategy responsibilities, with the half coverage cost of a full time appointment of an ACT Policing Crowded Places staff member.
- In the 2018-19 budget, the ACT Government allocated over \$1.5 million in funding towards improving the security of public places through CCTV enhancements, security risk assessments and additional resources for ACT Policing to implement the strategy.
- Concerns about national security or terrorism should be reported immediately to the National Security Hotline on 1800 123 400.

### **Defence support to National Counter-Terrorism arrangements (Chief Minister)**

- In 2016, the Commonwealth Government initiated a review of Defence support to national counter-terrorism arrangements in response to the changing nature of the terrorist threat.
- State and Territory police remain, and will continue to remain, the primary responders to any terrorist attack.
- While Defence's primary role in counter-terrorism is offshore, Defence possesses specialist capabilities that could support state and territory governments in responding to an attack.
- The Commonwealth Government in close consultation with all States and Territories has worked to develop options for practical counter-terrorism engagement and cooperation between the Australian Defence Force (ADF) and State and Territory police.
- Additionally, in 2017 the Commonwealth Government announced proposed amendments to Part IIIAAA of the *Defence Act 1903*.
- Part IIIAAA provides the framework for authorising the ADF to use force to resolve a domestic violence incident, including terrorism, in support of States and Territories.
- The amendments were passed by Parliament on 27 November 2018 and have a six month delayed commencement. The amendments will:

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- make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident
- allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air
- simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident
- enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.

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**Portfolio: Minister for Police & Emergency Services**  
**Attorney-General****ISSUE: CRIMINAL MOTORCYCLE GANG INCIDENTS**

This QTB focuses on the ACT Policing operational aspects. Information about legislative reform, fortification removal laws, crime scene powers and drive-by shootings can be found in the QTB titled “Serious and Organised Crime Response”.

**TALKING POINTS:**

- Countering serious and organised crime by criminal gangs and maintaining public safety is of primary focus for the ACT Government and ACT Policing.
- 2017-18 saw an increase in the number of criminal gangs and criminal gang members operating in the ACT.
  - As at 30 January 2019, there are four known Criminal Motorcycle Gangs operating in the ACT.
  - As at 30 January 2019, the total number of members associated with ACT chapters of these Criminal Gangs is estimated at approximately 60 people.
- Through Taskforce Nemesis, ACT Policing continues to proactively disrupt criminal gang members to deter and detect criminal activity. This includes the confiscation of criminal assets.
- 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.
- ACT Policing has, and will continue to deploy resources flexibly to ensure an appropriate police response to target and disrupt those seeking to cause harm in our community.
  - ACT Policing is in a unique position, in that it has the ability to call on resources from the broader AFP as operational requirements arise.
  - These specialist and surge capabilities afford ACT Policing additional resources, to meet fluid and changing operational environments.
- The Government’s 2018-19 Budget commitment of \$1.594 million over four years to bolster the capability of Taskforce Nemesis provides funding for one Forensic Accountant, one Surveillance Team Member, and associated equipment and training. These funded positions will enhance ACT Policing’s capability to respond to serious and organised criminal activity in the ACT.
  - The surveillance team member position has been filled.
  - Recruitment for the Forensic Accountant is underway. Exact commencement date is dependent on completion of recruitment and security processes.
  - Funding allocated to combating Criminal Gangs in August 2016 has been applied, and eight members were appointed to Taskforce Nemesis.

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- In 2017, the Federal Government boosted resources for dealing with organised crime through the National Anti-Gangs Squad (NAGS). Taskforce Nemesis works closely with the NAGS and other agencies, 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.
- ACT Policing has had additional powers available since 2017 that have enhanced our ability to respond to and prosecute criminal gang related acts of violence after the fact.

### Recent strategic activity

- ACT Policing has established a Whole of Government (WoG) 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 National Anti-Gang Squad model that brings a whole-of-government approach to addressing this issue.
- Members of the working group include ACT Policing, ACT Housing, NSW Police (Monaro LAC), Australian Border Force, Australian Criminal Intelligence Commission, AUSTRAC, Department of Human Services, and the Australian Taxation Office.

### Recent ACT Policing operational activity

<b>Key Taskforce Nemesis figures (criminal gang related figures)*</b>	<b>2018</b>	<b>1 Jan 2019 to 24 Jan 2019</b>
Criminal gang members charged**	27	8
Offences charged	78	11
Search warrants executed	100	3
Firearms seized	20	0

\*As at 13 February 2019

\*\*Person may be charged on numerous occasions

- On 5 February 2019, Taskforce Nemesis arrested and charged an adult male following an investigation into the theft of a motor vehicle. The male was charged with driving a motor vehicle without consent, theft, and traffic offences (suspended license).
  - The man is believed to be the interim president of the ACT Chapter of the Satudarah OMCG.
  - This matter is currently before the court.
- On 4 February 2019 ACT Policing responded to a reported firearms and arson incident in Kambah. Investigations reveal a number of shots were fired into a residential premise and three vehicles set alight. No people were injured in the incident.
  - ACT Fire and Rescue also attended and extinguished the vehicles.
  - The incident is believed to be targeted and related to criminal gang (OMCG) activity.
  - As the matter remains subject to investigation by Taskforce Nemesis, it would be inappropriate to provide further comment.

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- On 18 January 2019 a physical altercation was reported at the Southern Cross Club in Woden. Approximately 16 Comanchero OMCG members and a number of Nomads OMCG members were involved in the affray.
  - While members of the public were in close proximity and became fearful for their safety, no members of the public were physically harmed in the incident however one members of the Nomads suffered facial injuries
  - On 8 February 2019, Taskforce Nemesis executed a search warrant on the residence of a Comanchero member. Five Comanchero members, including the Commander of the ACT Chapter of the Comanchero OMCG, were arrested and charged in relation to the Southern Cross club incident.
  - On 12 February 2019, a subsequent Comanchero associate was arrested and charged arising from the same matter.
  - Investigations remain ongoing into the matter.
- On 25 January 2019, Taskforce Nemesis arrested a 30 year-old man for aggravated robbery, inflict grievous bodily harm, make a demand with a threat to kill, and attempting to pervert the course of justice.
  - The man was the President of the ACT Chapter of the Satudarah OMCG.
  - On 26 January 2019, the man appeared before the ACT Magistrates Court, where he was charged and remanded in custody.
  - This matter is currently before the court.
- On 11 December, 2018, ACT Policing’s Criminal Investigations Detectives executed a search warrant on an Isabella Plains residence.
  - During the search police located and seized approximately 134 grams of crystal methamphetamine. Police also seized more than \$20,000 which is believed to be the proceeds of selling methamphetamine.
  - A 51-year-old Isabella Plains man with criminal motorcycle gang links was arrested and taken to the watch house where he was charged with trafficking in a controlled drug other than cannabis.
  - The matter is currently before the court.
- On 9 November, 2018, ACT Policing’s Taskforce Nemesis executed search warrants at the residence of the ACT Nomads President.
  - A significant quantity of cocaine, with an estimated street value of \$100,000, ammunition, cash and a prohibited item were seized by police from the residence.
  - A male has been charged with trafficking a prohibited substance, possessing ammunition, proceeds of crime and possessing a prohibited item.
  - The matter is currently before the court.
- Between 5 October and 7 October 2018, the Black Uhlands Criminal Motorcycle Gang held a National motorcycle run into Canberra.
  - Approximately 97 Black Uhlan members were identified during targeted Police interception by way of a vehicle checkpoint along the Barton Highway.

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- The Black Uhlans do not currently have an established chapter in the ACT.
- On 6 September 2018, a senior member of the Nomads Criminal Motorcycle Gang pleaded guilty to charges arising from a violent incident at a Monash Tattoo Parlour on 1 February 2018.
- On 5 September 2018, a previously convicted Comanchero Criminal Motorcycle Gang member completed a sentence of imprisonment arising from a firearms incident in March 2015.
  - Upon completion of his sentence, the Comanchero Criminal Motorcycle Gang member was apprehended by Australian Border Force and has been deported due to visa revocation.
- On 3 September 2018, Taskforce Nemesis extradited a man from Victoria to the ACT in relation to a firearm shooting incident at two Calwell residential properties on 28 June 2018.
  - The man was charged with attempted murder and refused bail. This matter is currently before the court.
- On 25 August 2018, the ACT saw its first motorcycle run by the Nomads Outlaw Motorcycle gang.
  - There was approximately 30 fully participants in attendance that attracted significant public attention.

### Background

- Developments in criminal gang membership in the ACT have highlighted the fluid nature of the criminal gang operating environment. Criminal gang membership has traditionally been relatively stable, however, changes to criminal gang membership in recent years highlights a shift towards more fluid concepts of membership. Currently, it is not uncommon for club members to ‘patch-over’ and change membership to other criminal gangs.
- While such ‘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 gang, and has had a significant impact upon the strength and rivalry between criminal 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 works closely with Police in other jurisdictions by sharing intelligence, best practices, and collaboratively monitoring and combating criminal gangs.
- The increase in criminal gang members and conflict in the ACT has placed increased resource pressure on ACT Policing requiring ACT Policing to divert considerable resources in support of Taskforce Nemesis.

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**Portfolio:** Attorney-General & Police and Emergency Services**ISSUE: SERIOUS AND ORGANISED CRIME RESPONSE**

Criminal gangs are involved in illegal activities across Australia such as drug production and trafficking, vehicle rebirthing, firearms offences, money laundering, extortion and serious assaults.

**TALKING POINTS**

- The ACT Government is strongly committed to responding to the criminal activities of criminal gangs in order to ensure Canberra is a safe and secure community.
- Most recently the ACT Government has committed to the establishment of ACT-specific laws to strip unexplained wealth from people involved with criminal gangs.
- ACT Policing has established Taskforce Nemesis – to focus on operational and investigative responses to criminal gang activity.
- The Taskforce is supported by a suite of criminal laws developed by the ACT Government over a number of years, and continued investment to ensure that ACT Policing has the resources it needs to combat criminal gangs in the ACT.
- Over the past 12 months a number of steps have been taken by the ACT Government to help law enforcement effectively target organised crime, including the introduction of crime scene powers, fortification laws and offences related to drive by shooting.
- In 2018 the Government committed \$980,000 to the ACT Office of the DPP to boost their ability to seize criminal assets depriving criminals and criminal organisations of proceeds of crime.
- In the 2018-19 Budget, a further \$1.6 million over four years was provided to Taskforce Nemesis. This funds two specialist officers, a forensic accountant and surveillance team member, to bolster the taskforces ability to combat organised crime, strip criminal wealth and improve surveillance capability to monitor the activity of criminal gangs.

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### *Anti-consorting laws*

- The ACT does not have this legislation and we are not considering introducing it. The fact is criminal gangs haven't stopped operating where these laws have been introduced.
- In jurisdictions that have had such laws in place for some time, most prominently in NSW following the review by the NSW Ombudsman, there is also evidence that anti-consorting laws disproportionately target vulnerable people including youth, people who are homeless, and Aboriginal and Torres Strait Islander people.
- The ACT Government's strong measures to tackle criminal gangs are evidence based. We have actively targeted the financial motivations behind organised crime by funding more police and prosecutors to seize criminal assets, and we are working with the Commonwealth and other jurisdictions to develop new ways of targeting unexplained wealth. That work has and will continue to show concrete results.
- We'll keep monitoring the evidence as it becomes available about both the human rights impact and effectiveness in preventing crime of any new legislation.

### Crime scene powers and drive-by shootings

- 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 created 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.
- These new laws are being effectively used by ACT Policing to support its work to combat criminal groups in the ACT.

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### Fortification removal laws

- Fortifications are structures designed to stop or hinder uninvited entry to premises.
- The *Crimes (Fortification Removal) Amendment Bill 2017* was passed in February 2018.
- The Bill provides the Chief Police Officer with the power to apply to the Magistrates Court for an order that the occupier of the premises remove fortifications on the premises. The Bill also prohibits the establishment of fortifications on certain premises.
- These laws will help make the ACT a hostile environment for criminal gangs to prevent the establishment of fortified premises such as criminal gang club houses.
- The *Crimes (Fortification Removal) Amendment Act 2017* commenced on 1 September 2018.

### ACT Unexplained wealth

- The ACT Government has committed to adopt an unexplained wealth scheme for the ACT.
- These new powers will complement existing confiscation of criminal assets laws in the ACT by deterring people from engaging in criminal activity and depriving people of their criminal profits.
- ACT Policing and the ACT Director of Public Prosecutions will be able to target those involved in drug trafficking or other serious organised criminal activity and those masterminding or directing criminal activity at arms-length.

### National Unexplained Wealth

- The Commonwealth Unexplained Wealth Legislation Amendment Bill 2018 passed Parliament on 19 September 2018.
- The Bill extends Commonwealth unexplained wealth orders to ACT offences.
- Unexplained wealth laws provide a valuable tool to law enforcement to confiscate assets where a person linked to criminal activity cannot reasonably demonstrate that these assets have been lawfully obtained. These mechanisms complement traditional law enforcement responses.
- The Commonwealth scheme has been developed through consultation with states and territories over the past four years. The ACT has been

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part of these discussions, remaining vigilant in its commitment to work as part of the ongoing national effort to disrupt, disable and dismantle the activities of organised crime.

- On 6 December 2018 the Attorney-General signed the Inter-Governmental Agreement for the Scheme on behalf of the ACT. The IGA will allow the ACT to benefit from key aspects of the scheme including preferable treatment under new equitable sharing arrangements.

## **Background**

At the meeting of the Council of Attorneys-General (CAG) held on 8 June 2018, participants agreed that organised crime is a serious and pervasive threat to the community. In recognition of this, participants agreed to have regard to the statement of guiding principles when developing legislative responses to combat organised crime. The principles will be considered in further detail at the first CAG meeting in 2019.

As at 30 January 2019, ACT Policing has identified four Outlaw Motorcycle Gangs (OMCGs) that operate in the ACT with a total number of members associated with the ACT chapters of these Criminal Gangs estimated at approximately 60 people.

The ACT Government remains strongly committed to embracing practical legislative measures to address serious and organised crime in order to keep Canberra a safe and secure community.

### Anti-Consorting Laws

Consorting laws make it an offence to associate with a person after being issued with a warning to refrain from associating with that person.

All jurisdictions except the ACT have consorting law schemes. Consorting law schemes differ in each jurisdiction. Some legislative schemes have been found to be invalid by the High Court. The Victorian model is the only model that requires law enforcement to demonstrate a link between the association of two people and the commission of a criminal offence. Obtaining evidence to support this belief may be challenging in an operational context.

The Human Rights Commission advised that without a suspected link to identifiable criminal activity, it is unlikely that consorting laws will be cured of their inherent incompatibility with the *Human Rights Act 2004*.

The ACT has not supported the introduction of consorting laws to date due to the lack of evidence for their effectiveness and the significant human rights implications.

### *Recent media*

- On 28 August 2018 [media](#) reported on an image of the Nomads OMCG on Mount Ainslie, which lead to renewed calls for anti-consorting laws from Mr Hanson.
- On 15 November 2018 the [media](#) published an article reporting on the Annual Report hearing conducted on 14 November 2018 in the Police and Emergency Services (JACS) portfolio. The report makes reference to the ACT Opposition party indicating Mr Hanson will

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attempt to introduce anti-consorting laws for a second time in either late 2018 or early 2019.

- On 29 January 2019 [media](#) reported that the number of bikie gangs with chapters operating inside Canberra has grown to five with the arrival of the European outlaw motorcycle gang Satudarah. Please see QTB 'OMCG Incidents' for ACTP operational information on this issue.

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**ISSUE: CHILD ABUSE ROYAL COMMISSION – CRIMINAL JUSTICE REFORMS****Talking points:**

- Child abuse is unacceptable and ensuring the safety of children in our community is a top priority for the ACT Government.
- In June 2018, I presented the ACT Government’s formal response to the approximately 300 recommendations of the Royal Commission that relate to State and Territory governments.
- Our response shows our clear, unambiguous commitment to protecting children, and righting wrongs.
- It demonstrates our intention to effect cultural change within organisations and the broader community, and to ensure the failures of the past are not permitted to continue.
- The response to the Royal Commission’s 85 criminal justice recommendations shows our strong commitment to improving the ACT criminal justice system’s response to child sexual abuse, through both legislative and non-legislative reforms.
- The ACT has long been a leader in adopting survivor-focused criminal laws, and already had in place a number of measures recommended by the Royal Commission.
- We are continuing to improve our criminal justice system and the Government has made significant progress on implementing the criminal justice recommendations since the release of the Royal Commission’s report. For example:
  - We have created a new offence for failure to protect a child from child sexual abuse
  - We have created two new grooming offences
  - We have improved the way child sexual abuse offenders are sentenced
  - We have improved the way victims give evidence in court

- We have implemented an offence of maintaining a sexual relationship so that the ongoing sexual relationship is criminalised, rather than just the individual sexual acts; and
- We have created a procedural mechanism for charging offences as a ‘course of conduct’
- The Government is progressing further reforms in consultation with stakeholders.

### *Reporting of sexual abuse – implications for religious confession*

- The Royal Commission’s recommendations around abuse disclosed in the context of religious confessions form an important part of the Report and the Government has accepted them in principle.
- The ACT Government commissioned Her Honour Justice Julie Dodds-Streeton to provide an analysis report on the implementation of recommendations relating to the reporting of child sexual assault, which have implications for the confessional seal.
- Her Honour has consulted with key stakeholders, including representatives of churches, agencies and organisations responsible for the reporting of child abuse and organisations representing survivors and victims.
- This will assist the Government in the design of legislation to address these recommendations.

### *Intermediary scheme*

- The Government accepted in-principle the Royal Commission’s recommendations that an intermediary scheme should be established to help prosecution witnesses with a communication difficulty in a child sexual abuse prosecution.
- Work is proceeding within Government to provide advice on an appropriate model for an ACT intermediary scheme, following the Intermediary Forum hosted by the Victims of Crime Commissioner in October last year. This provided a valuable insight from NSW and Victoria where schemes have been piloted in the last few years.
- The Government will continue to work with stakeholders and the ACT community as we progress the implementation of the ACT Government’s response to recommendations for criminal justice reforms.

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## Key Information

### Royal Commission Criminal Justice Legislation Amendment Bill 2018 (the Bill)

- The Bill was passed in December 2018 and:
  - creates a new offence in the Crimes Act 1900 of failure by a person in authority, in a relevant institution, to protect a child from the risk that a sexual offence will be committed against the child;
  - creates a procedural mechanism for charging offences as a ‘course of conduct’ for child sexual abuse;
  - amends the sentencing provisions in the Crimes (Sentencing) Act 2005 so that sentences for child sexual abuse must be sentenced according to current sentencing practice rather than the sentencing practice at the time of the offending, while retaining the principle that a sentence must not exceed the maximum that applied at the time of the offence; and
  - amends the Evidence (Miscellaneous Provisions) Act 1991 to:
    - include principles for dealing with child witnesses;
    - harmonise the structure and definitions within chapter 4, which contains the Special Measures available to witnesses in proceedings; and
    - extend the availability of certain measures to more categories of witnesses, including witnesses with disability, family members of, and people in a special relationship with, particular vulnerable witnesses and for all child witnesses.
    - make consequential amendments to other legislation as a result of the changes to the Evidence (Miscellaneous Provisions) Act.

### Criminal Justice Reforms

- The Government’s full response to the Royal Commission’s recommendations was released on 15 June 2018.
- A consultation process about the criminal justice reforms was supported by a series of factsheets and information available on the ACT Government’s YourSay website and the Justice and Community Safety Directorate website.
- The Justice and Community Safety Directorate has been consulting directly with a range of key stakeholders in the justice system and more broadly to inform the Government’s approach to legislative reform in this space. This includes consultation with the Sexual Assault Reform Program (SARP) Reference Group.
- You have been separately briefed on a Bill for introduction in February 2019 to implement further criminal justice reforms recommended by the Royal Commission.

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**Portfolio:** Attorney-General**ISSUE: COMMONWEALTH REDRESS SCHEME FOR SURVIVORS OF INSTITUTIONAL SEXUAL ABUSE****Talking points:**

- The ACT Government acknowledges the nature and impact of the abuse suffered by victims of child sex sexual abuse. Many survivors of child sexual abuse suffer long lasting and severe harms that can affect them for the rest of their lives.
- The ACT Government is working closely with the Commonwealth and other jurisdictions to implement the Redress scheme in a manner that ensures that it meets the needs of survivors.
- The Scheme started on 1 July 2018 and will run for 10 years.
- The Scheme will offer access to psychological counselling, a direct personal response from the responsible institution and a monetary payment of up to \$150,000.
- All state and territory governments have now joined the Redress scheme.
- In addition, a growing number of non-government institutions have announced their participation in the Scheme. The Commonwealth has indicated this achieves coverage of over 90 percent of anticipated claimants.
- Survivors will be able to access legal and community support services to assist through the redress application process.
- The Commonwealth has established a dedicated telephone helpline (1800 737 377) and website ([www.nationalredress.gov.au](http://www.nationalredress.gov.au)) to provide information for survivors and their families about the Scheme.

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- Based on actuarial estimations using population data, the experience of previous schemes and Royal Commission private hearings it is estimated that there will be 225 applications with ACT Government liability out of an estimated total of 830 across the ACT over the 10 years of the scheme. The Commonwealth will be responsible for claims pre self-government (11 May 1989) and non-government institutions will be liable for the balance.
- Modelling undertaken by the Commonwealth Government when designing the scheme estimated that the average payment of Redress would be \$76,350.
- The Commonwealth continues to receive applications to the Scheme. As of 31 January 2019 the ACT Government has received requests for information in relation to two applications. These have been referred to the Education Directorate to assist with relevant information.
- The ACT is continuing to work with the Commonwealth Department of Social Services - the Scheme Operator - to ensure that applications in relation to ACT Government institutions are responded to effectively.
- This includes work being undertaken by the Justice and Community Safety Directorate, together with other ACT directorates to manage several aspects of the scheme, including identifying the relevant information required in order to respond to applications made by survivors.
- Victim Support ACT will be coordinating the provision of counselling services where counselling support is a component of redress in relation to abuse which occurred in ACT government institutions.
- The Restorative Justice Unit is supporting the provision of direct personal responses from representatives of ACT government institutions.

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**Key Information**

The Redress Scheme commenced 1 July 2018.

The Redress Scheme includes psychological counselling, a direct personal response and payments for up to \$150,000.

*Who is eligible for redress?*

A person is eligible if:

- the person, when they apply, is an Australian citizen
- was sexually abused as a child
- the abuse occurred before the start of the scheme
- one or more of the institutions participating in the scheme was responsible for the abuse.

*How the application process works*

The Scheme is being administered by the Commonwealth through the Department of Social Services, which receives applications from those seeking redress. In this context the DSS is Scheme Operator under the legislation establishing the Scheme.

DSS then requests information from the institution or institutions the applicant has identified in their application as those in which the abuse occurred.

Institutions have a timeframe in which to respond with relevant information (from their records) to assist the Scheme Operator to assess the application and make a decision about whether to make an award of redress and, if so, what monetary amount to award.

Independent decision makers have been appointed by the scheme operator to make these assessments. Jurisdictions, including the ACT, have had an opportunity to nominate people who could be suitable for appointment as an independent assessor. The ACT has currently nominated three independent decision makers. One of these nominations, Mr John Hinchey, the former Victims of Crime Commissioner, has been appointed by the Scheme. The ACT Government is awaiting advice regarding the other two nominations.

An application for redress is approved by an independent decision maker if there is a reasonable likelihood that the person meets the eligibility criteria – i.e. that they were sexually abused as a child and one of more of the participating institutions is responsible for the abuse.

If it is assessed that this test is met the application for redress must be approved and the amount of a redress payment determined, as well as the psychological and counselling component of redress for the person.

*Application of the scheme to people in gaol or who have convictions*

Cleared as complete and accurate:	31/01/2019	
Cleared by:	Executive Director	Ext: 76244
Information Officer name:	Karen Greenland	
Contact Officer name:	Simon Matuzelski	Ext: 73923
Lead Directorate:	Justice and Community Safety	

A person cannot apply for redress if they are in gaol, unless the Scheme Operator determines there are exceptional circumstances justifying the application.

A person who is sentenced to imprisonment for 5 years or longer is not entitled to redress unless the scheme operator is satisfied that providing redress would not bring the scheme into disrepute or adversely affect public confidence in or support for the scheme.

In considering whether there are exceptional circumstances justifying an application from a person in gaol or whether an application from a person sentenced to more than 5 years imprisonment would bring the scheme into disrepute, the Scheme operator will seek views from the Attorneys-General of the jurisdictions where the person is, relevantly, in gaol, was sentenced to imprisonment and where the abuse is stated to have occurred.

The ACT has advised that in these cases, the ACT will support the position that the person's application should be accepted. This is on the basis that there should be no discrimination against victims or survivors of institutional child sexual abuse, having regard to their status as prisoners or people who have been sentenced to a period of imprisonment. It recognises that the life path of some victims and survivors, including offending, will often be linked to the person's experience of abuse and the impact of this on their life.

#### *Participating institutions*

The most recent advice from the Commonwealth on 25 January 2019 is that a number of non-Government institutions have recently joined the Scheme, including the Geelong Grammar School, The Presbyterian Church of Queensland, six Anglican organisations which are represented by Anglican Representative Limited and one further Catholic institution - The Personal Ordinate of Our Lady of the Southern Cross. . As a result, 34 of the 35 Catholic Dioceses and Archdioceses have now joined the scheme.

The Commonwealth is continuing to work with other organisations which have been named in applications.

#### *Claims to date*

The most recent information from the Scheme Operator (26 November 2018) is that approximately 2050 claims have been received.

While there are currently two applications being processed by the ACT Government for the provision of information, it should be noted that any applications relating to abuse which occurred pre-self-government are being responded to by the Commonwealth. JACS has requested information from the Commonwealth on the number of such applications, to provide a more complete picture of claims relating to ACT Government agencies.

As at late November 10 redress payments had been made.

#### **Funding for ACT redress**

In the 2018-19 Budget, the Government allocated \$13.9 million for the first four years of the National Redress Scheme, it is estimated that it will cost approximately \$30 million over the life of the Scheme.

Cleared as complete and accurate:	31/01/2019	
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Lead Directorate:	Justice and Community Safety	

**ISSUE: RESIDENTIAL TENANCIES**

**Talking points:**

Residential Tenancies Amendment Bill 2018 (No 2)

- The Residential Tenancies Amendment Bill 2018 (No 2) (the Bill) was introduced on 1 November 2018.
- The Bill will amend the *Residential Tenancies Act 1997* to provide fairer outcomes for tenants.
- The amendments proposed in the Bill include:
  - making it easier for tenants to keep pets in rental properties
  - making it easier for tenants to make modifications in rental properties
  - refining the domestic violence and personal protection order provisions to assist the ACT Civil and Administrative Tribunal (ACAT) to address practical issues that have arisen with current drafting
  - allowing tenants to vacate with no penalty during a fixed term when notice of a ‘no cause’ termination has been given
  - providing that a tenant does not need to pay a ‘break lease’ fee if the lessor finds a replacement tenant, subject to reasonable costs and
  - requiring lessors to apply to ACAT for any rental increase in excess of a prescribed amount (the rental consumer price index plus ten per cent) unless the tenant has agreed to the increase.
- These amendments are the result of extensive consultation with renters, landlords and community groups.
- The amendments will support vulnerable people to be secure in their homes. This is a priority for the Government and will make Canberra a stronger, safer and more connected city.

Cleared as complete and accurate:	08/02/2019	
Cleared by:	Executive Director	Ext: 70674
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Lead Directorate:	Justice and Community Safety	

TRIM Ref: 2019/000034-048

**Portfolio:** Attorney-General**ISSUE: STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
REPORT ON INQUIRY INTO THE CRIMES (CONSENT) AMENDMENT BILL 2018***(Before tabling of the Government Response in the Assembly)***Talking points:**

- 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 ACT Government welcomes the opportunity to consider potential improvements to our criminal laws through the Justice and Community Safety Standing Committee's Report on the inquiry into the Crimes (Consent) Amendment Bill 2018, which was presented to the Assembly on 31 October 2018.
- The Committee's Report focuses on the definition of consent proposed in the Crimes (Consent) Amendment Bill 2018, the intentions of the Bill in relation to an 'affirmative communicative model' of consent based on 'free and voluntary agreement', and the social implications of the Bill.
- The Government will table its response to the Committee's Report in the Legislative Assembly during the second week of the February 2019 sitting period.

**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'.
- It is relevant that any proposed changes to sexual consent provisions are considered in connection with the large body of work being undertaken by Government to implement the *Criminal Justice recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse*.

Cleared as complete and accurate: 04/02/2019  
Cleared by: Executive Director Ext: 76244  
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Safety

### Law reform commission recommendations

- The 2010 Australian Law Reform Commission's *Final Report Family Violence – A National Legal Response* recommends that ACT sexual offence provisions should 'include a statutory definition of consent based on the concept of free and voluntary agreement' (recommendation 25-4).
- The NSW Law Reform Commission is currently reviewing sexual consent provisions in NSW legislation. Public submissions are being accepted until 1 February 2019.

### **Background Information**

- On 11 April 2018, Ms Le Couteur introduced the *Crimes (Consent) Amendment Bill 2018* in the Legislative Assembly. The Bill seeks to amend the *Crimes Act 1900* (Crimes Act) to insert a new statutory definition of consent for certain sexual offences and distribution of intimate images, and to exclude the operation of specified child sex offences to some young people.
- On 8 May 2018, the Assembly referred the Bill to the Standing Committee on Justice and Community Safety for inquiry and report. The Committee presented its report to the Assembly on 31 October 2018 with ten recommendations, including that:
  - the Bill as introduced into the Legislative Assembly on 11 April 2018 not be proceeded with in its current form (Recommendation 1);
  - the ACT not consider or enact legislative change to introduce a definition of affirmative consent until the report from the current NSW Law Reform Commission inquiry in relation to sexual offences is presented (Recommendation 2); and
  - a definition of consent based on a concept of free and voluntary agreement, and affirmative and communicative consent be considered for enactment into ACT law (Recommendation 4).
- A Government Response is required to be tabled in the Assembly within four months of release of the Report – this being 1 March 2019.
- The Justice and Community Safety Directorate is undertaking work to implement the 2017 *Criminal Justice recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse*, which will be relevant to consider for implementation of the Government Response.

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## Summary of the Crimes (Consent) Amendment Bill 2018

- The Bill proposes to insert a new statutory definition of consent into the Crimes Act. In summary, the definition would provide that consent means: a person gives free and voluntary agreement and the other person knows or is satisfied on reasonable grounds that the agreement was freely and voluntarily given. The Revised Explanatory Statement states that the policy goal of the new definition is to 'clarify the law of consent and provide better outcomes for victims and the community'.
- The Bill also creates an exception to offences of using a child for the production of child exploitation material, possessing child exploitation material, and grooming and depraving young people. The exception would dis-apply those sections to a defendant where, at the time of the alleged offence, the complainant was at least 10 years old, the defendant was not more than 2 years older or younger, and the complainant 'consented to the act constituting the offence'.
- The Revised Explanatory Statement for the Bill states that insertion of the exception aims to ensure that young people consensually sharing sexual material between each other are not at risk of prosecution. It suggests the amendments would promote consistency with the age of consent in other provisions in the Act, including section 55 (sexual intercourse with a young person), section 61 (acts of indecency with a young person) and section 72D (distribution of intimate image of a young person).

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Safety

TRIM Reference MIN:2019/000034-049

**Portfolio/s:** Attorney-General**ISSUE: ELECTORAL AMENDMENT BILL 2018****Talking points:**

- The Electoral Amendment Bill 2018 (the Bill) meets a key government election commitment by banning political donations from property developers.
- The Bill, which I introduced on 29 November 2018, will increase public confidence in our democratic system of government by removing perceived bias and strengthening our electoral reporting framework.
- The Bill introduces an offence for a property developer or close associate of a property developer to give a gift to a political entity. A political entity includes an MLA or a political party, and a close associate includes an officer of a corporation and their domestic partner.
- There is a corresponding offence for a political entity to accept a gift from a property developer or a close associate.
- The Bill also amends the Electoral Act to treat the total amount of a fundraising contribution as a 'gift' for the purpose of reporting thresholds. Previously donations of up to \$250 did not need to be reported.

*If asked – Greens amendments to scope of ban*

- Following the introduction of the Bill, media reports stated that the Greens would be seeking to amend the Bill, including to exclude donations other than from individual registered ACT voters.
- Without foreshadowing debate on the Bill or any amendments which may be moved, I would note that the ACT has considered models in other jurisdictions and the outcome of legal challenges in developing legislation to ban property developer political donations.

Cleared as complete and accurate: 04/02/2019  
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- We have been cognisant that there are important human and constitutional rights to consider. We are mindful that NSW legislation has been considered by the High Court of Australia in the case of *McCloy v NSW*. The High Court upheld the validity of NSW provisions banning political donations by property developers, and recognised that limitations on donations can be an important part of enhancing free and fair elections.
- Further, in *Unions NSW v NSW* the High Court found that banning political donations from any person who does not appear on a federal, state or local electoral roll was unconstitutional as it infringed on the implied right to political communication.
- The Government has taken into account the High Court's judgments, and drafted legislation to focus narrowly on the risk of influence on elections and Government decisions.

*If asked – 2015 amendments to caps on gifts – Greens are reported as intending to reimpose cap on gifts that was in place between 2012 -2015*

- The Labor Government removed the cap on gifts, in 2015, for a very good reason. It removed an unintended incentive for donors to circumvent the electoral funding laws. This was based on the NSW experience where the Independent Commission Against Corruption inquiry into political donations called into question the ability of these caps to provide a meaningful constraint on donations.
- The change promoted the ability of individuals and organisations to support the democratic electoral process.
- The cap was not beneficial to the electoral process, and in fact, as addressed by the High Court in the *Unions NSW v NSW* case in 2013, risked impugning the implied freedom of political communication .

*If asked – 2015 amendments to expenditure caps*

- By capping the electoral expenditure at \$40,000 for individuals in 2015, there is now a more level playing field for candidates, regardless of the resources they have at their disposal.
- An expenditure cap of \$40,000 per candidate was recommended by the 2014 Select Committee on Amendments to the Electoral Act 1992 in its report Voting Matters.

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Safety



- The change struck a balance between the need to allow individuals and organisations to support the democratic electoral process and the need to ensure integrity and transparency.

*If asked – 2015 amendments to remove ‘in concert’ third-party provisions*

- 2015 amendments removed provisions about third party campaigners acting in concert to exceed the expenditure limit.
- The provision was abolished as there were concerns about its constitutional validity after the 2013 decision of the High Court in *Unions NSW v NSW*.
- The High Court found provisions that treated parties and their affiliates as being the same source of funds for electoral communication expenditure were unconstitutional. To prevent provisions that aggregated funds of third party campaigners in the ACT Electoral Act from being found unconstitutional, they were removed.
- This change had no impact on transparency as associated entities, party groupings, non-party MLA groupings and third parties are still subject to expenditure caps and are required to give the Electoral Commissioner a return stating all the details of their expenditure.

### Key Information

*ACT Greens Party anticipated amendments*

- Based on media reports following the introduction of the Bill, the ACT Greens Party is expected to seek amendments to the Bill as follows:
  - expand the class of prohibited donors so that donations can only be made by individuals on the electoral role, excluding any donations from organisations including not-for-profits
  - reinstate the \$10,000 cap on gifts that was in place from 2012 until it was abolished in 2015;
  - require public funding to be given to candidates who receive one percent of the vote in a given electorate, rather than only those who received four percent or more; and
  - close a ‘loophole’ to ensure that third parties can not use multiple legal entities to exceed the \$40,000 electoral expenditure cap.

Cleared as complete and accurate: 04/02/2019  
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Lead Directorate: Justice and Community Safety

- In terms of the class of prohibited donors, during the debate on the *Electoral Amendment Act 2015* Mr Rattenbury acknowledged the 2013 High Court decision in *Unions NSW v NSW* but noted that the “Greens would have been content to let those provisions stand and be tested”.
- In response to the removal of the cap in on gifts, Mr Rattenbury moved private member amendments to reduce the then \$10,000 limit to \$5,000. These amendments were voted down.

#### *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 Australian Constitution and the *Constitution Act 1902* (NSW), and were inconsistent with provisions of the *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 parties, candidates and third-party campaigners are 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 make 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.

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*High Court Precedent on banning political donations from property developers**McCloy v New South Wales [2015]*

- In *McCloy v New South Wales [2015]* (McCloy case), 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. The NSW Government argued that a history of corruption and undue influence in planning decisions over a lengthy period of time contributed to the law being reasonably appropriate and adapted.
- The High Court upheld the validity of NSW provisions banning donations from property developers 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 Queensland (still before the Court)*

- The High Court is still deciding *Gary Douglas Spence v Queensland (Spence v QLD)*. *Spence v QLD* considers whether Queensland's laws banning political donations from property developers are unconstitutional.

- **Sch 1, s1.2**
- 

Portfolio/s: Chief Minister, Health & Wellbeing, Attorney-General, Police & Emergency Services

**ISSUE: Government Position on Drugs of Dependence (Personal Cannabis Use) Amendment Bill**

**Talking points:**

- The Government takes a clear harm minimisation position to drug use in our community.
- We do not condone personal use of cannabis and we know there are health risks for individuals that do use it. However, we also acknowledge the simple reality that it's happening Canberra.
- We want to provide an appropriate scheme for those individuals who are already using cannabis and will continue to do so, acknowledging that outright prohibition can bring people into contact with the justice system unnecessarily and prevent people seeking help when they need it.
- The Government supports the Private Members Bill in principle, but notes this is a complex issue that requires proper consideration and debate.
- The ACT has decriminalised personal use of small amounts of cannabis for some time, and the Private Members Bill is largely consistent with the scheme already in place.
- We will take time to consider the scrutiny report and potential Government amendments we believe will improve the Bill from both a health and justice perspective.

**Key Information**

- We want to put these measures in place to move focus away from small personal users of cannabis so that police efforts can go where they are really needed.
- We know there is still some uncertainty about how these changes will unfold given the complex legal environment. The government is supporting these changes as a trial and will monitor and review their impacts over the coming years.

Cleared as complete and accurate:

Cleared by:

Contact Officer Name:

Lead Directorate:

Director

Andrew Mehrton

Chief Minister, Treasury and  
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Ext: 58507

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- We're also taking time to consider government amendments. We want to think this through and take on board the feedback we receive, noting our approach in principle is to support cannabis reform.
- The Bill proposes to legalise the personal cultivation, possession and use of small amounts of cannabis for persons aged 18 or older; possession and use of up to 50 grams of cannabis and cultivation of up to four cannabis plants.
- For persons under 18 years of age it would remain an offence to possess cannabis or cannabis plants and SCONs would continue to be available for use by police.
- The Bill includes other minor elements such as new offences for smoking cannabis in public places or near children; and consequential amendments to the *Criminal Code 2002* (ACT) and the *Medicines, Poisons and Therapeutic Goods Act 2008*.
- Whilst no other Australian jurisdiction has legalised the personal use of cannabis, National and ACT surveys show community support for the decriminalisation and/or legalisation of cannabis for personal use.

### **Background Information – may not be suitable for public disclosure**

- Under current ACT legislation, the *Drugs of Dependence Act 1989* (Drugs Act), it is an offence to possess cannabis or to cultivate cannabis plants, including in small quantities for personal use.
- The Drugs Act also allows for the use of a Simple Cannabis Offence Notice (SCON) as an alternative to an arrest for the possession of cannabis, if the offence is possession of cannabis weighing no more than 50 grams or possession of no more than two cannabis plants. A SCON is effectively a \$100 fine which, if paid within 60 days, and avoids a criminal conviction being recorded for the offender.
- On 28 November 2018, Michael Pettersson MLA introduced the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill) into the ACT Legislative Assembly.

Cleared as complete and accurate:

Cleared by:

Contact Officer Name:

Lead Directorate:

Director

Andrew Mehrton

Chief Minister, Treasury and  
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# ATTORNEY-GENERAL

## QUESTION TIME BRIEFS

19-21 March 2019

<b>Racing and Gaming</b>	
1.	Gambling Harm Reduction Measures
2.	Community Club Contributions
3.	Thoroughbred Racing Issues
4.	Community Club Grants
<b>QTBs – Judicial / Courts</b>	
5.	DPP Resourcing
6.	Resourcing of Magistrates and Coroners Court
7.	Coroner's Court Reform
8.	Drug and Alcohol Court
9.	PPP Law Courts Progress
10.	Bail Laws
11.	Eastman Update
12.	Mr Isa Islam & Parole/Bail Laws (Shared from MFCJH)
13.	Courts Coat of Arms
14.	Judicial Council Complaints and Oversight
<b>Security and Crime</b>	
15.	National Security Issues
16.	OMCG Incidents – Taskforce Nemesis (Copy of ACT P Brief only)
17.	Serious and Organised Crime Response (Policy)
<b>General</b>	
18.	Child Abuse Royal Commission
19.	Redress
20.	Residential Tenancies
21.	Electoral Amendment Bill
22.	Cannabis
23.	
24.	
25.	

MIN:2019/000034-023

**Portfolio/s:** Attorney-General**ISSUE: GAMING MACHINE HARM REDUCTION MEASURES  
(to include Government Response to Stevens Report)****Talking points:**

- The Government is delivering on our commitment to implement strong gambling harm reduction measures while supporting a sustainable, diverse and vibrant club industry that continues to make a valuable contribution to the ACT community.
- 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 earlier this year.
- A two-stage approach has been taken to achieve this reduction; voluntary and compulsory surrender of gaming machine authorisations. The steps incentivised early voluntary surrender, by providing financial and non-financial support for clubs who voluntarily surrendered gaming machine authorisations by the end of January 2019 to diversifying their business models.
- The small number of authorisations needed to be compulsorily surrendered is a testament to the success of the voluntary surrender scheme and the willingness of the club industry to support this Government initiative.
- There will now be a two-stage compulsory surrender of authorisations process – in April 2019 and April 2020, to further reduce the number of authorisations to 4,000.
- Clubs have been notified of their compulsory surrender obligations.
- The total number of authorisations may decrease further after the first compulsory surrender day as clubs engage in trading. The authorisation trading scheme requires one authorisation to be surrendered out of every four traded.

Cleared as complete and accurate: 05/03/2018  
Cleared by: Executive Branch Manager Ext: 70674  
Contact Officer name: Julie Beddoe Ext: 74264  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/00034-023

- As part of the Government's reforms, clubs will also have access to a new Diversification Support Fund, which will be jointly funded by industry and Government to help clubs pursue a future away from gaming machines and support club staff to develop new skills. Legislation establishing this fund will be brought in the coming months.

#### Regulatory Reforms (incl. Code of Practice)

- Experiences such as that of Professor Laurie Brown's demonstrate that significant reform is needed to ensure the Territory's harm reduction framework is robust and fit for purpose.
- I have carefully considered the outcomes of this case and will be strengthening the Territory's gaming regulations to ensure they offer meaningful and effective harm minimisation measures and that the Gambling and Racing Commission has the tools it needs for effective enforcement.
- The Government is progressing work to amend the *Gambling and Racing Control (Code of Practice) Regulation 2002* in a number of ways:
  - by improving the definition of gambling harm
  - the signs of gambling harm in the Code of Practice will provide less room for interpretation by club staff
  - club staff will need to undertake better training more often, in recognition of the crucial role they play in identifying signs of harmful gambling
  - club board members will be also trained to foster a culture where gambling harm reduction and consumer protection is the priority
  - we are looking at changes to enhance the operation of self-exclusion, and a Gambling Contact Officer will need 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
- I have discussed these proposed changes with representatives of workers, clubs and community representatives, including those with lived experience of gambling harm, at the Gaming Machine Harm

Cleared as complete and accurate:	05/03/2018	
Cleared by:	Executive Branch Manager	Ext: 70674
Contact Officer name:	Julie Beddoe	Ext: 74264
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TRIM Ref:	MIN:2019/00034-023	



Reduction Roundtable, on 28 September 2018 and have circulated a draft regulation to the group for comment.

- In November 2018 the Government's Bill to strengthen enforcement mechanisms and penalties under the *Gaming Machine Act 2004* was passed in the Legislative Assembly. The changes enhance the compliance framework for gaming machines and ensure the Gambling and Racing Commission has the tools it needs for effective enforcement.
- We are going to keep consulting, and keep delivering on this Government's commitment to a safer, stronger, and more connected city where our clubs industry is diverse and sustainable, and provides robust protections against gambling harm.

*If asked about the amount of time clubs had to review agreements*

- All clubs were provided the Pathway to 4,000 timeline on 23 August 2018 which included the date by which agreements must be entered into. Clubs were provided with a draft of the Voluntary Surrender Agreement on 21 December 2018 to allow them to review the agreement before agreements with the clubs particular details.

### **Key Information**

- There are **44** licensed venues in the ACT who hold authorisations to possess gaming machines.
- The first compulsory surrender day is 1 April 2019.
- Gaming machine licensees had until 31 January 2019 to give the Minister a voluntary surrender notice outlining the number of authorisations or authorisation certificates to be surrendered by the licensee.
- 23 licensees signed voluntary surrender agreements. All non-exempt licensed clubs have engaged to some degree in the voluntary surrender process.
- The most recent figures published by the Gaming and Racing Commission (31 January 2019) state there were 4877 authorisations and 4157 electronic gaming machines in the Territory. Figures reflecting the reduction to 4,012 should be published within the next month.
- Clubs may have been reducing their machines on the floor in preparation of voluntary surrender.

Cleared as complete and accurate:	05/03/2018	
Cleared by:	Executive Branch Manager	Ext: 70674
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Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Richard Glenn	
TRIM Ref:	MIN:2019/00034-023	

MIN:2019/000034-046

**Portfolio/s:** Attorney-General**ISSUE: COMMUNITY CLUB CONTRIBUTIONS****Talking points:**

- The Government's changes to the community contributions scheme were debated and passed in the last week of the November 2018 sittings.
- These changes increase the funds available to the broader community, including by providing more guidance to clubs about appropriate distribution, and to increase transparency about how those funds are allocated.
- The Government has redefined allowable contributions so that there is clearer guidance on what does and does not count as a contribution.
- The minimum amount of contributions that must be made from net gaming machine revenue will increase by 0.8 per cent for clubs and hotels. This funding will be distributed through two funds that provide support to people in the community:
  - 0.4 per cent will go to gambling harm prevention and mitigation; and
  - 0.4 per cent will go to community charitable causes.
- Clubs may apply to the Minister to seek a lower minimum contribution rate where they can demonstrate that meeting the overall 8.8 per cent requirement would seriously affect the club's viability.
- Large clubs and large club groups' claims for in-kind contributions will be restricted to 2 per cent of a club's net gaming machine revenue. For these clubs, 6 per cent of net gaming machine revenue will need to be paid as money.
- 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 last year. The Government will now consider these views received before the final regulation is made.

Cleared as complete and accurate: 05/03/2018  
Cleared by: Executive Branch Manager Ext: 70674  
Contact Officer name: Julie Beddoe Ext: 74264  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/00034-046

*If asked about the impact of the capping of in-kind contributions on charities and community groups:*

- In-kind contributions from large clubs will be restricted to 2 per cent of a club's net gaming machine revenue. For these clubs, 6 per cent of net gaming machine revenue will need to be paid as money. This is comparable to the 20 per cent restriction on in-kind support in NSW's ClubGRANTS scheme.
- Large clubs/club groups are those receiving over \$4 million in gross gaming machine revenue each year.
- 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.
- These reforms limit (but do not stop) the ability of large clubs to make their community contributions on an 'in-kind' basis. As part of clubs' social licence the Government has set a minimum community contribution of 8.8 percent of net gaming machine revenue, but clubs are free to contribute as much of the remaining approximately 90 per cent of net gaming machine revenue as they wish to support their objectives.
- 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.
- I can assure the Assembly that the focus of these reforms is for the community to get more, rather than less, out of the community contributions scheme, and I am confident that the changes the Government is developing will achieve this goal.

Cleared as complete and accurate:	05/03/2018	
Cleared by:	Executive Branch Manager	Ext: 70674
Contact Officer name:	Julie Beddoe	Ext: 74264
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Richard Glenn	
TRIM Ref:	MIN:2019/00034-046	

*If asked about the definition of professional sport proposed in the Exposure Draft Gaming Machine Amendment Regulation 2018:*

- The draft Regulation specifically allows for claims for professional women's sports including those towards player and coach wages.
- I recognise that there can be different interpretations of what constitutes professional sport and that is exactly why I have sought feedback from industry about what they consider to fall within the ambit of this term.
- The feedback that has been received on this issue will inform Government's final decision about what will, and won't be, included in the final regulation.

Cleared as complete and accurate:	05/03/2018	
Cleared by:	Executive Branch Manager	Ext: 70674
Contact Officer name:	Julie Beddoe	Ext: 74264
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Richard Glenn	
TRIM Ref:	MIN:2019/00034-046	

MIN:2019/000034-020

**Portfolio/s:** Attorney-General**ISSUE: THOROUGHBRED RACING DEVELOPMENTS****Talking points:**

- The Racing Memorandum of Understanding (MoU) between the ACT Government and Canberra Racing Club (CRC) and Harness Racing Club, includes a commitment for the establishment of a Joint Racing Industry and Government Committee with a focus on the development and sustainability of racing in the ACT.
- The Committee has met on five occasions since February 2018, and discussed a range of issues including ACT Racehorse Trainers Workers Compensation, the introduction of Point of Consumption Tax, Industry Funding Arrangements, and potential land development opportunities at Thoroughbred Park.
- The CRC has raised with me the impact that increased prizemoney in country NSW races is having on its ability to attract quality fields.
- The ACT Government is committed to the ongoing development and sustainability of the thoroughbred racing industry in the ACT. Discussions have been occurring through the Joint Racing Industry and Government Committee and I understand this important conversation is continuing.
- The Chief Minister and I met with the CRC in late January and it shared a masterplan of the Thoroughbred Park precinct which includes exploration of future development options.
- The Government is excited to engage with the Club as part of the development of the City and Gateway Urban Design and I understand that officials are shortly due to meet with the Club to discuss the masterplan in more detail.

Cleared as complete and accurate: 06/03/2019  
Cleared by: Executive Branch Manager Ext: 70674  
Contact Officer name: Julie Beddoe Ext: 74264  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Choose an item  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-020

## Key Information

- The MoU between the ACT Government and the CRC and Canberra Harness Racing Club provides for funding to the CRC of approximately \$6.4 million (plus annual CPI – 0.5 per cent adjustment) until 2020-2021.
- The *Betting Operations Tax Act 2018* took effect from 1 January 2019
  - All wagering operators with relevant revenues above a tax free threshold of \$150,000 per annum are liable to pay the tax, at a rate of 15 per cent of net wagering revenue (player loss) for bets placed in the ACT.
- Ian Mackay is the new chairman of the Canberra Racing Club. Mr Mackay is also the chief executive of the Canberra Southern Cross Club. Stephen Heppenstall is the new vice chairman, and Les Boag is the new treasurer.
- Peter Stubbs has retired from his position as chief executive, former chief financial officer Andrew Clark has been appointed to the role of CEO.
- Ms Kareena Arthy, Deputy Director-General, Chief Minister, Treasury and Economic Development Directorate is due to meet Andrew Clark to discuss the Masterplan in more detail on 20 March 2019.

Cleared as complete and accurate: 06/03/2019  
Cleared by: Executive Branch Manager Ext: 70674  
Contact Officer name: Julie Beddoe Ext: 74264  
Lead Directorate: Justice and Community Safety  
Cleared for release: Choose an item  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-020

MIN:2019/000034-020

**Portfolio/s:** Attorney-General**ISSUE: COMMUNITY CLUB GRANTS****Talking points:**

- The Government is dedicated to supporting small and medium clubs to diversify their revenue streams away from gaming machines, through viable and long-term measures to help clubs move their operations out of gaming.
- The Government has implemented a range of measures to assist small and medium clubs, including to help them to diversify their income streams. These include, from 2017-18:
  - a. introducing a small and medium club gaming tax rebate to allow smaller clubs to keep 50 per cent of their gaming taxes on up to \$4 million of gross gaming machine revenue to re-invest into their organisation
  - b. the option to make quarterly (rather than monthly) gaming machine tax and Problem Gambling Assistance Fund (PGAF) payments
  - c. the availability of a \$10,000 community club grant for the purpose of diversification towards alternative income streams.
- The 2017-18 Budget includes \$200,000 for Community Club Grants (the Grant). As part of its *Supporting Local Community Clubs Policy*, the ACT Government invited small and medium clubs and club groups (defined as having Gross Gaming Machine Revenue [GGMR] less than \$4m in 2016-17) to apply for a \$10,000 grant to help them to diversify their income streams away from gaming revenue.

Cleared as complete and accurate: 06/03/2019  
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Contact Officer name: Julie Beddoe Ext: 74264  
Lead Directorate: Justice and Community Safety  
Cleared for release: Choose an item  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-022

- A panel from the ACT Government assessed the applications for the grant and determined that 14 clubs met the eligibility criteria for the Grant. Uses proposed for the grant have included: new, and refurbishments to kitchens, function areas, and entertainment spaces such as dance floors; and consultancy fees for alternative land use applications.
- Deeds require each club to provide evidence of expenditure with a final report confirming the use of the funds for the agreed purpose, including receipts and invoices, and information on any related matters. These reporting provisions will help the Government evaluate the use of the grants and acquit any funds not spent on eligible purposes.
- A list of Community Club Grant recipients and stated purpose is available within the table at [Appendix A](#).

## Key Information

- [Appendix A](#): Community Club Grant recipients and identified purpose for use of the grant

	Applicant	Purpose	Amount (\$)
1.	Austrian-Australian Club	Restoration of dance floor in club auditorium.	10,000
2.	Belconnen Magpies Sports Club	Consultancy fees for planning and development advice to explore alternate land use at Kippax site.	10,000
3.	Belconnen Soccer Club	Consultancy costs towards development of a childcare centre at Mackellar site.	10,000
4.	Canberra Bowling Club	Replace carpet and install a dance floor in function space.	10,000
5.	Canberra Club	Replace old kitchen equipment with updated appliances.	10,000
6.	Canberra Highland Society and Burns Club	Consultancy fees for planning and development advice to explore alternate land use.	10,000

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7.	Canberra North Bowling Club and Rugby Union Club	Installation of a grease trap in the club's kitchen.	10,000
8.	Croatia Deakin Soccer Club	Update the furniture in the club's function room.	10,000
9.	Harmonie German Club	Contribute towards refurbishment of club's auditorium (bathrooms and fixtures and fittings).	10,000
10.	Italo Australian Club	A new large marquee for outdoor functions; new kitchen equipment; additional beverage delivery system; and lit signage.	10,000

11.	Murrumbidgee Country Club	Consultancy fees to progress development of residential land on surplus club land; our kitchen refurbishment; or new outdoor furniture.	10,000
12.	National Press Club	Development of additional private function and dining facilities.	10,000
13.	Spanish Club	A new custom made marquee for outdoor events and construction of a new six lane petanque court.	10,000
14.	Canberra Irish Club	Consultation fees to investigate redevelopment of site improve food area; Upgrade equipment for live music performances; upgrade bar fridges; or purchase of new Point of Sale equipment.	10,000

Cleared as complete and accurate: 06/03/2019  
 Cleared by: Executive Branch Manager Ext: 70674  
 Contact Officer name: Julie Beddoe Ext: 74264  
 Lead Directorate: Justice and Community Safety  
 Cleared for release: Choose an item  
 Information Officer name: Richard Glenn  
 TRIM Ref: MIN:2019/000034-022

## Background Information

- Activities that contribute towards diversifying a club's revenue streams away from electronic gaming towards alternative income streams will be eligible for the Grant.
- Grant funds cannot be used for:
  - any gambling-related activity, such as improvements to gaming areas, gaming equipment or gaming facilities;
  - the purchase of stock, consumables or payment of ongoing club operating costs (including payroll, utilities etc); or
  - payment of government fees, charges, taxes or fines.
- Recipient clubs were required to provide expenditure reports or to remit to the ACT. Government any grant funds not spent by 30 June 2018.
- Expenditure reports were due on 31 July 2018. JACS has received 10 expenditure reports and is following up on the outstanding four. The reports will contribute to the evaluation of the program.

Cleared as complete and accurate: 06/03/2019  
Cleared by: Executive Branch Manager Ext: 70674  
Contact Officer name: Julie Beddoe Ext: 74264  
Lead Directorate: Justice and Community  
Safety  
Cleared for release Choose an item  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-022

MIN:2019/000034-020

**Portfolio/s:** Attorney-General**ISSUE: DPP RESOURCING****Talking points:**

*Immediate resourcing following the NOUS Strategic Review in 2018-19 Budget review*

- The Government is committed to supporting the vital work of the Director of Public Prosecutions (DPP).
- This commitment can be seen in the increases in funding immediately following the NOUS Group Strategic Review of the DPP and in recent announcements of baseline funding increases coming into effect over the mid to long term.
- The Government announced in the 2018-19 Budget that an extra \$6.922 million funding will be provided over four years for additional prosecutorial and paralegal staff. The Director has recently written to me to advise that this funding has enabled him to establish the ACT's first specialised Crown Chambers. The Director expects to appoint a specialised Crown Prosecutor at the SES 1.4 level in May this year, with the addition of a further Crown Prosecutor every year up to and including the 2021-22 financial year.
- This staffing increase will be supplemented by a one off capital injection of \$350,000 for expanded accommodation and is in addition to resource allocations for four full-time additional staff in 2017-18 and 2018-19 to support the work of the Confiscation of Criminal Assets scheme
- I am confident that the appointment of an eighth magistrate, the additional funding for Legal Aid and the DPP, the re-appointment of a special magistrate, and recent amendments to justice legislation across the statute book will improve the efficiency of the justice system and the timeliness of proceedings in the Magistrates Court.

Cleared as complete and accurate: 13/03/2019  
Cleared by: Executive Branch Manager Ext: 70674 (Daniel Ng)  
Contact Officer name: Sam Grundy / Kate Smyth Ext: 52434 / 76483  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-027

*If asked about separate administration and direct appropriation for the DPP*

- NOUS consulting recommended the DPP should be directly appropriated rather than as part of the Justice and Community Safety Directorate (JACS).
- The Government's approach to date has been to use the administrative resources of JACS to offer economies of scale to smaller, independent agencies. Services like human resources and finance are provided by a centralised team in JACS to other agencies, including the Human Rights Commission and the ACT Emergency Services Agency.
- The Government is considering the NOUS recommendation and will work with the new DPP to ensure that our model of appropriation and funding is as efficient as possible, and appropriate to the DPP's working environment.

**Key Information**

*If asked for specifics about the 2018-19 baseline business case*

- Base level funding: \$6.922 million over four years plus \$350,000 one off capital injection for accommodation
- Full Time equivalent (FTE) additions
  - One Prosecutor Grade 4; two Prosecutors Grade 3; one Paralegal Grade 4; two Paralegals Grade 3 ongoing from 2018-19
  - One Prosecutor Grade 5; one Administrative Officer Grade 5 ongoing from 2019-20
  - Two Executive (Crown Prosecutors) ongoing from 2020-21
  - One Prosecutor Grade 4; one Paralegal Grade 3 ongoing from 2021-22
- The NOUS review recommended a 30 per cent increase in grade 3, 4 and 5 prosecutors within 12 months. Nour's basis for concluding that FTE positions for prosecutors will need to increase by 30 per cent at a minimum, is unclear.
- The additional baseline FTE in 2021-22 will represent an increase of new prosecutors plus new executives of 17.4 per cent on 2016 -2017 FTE levels (according to Agency Profile Table, DPP Annual Report 2016-17, p 49).

Cleared as complete and accurate:	13/03/2019	
Cleared by:	Executive Branch Manager	Ext: 70674 (Daniel Ng)
Contact Officer name:	Sam Grundy / Kate Smyth	Ext: 52434 / 76483
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Richard Glenn	
TRIM Ref:	MIN:2019/000034-027	

## Background Information

### DPP appointment process

- You appointed Mr Shane Drumgold as the new Director of Public Prosecutions for a period of seven years commencing on 1 January 2019.

Cleared as complete and accurate: 13/03/2019  
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Contact Officer name: Sam Grundy / Kate Smyth Ext: 52434 / 76483  
Lead Directorate: Justice and Community Safety  
Cleared for release: Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-027

MIN:2019/000034-026

**Portfolio/s:** Attorney-General**ISSUE: RESOURCING OF MAGISTRATES AND CORONER'S COURTS****Talking points:***Magistrate terms and conditions*

- A bill supporting Magistrates by making the terms and conditions of their office more inclusive was passed on 20 September 2018.
- The amendments will increase the retirement age of Magistrates from 65 to 70.
- The amendments will also introduce a mechanism for Magistrates to be appointed or to work part-time.
- These changes will provide greater flexibility for the Court to manage its business and will support Magistrates who wish to transition to retirement or temporarily reduce their working hours, for example, to accommodate family or carer responsibilities.
- These reforms commenced on 13 March 2019.

*Eighth Magistrate*

- Ms Louise Taylor has been sitting as the Territory's eighth full-time resident magistrate since 10 September 2018.
- Ms Taylor's appointment reflects the ACT Government's commitment to provide the ACT Magistrates Court with the resources it needs to meet increasing demand. It will also help improve the efficiency of the justice system and the timeliness of proceedings in the Magistrates Court.
- In addition to resourcing the new Magistrate position, Legal Aid ACT received an additional \$1.3 million and the Director of Public Prosecutions (DPP) will be provided with \$987,000 for additional staff to support the increased capacity of the Magistrates Court.

Cleared as complete and accurate: 18/01/2018  
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Contact Officer name: Sam Grundy Ext: 52434  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-026

### If asked about the Chief Magistrate's views

- I acknowledge the Chief Magistrate's view that further resources are needed for the Magistrates Court.
- As Attorney-General, I will continue to consider resourcing of the justice system as a whole, and to make sure that each component is working effectively to support an effective justice system in the ACT.

### Recruitment

- A recruitment process for Magistrate and Special Magistrate positions closed on 25 January 2019 and the Government expects that appointments will occur shortly.
- The Government re-appointed Ms Margaret Hunter as a Special Magistrate to continue sitting within the Court as required until the end of June 2019.

### Dedicated full time ACT Forensic Pathologist

- The 2018-19 Budget also provided \$1.9 million 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.
- The Government is confident this new capability 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.

### Dedicated Coroner

- Decisions about 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.
- The Government is also continuing to consider reforms to build restorative practices into the coronial process, as well as supporting the

Cleared as complete and accurate: 18/01/2018  
Cleared by: Executive Branch Manager Ext: 70674  
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Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-026

operation of the Coroner's court. This will better deliver the justice needs of families, affected people and the community through the coronial process.

**Key Information**

- The criminal jurisdiction of the Magistrates Court has experienced a significant increase in demand, with a 15 per cent increase in lodgements leading to a 23 percent increase in pending matters and 15 per cent increase in cases pending for more than 12 months (excluding failure to vote charges resulting from the 2016 ACT election).
- There was a very slight increase in coronial cases lodged in 2017/18 to 308 from 299 in 2016/17, but the Government's suite of legislative reforms in 2014 continues to mean this is much lower than the more than 1100 cases lodged per year in 2013/14 and 2012/13.
- The workload of the Coroner's Court can fluctuate depending on the circumstances of particular cases.
- Just as workload can fluctuate, some complex or sensitive cases take longer to hear and resolve. In 2017/18 the median number of days to finalise a case was 92, down from 94 in 2016-17, but up from 75 in 2018/16. This has exceeded the target of 85 days. This was in part due to a number of long and complex coronial matters being finalised.

**Background Information**

- You have asked the Justice and Community Safety Directorate to explore options to improve the support provided to the operations of the Coroner's Court, in particular, to better focus on and meet the needs of families affected by a death subject to an inquiry.

Cleared as complete and accurate: 18/01/2018  
Cleared by: Executive Branch Manager Ext: 70674  
Contact Officer name: Sam Grundy Ext: 52434  
Lead Directorate: Justice and Community Safety  
Cleared for release: Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-026



**ISSUE: REFORMS TO THE OPERATION OF THE CORONERS 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.
- The 2018-19 Budget provided \$1.9 million 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.

**Improvements to support families**

- The Government is also continuing to consider reforms to build restorative practices into the coronial process, as well as supporting the operation of the Coroner's court. This will better deliver the justice needs of families, affected people and the community through the coronial process.
- As part of this consideration, the Government is working with families and key stakeholders to make sure that any reforms to coronial processes support the needs of people affected by a death.

**Background Information**

- The Law Reform Advisory Council report on its inquiry into Canberra as a restorative city recommended that restorative practices should be trialled within the coronial system.
- You have directed the Justice and Community Safety Directorate to prepare proposals for reform of the coronial system that will incorporate restorative practice and align with the Restorative Cities work being progressed by the Government.

Cleared as complete and accurate: 13/03/2019  
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Contact Officer name: Kelly Lokan Ext: 51772  
Lead Directorate: Justice and Community  
Safety  
Cleared for release Yes  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-025

MIN:2019/000034-030

**Portfolio/s:** Attorney-General

**ISSUE: DRUG AND ALCOHOL COURT**

**Talking points:**

- The Government committed to establishing a Drug and Alcohol Court in the Parliamentary Agreement for the 9<sup>th</sup> Assembly.
- It is expected that the ACT Drug and Alcohol Court (DAC) will become operational in the second half of 2019.
- The Justice and Community Safety Directorate is working closely with key stakeholders to develop the necessary Bill, policies and operating procedures ahead of implementation. These stakeholders include ACT Health, Canberra Health Services, ACT Corrective Services, ACT Policing, ACT Courts and Tribunal, ACT Housing, the Director of Public Prosecutions, and Legal Aid ACT.
- The Supreme Court has developed proposals in relation to the model, assisted by a working group of key stakeholders, chaired by Justice John Burns.
- The Government is working with the Court to finalise an appropriate model for the Territory's DAC, including drafting Bill and developing policies and operating procedures for the DAC.
- Drug courts in NSW and Victoria have demonstrated the long-term cost-effectiveness of a therapeutic approach which is able to achieve long-term behavioural change.
- A 2018 cost benefit analysis which estimates that the DAC will achieve a positive return on investment in the first full year of operation. Over 10 years it is estimated that the return on investment will be a return of \$3.14 for every dollar invested.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Executive Branch Manager Ext: 70522  
Contact Officer name: Philippa Spence Ext: 52198  
Lead Directorate: Justice and Community Safety  
Cleared for release: Yes  
Information Officer name: Kelly Williams  
TRIM Ref: MIN:2019/000034-030

*Purpose of the DAC*

- The DAC and associated support programs aim to reduce the criminogenic risks of drug and alcohol dependence within a therapeutic framework, and targets high-risk high-needs offenders whose criminal activity is associated with drug or alcohol dependence.
- The effectiveness of DACs in achieving long-term behavioural change in offenders is supported by a substantial body of research. Results include reductions in re-offending (recidivism), reduced incarceration rates, and improved community safety outcomes.
- A DAC requires a range of services both in the court context and to provide treatment, supervision and support in the community. As such this is a complex program of work and requires the planning phase to be very carefully considered.
- Alcohol and other drug treatment services in particular need to be planned to ensure appropriate therapeutic treatment pathways are clearly identified for DAC participants. The Government is working with the alcohol and other drug service sector to support this planning process.
- The problem-solving approach taken by drug courts involves key principles to achieve the best outcomes including: an integrated approach by all parts of the justice system; prompt access to treatment and related services and a high level of judicial intervention.

**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 3.5 years was allocated to the DAC in the 2018-19 mid-year budget appropriation.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Executive Branch Manager Ext: 70522  
Contact Officer name: Philippa Spence Ext: 52198  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Kelly Williams  
TRIM Ref: MIN:2019/000034-030

- The Criminal Justice Costs Model costs the individual components of the current ACT criminal justice system from the point of apprehension to post-sentence; it includes data up until 2016-2017, and projects costs to 2025-2026. This is the basis on which the return on investment of the DAC has been calculated. The DAC and the cost modelling were presented to the Human Services and Social Inclusion Subcommittee of Cabinet for consideration on 28 September 2018.
- On 23 January 2019, the Attorney General and the Minister for Health and Wellbeing attended the Parramatta Drug Court in Sydney, New South Wales to witness the Drug Court proceedings.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Executive Branch Manager Ext: 70522  
Contact Officer name: Philippa Spence Ext: 52198  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Kelly Williams  
TRIM Ref: MIN:2019/000034-030

MIN:2019/000033-002

**Portfolio/s:** Attorney-General**ISSUE: Law Courts Progress****Talking points:**

- Stage 1 reached Technical Completion on 25 September 2018.
- The Courts moved into the new Stage 1 facilities on the weekend of 13/14 October 2018. A smoking ceremony was held prior to the Courts commencing operations on 15 October 2018.
- Stage 1 includes a new four-story building fronting Vernon Circle, refurbishment and reconfiguration works in the existing Magistrates Court building and a new entrance foyer linking the two existing buildings. Stage 1 will deliver six courtrooms (including five jury courtrooms).
- Stage 1 completion was achieved with a number of minor outstanding items remaining to be completed. The Project Team is working closely with Juris and Laing O'Rourke to complete these items. Many of these items have now been completed including the façade to Vernon Circle.
- Works on Stage 2 (the refurbishment of the existing Supreme court) commenced on 15 October 2018.
- The Territory project team anticipates completion of Stage 2 during the forth quarter of 2019.
- Monthly Service Payments (MSP) to Juris Patnership are only payable following completion. The MSP for Stage 1 has commenced and will step up to the full MSP on completion of Stage 2.
- The end date of the PPP contract is fixed based on a 25-year period following the contracted date for completed of Stage 2 (i.e. 28 August 2018 plus 25 years). Therefore, the operational period during which payments are made by the Territory is truncated to the same extent as the delay to completion. This results in a saving to the Territory compared to the payments that would have been made had the project been completed on time.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Director-General Ext:  
Contact Officer name: Ext:  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Alison Playford  
TRIM Ref: MIN:2019/000033-002

- These savings are greater than the project management and other costs that the Territory will incur as a direct result of the prolonged period of construction.

## Key Information

### The ACT Law Courts Project

- Stage 1 reached Technical Completion on 25 September 2018. Commercial Acceptance was achieved on 8 October 2018.
- At completion of Stage 1 the new facilities were fully fit for purpose for the Court functions. However, some minor areas of work remained to be completed, for example:
  - cosmetic cladding to the ‘hood’ structures to the Vernon Circle façade;
  - landscaping (planting) to the Vernon Circle frontage; and
  - installation of commissioned artwork.
  - Under the PPP contract Stage 1 was due to be completed by 24 November 2017 and Stage 2 by 28 August 2018.
- The Territory entered into contract with Juris Partnership (Juris) in December 2015 to design, build, finance and maintain the ACT Law Courts under a Public Private Partnership (PPP) arrangement (the Project). The Project represents a capital investment in the ACT Law Courts of over \$160 million.
- The Juris Partnership consortium includes Laing O’Rourke Australia Construction Pty Ltd, Macquarie Capital Group Limited and Programmed Facility Management Pty Ltd.
- The Project is being delivered in two main stages. Stage 1 includes a new four-story building fronting Vernon Circle, refurbishment and reconfiguration works in the existing Magistrates Court building and a new entrance foyer linking the two existing buildings. Stage 2 completes the project with the refurbishment of the existing Supreme Court building. Stage 1 will deliver six courtrooms (including five jury courtrooms) and Stage 2 will deliver the remaining two non-jury courtrooms.

### Progress of the Project (delays)

- Stage 1 of the construction phase has experienced significant delays. The delay to Commercial Acceptance of Stage 1 was just over ten and a half months.
- Stage 2 of the project is expected to be completed in Quarter 4 of 2019 – in excess of twelve months later than the original contract dates.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Director-General Ext:  
Contact Officer name: Ext:  
Lead Directorate: Justice and Community Safety  
Cleared for release: Yes  
Information Officer name: Alison Playford  
TRIM Ref: MIN:2019/000033-002

## Operational consequences of the delay

- During the construction phase for the new facilities the Court has retained use of the same number of courtrooms (both jury and non-jury) as were available prior to commencement of the project. The Court has been kept fully apprised of the delay and took this into account when listing matters during 2018.
- Consistent with past practice, the Court has continued to utilise the Queanbeyan courthouse and the Military Court at Fyshwick to provide additional jury trial capacity when required.
- The delays have not had a direct detrimental affect on the capacity and functioning of the Court.

## Financial consequence of the delay

- Under the PPP contract arrangements, except for certain exceptional circumstances, Juris assumes full risk for the time it takes to complete the works. Accordingly, the contractor is not entitled to any additional payments due to completion being later than the dates set out in the contract.
- Payments to Juris do not commence until completion of Stage 1 has been achieved and, as the end date of the contract is fixed, the 25-year operational phase of the PPP contract is truncated to the same extent as the delay to completion. This results in a saving to the Territory compared to the payments that would have been made had the project been completed on time. These savings are greater than the project management and other costs that the Territory will incur as a direct result of the prolonged period of construction.
- The cost (and value-for-money) of the project to the Territory is measured as a Net Present Cost (NPC) of the future payments to be made to Juris over the term of the contract. At the date of entering into the contract, the NPC was calculated at \$250.4 million as set out in the published Contract Summary.
- Due to the delays in construction the NPC of the future payments due to be made by the Territory will reduce compared to the amount initially expected. The extent of this reduction will not be calculated until after both Stages have been completed.

Cleared as complete and accurate:	15/03/2019	
Cleared by:	Director-General	Ext:
Contact Officer name:		Ext:
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Alison Playford	
TRIM Ref:	MIN:2019/000033-002	

**ISSUE: BAIL LAWS****Talking points:**Purpose of bail laws

- Bail allows, in appropriate cases, accused people to remain in the community until their charges can be determined by a court of law. The ACT *Bail Act 1992* (Bail Act) is designed to: balance competing rights, interests and expectations; ensure accused people attend court; and ensure the accused does not interfere with witnesses or evidence and does not reoffend.

Decisions to grant bail

- Deciding to grant bail requires an assessment of a range of factors under our bail laws including through: presumptions against bail for certain offences; conditions of bail that can be imposed; and the role of ACT Policing (ACTP) and ACT Corrective Services can play in ensuring that offenders comply with their bail conditions.
- There is no data available about the number of instances where a person offends on bail, but the ACT Government is satisfied on the basis of available information that the mechanisms currently in place to determine the issue of bail and management of people on bail are satisfactory.

Bail Support Program

- The ACT Government commenced a two year trial Bail Support Program in December 2017 to contribute to the Government's commitment to reduce recidivism. The Program is designed to support Aboriginal and Torres Strait Islander people released on bail. As at December 2018, 84 people had participated in the Program.

Review of bail laws*Section 44 of the Bail Act*

Cleared as complete and accurate:	13/03/2019	
Cleared by:	Executive Group Manager	Ext: 70522
Contact Officer name:	Ashleigh Tilbrook	Ext: 53735
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Kelly Williams, Executive Group Manager, LPP	
TRIM Ref:	MIN:2019/000034-018	



- From May 2019, a review will be undertaken as required by legislation of the operation of section 44 of the Bail Act which provides an own-motion bail review power to the Director of Public Prosecutions (DPP). This power provides a right to apply to the Supreme Court for review of a magistrate's bail decision.
- The DPP has given oral notice of a proposed application twice and on both occasions did not ultimately proceed to make an application to the Supreme Court.
- I will present a report of the review to the Legislative Assembly within six months after the day the review is started.

### *Section 56A of the Bail Act*

- In November 2018, the ACT Court of Appeal delivered a decision considering the interpretation of section 56A of the Bail Act and the question of whether the power to arrest for breach of bail permits entry to premises without a warrant to effect the arrest.
- The Court of Appeal found that section 56A should be interpreted to permit a right of entry having considered the legislative history and intent of the legislature in combination with the common law right of entry.
- An application for special leave has been made to the High Court by the respondent to the original proceedings, Ms Thomson, seeking leave to appeal from the decision of the Court of Appeal.

### **Background Information**

#### Matter of *Andrews v Thomson*: interpretation of section 56A of the Bail Act

- The Court of Appeal matter was an appeal from a decision of the ACT Supreme Court which was itself the determination of an appeal from a decision of the ACT Magistrates Court. The background to the matter is that police officers attended the home of a person on bail because they believed she had breached a condition of her bail order not to use illicit drugs. The issue was whether or not the police officers were entitled to enter the premises to make the arrest.

Cleared as complete and accurate: 13/03/2019  
Cleared by: Executive Group Manager Ext: 70522  
Contact Officer name: Ashleigh Tilbrook Ext: 53735  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Kelly Williams, Executive  
Group Manager, LPP  
TRIM Ref: MIN:2019/000034-018

- In the Response to the Application filed with the High Court on your behalf by the ACT Government Solicitor, reference has been made to the ACT Government considering legislative amendments to confer an express statutory power to enter premises and identify the circumstances in which it may be lawfully exercised.

Cleared as complete and accurate: 13/03/2019  
Cleared by: Executive Group Manager Ext: 70522  
Contact Officer name: Ashleigh Tilbrook Ext: 53735  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: Yes  
Information Officer name: Kelly Williams, Executive  
Group Manager, LPP  
TRIM Ref: MIN:2019/000034-018

TRIM Ref: 2019/000034-040

**Portfolio:** Attorney-General

**ISSUE: EASTMAN TRIAL UPDATE**

**Talking points:**

- The retrial of Mr David Harold Eastman demonstrated that the ACT judicial system is functioning independently and appropriately. The system has upheld the defendant's right to an open, transparent, and fair trial.
- The interests of justice have been served and it is not appropriate to comment on either the outcome or the antecedents of the trial.

*If asked -*

*Was this a waste of taxpayer money?*

- We have a responsibility to provide our community with transparent, accessible, and timely court services. As a Government we have and will continue to invest the necessary resources to meet that obligation.
- The ACT Government provided funding for the ACT Courts and Tribunal, Legal Aid, the Director of Public Prosecutions and ACT Policing for the retrial of Mr David Eastman.

*Why was Eastman retried when there were so many doubts?*

- Everyone affected by a crime – victims, family members, the person accused, and the community – is entitled to a fair trial.
- Decisions about whether to prosecute, appeal, or take any other legal action in relation to crime are properly within the remit of the Director of the Public Prosecutions.

Cleared as complete and accurate:	13/03/2019	
Cleared by:	Executive Branch Manager	Ext: 70674 (Daniel Ng)
Contact Officer name:	Sam Grundy / Kate Smyth	Ext: 52434 / 76483
Lead Directorate:	Justice and Community Safety	
Cleared for release	No, contains sensitive information	
Information Officer name:	Richard Glenn	
TRIM Ref:	MIN:2019/000034-040	

*What about compensation for Mr Eastman?*

- At this juncture, it would not be appropriate to discuss the question of compensation to Mr Eastman as he has legal proceedings on foot arising from the original trial.

*Will the Government hold an inquiry into ACT Policing's investigation of the Eastman matter?*

- Our justice system depends on an open and transparent trial, and this has occurred. This has been a lengthy and complex trial.
- The government acknowledges the jury's decision and will not make further comment at this time.

**Background Information**

The re-trial of Mr Eastman was completed on 22 November 2018 with the jury returning a verdict of not guilty.

Total additional funding provided for the Eastman matter since 2012-13 is approximately \$29m. This amount relates to the additional funding provided, not the expenditure, for the Eastman matter.

It has been publically reported that Mr Eastman's compensation hearing has been set down for 30 September 2019 in the ACT Supreme Court.

Cleared as complete and accurate:	13/03/2019	
Cleared by:	Executive Branch Manager	Ext: 70674 (Daniel Ng)
Contact Officer name:	Sam Grundy / Kate Smyth	Ext: 52434 / 76483
Lead Directorate:	Justice and Community Safety	
Cleared for release	No, contains sensitive information	
Information Officer name:	Richard Glenn	
TRIM Ref:	MIN:2019/000034-040	

TRIM Ref: 2019/000011-044

**Portfolio:** Corrections and Justice Health**ISSUE: BAIL/PAROLE & MR ISA ISLAM****Mr Isa Islam**

- Due to information and health privacy laws, I am restricted about the comments I can make about individuals.
- As has been reported in local media, ACT Corrective Services was managing a sentenced male offender who had engaged in an extended period of voluntary starvation.
- I am aware the ACT Sentence Administration Board (SAB) recently granted conditional parole to the offender.
- The SAB is independent of Government, which ensures its decisions are made in the public interest and remain fair and free from political interference.

**Parole/Bail Laws:***Process and Monitoring of Parole*

- Offenders eligible for parole apply to the SAB for release.
- The *Sentence (Crimes Administration) Act 2005* provides the SAB with guidance on the criteria it must consider for granting parole.
- The SAB may make additional conditions on any parole order it deems necessary (e.g. to support the offender's case management plan, to reduce any risk to the community, etc.).
- Community Corrections Officers within ACT Corrective Services are responsible for monitoring the compliance with parole conditions set by the SAB and conduct their duties in accordance with their obligations under the Act.
- The supervision of orders involves undertaking a risk assessment to ascertain the level of supervision required.

Cleared as complete and accurate:	07/03/2018	
Cleared by:	Deputy Director-General	Ext: 50567
Contact Officer name:	Sch 2, s2.2 (a)(ii)	
Lead Directorate:	Justice and Community Safety	
Cleared for release	No, contains sensitive information	
Information Officer name:	Jon Peach	
TRIM Ref:	2019/000011-044	

- Factors include accommodation arrangements, support mechanisms, employment and risk of further offending.

#### *Breaching of Parole*

- The SAB may cancel an offender's parole if they are satisfied that the offender has breached conditions of the order.
- Where an offender is convicted of an offence punishable by imprisonment while on parole, the court must cancel the offender's parole.
- Following cancellation of parole, the offender must serve a period of full-time imprisonment equal to the period they were liable to serve on the date they were released on parole.
- Comments relating to the decision making processes of the SAB are best directed to the Board.
- The ACT has a robust parole system which prioritises the safety of the community.

#### **Key Information**

- The male offender commenced 'voluntary starvation' on 9 December 2018.
- On 29 December 2018, following medical advice, the offender was transferred to the Canberra Hospital under section 54 of the *Corrections Management Act*.
- Following an **Sch 2, s2.2 (a)(ii)** the offender was returned to the Alexander Maconochie Centre the same day.
- On 1 January 2019, **Sch 2, s2.2 (a)(ii)**

Cleared as complete and accurate:	07/03/2018	
Cleared by:	Deputy Director-General	Ext: 50567
Contact Officer name:	<b>Sch 2, s2.2 (a)(ii)</b>	
Lead Directorate:	Justice and Community Safety	
Cleared for release	No, contains sensitive information	
Information Officer name:	Jon Peach	
TRIM Ref:	2019/000011-044	

- A Governance group was established on 9 January 2019, to oversee the ongoing management of the situation. The group consisted of Alison Playford, DG JACS, Bernadette McDonald, CEO Canberra Health Service, Peter Garrison, Solicitor-General, David Pryce, DDG JACS and Jon Peach ED ACTCS.
- Following the meeting of 9 January 2019, Jon Peach ED ACTCS was appointed as the Incident Controller for ongoing matters.
- On 10 January 2019, the offender was admitted to the Canberra Hospital for observations under section 54 of the *Corrections Management Act*.
- On 17 January 2019, the male offender commenced refusing fluids.
- On the afternoon of 17 January 2019, the SAB held a bedside hearing with the offender at Canberra Hospital. The hearing was adjourned but numerous positive opportunities were presented to the offender around his parole.
- The Minister responded in writing to the offender on 16 and 18 January 2019, **Sch 2, s2.2 (a)(ii)**  
[REDACTED]
- **Sch 2, s2.2 (a)(ii)**  
[REDACTED]
- **Sch 2, s2.2 (a)(ii)**  
[REDACTED]
- On 22 February 2019, the Sentence Administration Board of the ACT held a bedside hearing for the offender at the Canberra Hospital. The Board approved the offender's release on parole with effect from 25 February 2019.
- The offender will remain under sentence until 3 July 2024.
- The Board may revoke or vary the parole order should he fail to comply with its conditions.
- **Sch 2, s2.2 (a)(ii)**  
[REDACTED]
- There has been media interest on the situation and several articles were released in late January and early February 2019. A supervised media interview was conducted with the detainee on 31 January 2019.
- The offender released a press release, on 25 February 2019 and revised the release on 1 March 2019.
- On 2 March 2019, the offender commenced eating.

Cleared as complete and accurate: 07/03/2018  
Cleared by: Deputy Director-General Ext: 50567  
Contact Officer name: **Sch 2, s2.2 (a)(ii)**  
Lead Directorate: Justice and Community  
Safety  
Cleared for release No, contains sensitive information  
Information Officer name: Jon Peach  
TRIM Ref: 2019/000011-044

**Background Information**

- The male offender was incarcerated at the AMC in July 2009, and was sentenced for intentionally inflicting grievous bodily harm and recklessly inflicting grievous bodily harm.
- The offender is a regular litigant against JACS, with 10 matters currently listed with the ACT Supreme Court.
- The offender has made a number of demands to the ACT Government and ACT Corrective Services in connection with his treatment in custody. These demands are largely beyond the ACT Government, some of which are the subject of current legal proceedings.
- For operational, security and legal reasons, further details cannot be provided.

Cleared as complete and accurate:	07/03/2018	
Cleared by:	Deputy Director-General	Ext: 50567
Contact Officer name:	Sch 2, s2.2 (a)(ii)	
Lead Directorate:	Justice and Community Safety	
Cleared for release	No, contains sensitive information	
Information Officer name:	Jon Peach	
TRIM Ref:	2019/000011-044	



MIN:2019/000085-001

**Portfolio/s:** Attorney-General

**ISSUE: COURTS COAT OF ARMS**

**Talking points:**

- The question on whether to develop a new Coat of Arms for the Territory has been referred by the Assembly to the Standing Committee on Environment and Transport City Services to commence an inquiry.
- The Government worked with the judiciary on the design of the new Courts building and will continue to do so.
- There are currently no plans to install a Coat of Arms at the new combined entry to the ACT Law Courts or behind the bench in the courtrooms or hearing rooms in the new building.
- The wording “Law Courts of the Australian Capital Territory” is placed over the entry.
- There is an existing Commonwealth Coat of Arms which will be restored and remain in place at the former entrance to the Supreme Court building. This was agreed to as an appropriate heritage consideration.
- The existing Coat of Arms used in the ACT is not, in fact, for the Territory as a whole but only for the City of Canberra, and was commissioned in 1928 in response to the Department of Defence practice of naval ships being named after cities needing to display that city’s coat of arms.
- The Committee holding an inquiry into a possible ACT Coat of Arms will consult with the community, and including the legal profession and ex - service community.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Director-General  
Contact Officer name:  
Lead Directorate: Justice and Community Safety  
Cleared for release: Yes  
Information Officer name: Alison Playford  
TRIM Ref: MIN:2019/000085-001

Ext:  
Ext:

## Key Information

- The design for the new facility was originally intended to include a large Territory Coat of Arms prominently displayed at the public entrance to the building. In addition, as is the convention, a Coat of Arms was to be installed behind the bench in each new courtroom.
- The Chief Justice preference is the building not be badged (either externally or internally) with the Canberra Coat of Arms. There are a number of reasons for this, including that the Coat of Arms was granted to the City of Canberra only, and is arguably therefore inappropriate for use by the courts as it does not represent all people of the ACT.
- There is an existing Commonwealth Coat of Arms which will be restored and remain in place at the former entrance to the Supreme Court building. This existing Coat of Arms will remain only as a key piece of the heritage fabric of the building.

Cleared as complete and accurate: 15/03/2019  
Cleared by: Director-General Ext:  
Contact Officer name: Ext:  
Lead Directorate: Justice and Community Safety  
Cleared for release: Yes  
Information Officer name: Alison Playford  
TRIM Ref: MIN:2019/000085-001

MIN:2019/000034-043

**Portfolio/s:** Attorney-General**ISSUE: JUDICIAL COUNCIL COMPLAINTS****Talking points:***Integrity Commission coverage of judicial officers*

- The *Integrity Commission Act 2018* (the Act), as passed on 29 November 2018, provides the Integrity Commission with jurisdiction to investigate complaints made about judicial officers. The Act contains a range of provisions to ensure that the independence of the judiciary and the separation of powers is respected.
- The Act does not provide the Integrity Commission with any disciplinary powers. In accordance with existing laws (the *Judicial Commissions Act 1994*), judicial officers may only be removed from office on a motion of the Assembly as recommended by a judicial commission.
- The Act requires the Integrity Commission to have proper regard for the preservation of the independence of judicial officers. The Commission must notify, and may consult, the Chief Justice or Chief Magistrate if it is investigating a judicial officer in their jurisdiction, unless doing so would prejudice an investigation.
- The Integrity Commission cannot investigate any complaint that directly relates to the merit of a decision of, an order made or a judgment given by, a judicial officer. The Act also includes a mechanism for complaints about judicial officers that come to the Integrity Commission to be referred to the Judicial Council.
- The Government will monitor the operation of the legislation. I note that the Act requires that a review of its provisions be conducted as soon as practicable after 1 July 2022.

Cleared as complete and accurate: 13/03/2019  
Cleared by: Executive Branch Manager Ext: 70674 (Daniel Ng)  
Contact Officer name: Sam Grundy / Kate Smyth Ext: 52434 / 76483  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: No, contains sensitive  
information  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-043

*If asked about the Judicial Council's role and function*

- The Judicial Council was established to handle low-level complaints about matters relating to the behaviour or physical or mental capacity of a judicial officer, which do not warrant the appointment of a full judicial commission.
- The Council considers complaints in private. The Council does not confirm whether complaints have been made nor comment on them. The annual reports of the Council provide information about the numbers of complaints received and their outcomes in a de-identified form.
- If the Council concludes the complaint justifies parliamentary consideration, the Council is required to make a recommendation to the ACT Executive that it appoint a judicial commission to examine the complaint further.
- If the Council considers the complaint does not justify its further consideration or does not justify parliamentary consideration, the complaint is referred to the head of the relevant jurisdiction.

**Background**

- Since the Judicial Council commenced on 1 February 2017, it has received 15 complaints.
- The Council has dismissed 13 complaints under section 35B of the *Judicial Commissions Act 1994*. Nine of these complaints could not be substantiated after considering the relevant transcripts and audio recordings and so did not justify further consideration by the Council. Two complaints were dismissed as the person who was the subject of the complaint was no longer a judicial officer.
- The Council has found one complaint substantiated and one complaint partly substantiated. It referred both complaints to the relevant head of jurisdiction under section 35C of the *Judicial Commissions Act 1994*.
- No complaints received by the Judicial Council have gone to full examination by a Judicial Commission.

*Integrity Commission Act 2018*

- The 2018 Select Committee on an Independent Integrity Commission recommended that judicial officers fall within the jurisdiction of an ACT Integrity Commission.
- The *Integrity Commission Act 2018* (the Act) was passed into law on 29 November 2018.
- The Act contains mechanisms as described above to protect judicial independence. It is based on the statutory model in place in Victoria.

Cleared as complete and accurate: 13/03/2019  
Cleared by: Executive Branch Manager Ext: 70674 (Daniel Ng)  
Contact Officer name: Sam Grundy / Kate Smyth Ext: 52434 / 76483  
Lead Directorate: Justice and Community  
Safety  
Cleared for release: No, contains sensitive information  
Information Officer name: Richard Glenn  
TRIM Ref: MIN:2019/000034-043

MIN:2019/000039-003

**Portfolio/s:** Chief Minister

Police & Emergency Services

Attorney-General

**ISSUE: NATIONAL SECURITY ISSUES (INCLUDING CROWDED PLACE SAFETY)**

## TALKING POINTS

### Christchurch New Zealand Terrorism Incident

#### Statements of Sympathy (Chief Minister)

- On behalf of all Canberrans, I share our deepest sympathies for those affected by this devastating terrorist attack in Christchurch.
- Our thoughts are with all New Zealanders at this tragic time as we unite as a community to express our solidarity.
- Canberrans share a common view that our city is stronger because of our diversity and inclusivity. There is no place in Canberra for the abhorrent views behind the attack.
- Canberra has a rich and vibrant multicultural community where every citizen has a right to feel safe and respected in their religious affiliations.

#### Community Inclusion and Support (Chief Minister)

- I encourage the Canberra community to continue to express our acceptance of all forms of diversity, so that everyone who visits or lives in our city knows they are welcome here.
- On 22 March 2019, the ACT Government will hold a public forum at the Australian National University about the Importance of Belonging.
- Canberrans that need support or assistance during this difficult time should call Lifeline Australia on 13 11 14.

Cleared as complete and accurate:	20/03/2019	
Cleared by:	Bren Burkevics	Executive Branch Manager
Contact Officer name:	Andrew Butters	Ext: 78628
Lead Directorate:	Justice and Community Safety	Ext: 70317
Cleared for release:	Yes	
Information Officer name:	David Pryce	
TRIM Ref:	MIN:2019/000039-003	

Community Safety (Minister for Police and Emergency Services)

- The Government and ACT Policing are communicating with Commonwealth Government agencies as we work to learn how this tragedy occurred and what can be done to prevent it happening in the future.
- The government and ACT Policing are engaging with the ACT Muslim community to provide support and reassurance. Muslim community members have expressed their appreciation for the support and well wishes they continue to receive from the Government and community.
- While there is no credible or specific threat to the ACT or its Mosques and places of worship, ACT Policing has increased patrols around these facilities.
- Anyone with information on suspicious activity is urged to call the National Security Hotline on 1800 123 400 or Crime Stoppers on 1800 333 000.

Measures to regulate firearm use in the ACT (Attorney-General)

- Semi-automatic firearms, such as the one that appears to have been used in the attack are highly controlled in Australia.
- The ACT Government strongly supports the National Firearms Agreement (NFA) which acknowledges the principle that firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety.
- The ACT has historically had very strong regulation of firearms and we have been involved in the national discussions before and since 1996 when the NFA was agreed.
- The ACT Government is a strong supporter of protecting the community against crime involving firearms, while balancing the needs of legitimate and authorised firearms users.
- The ACT Government will work with its Commonwealth, State and Territory counterparts to ensure our laws support safety in our community in the context of the NFA and any learnings from the Christchurch Terrorist attack.

Cleared as complete and accurate: 20/03/2019  
Cleared by: Bren Burkevics Executive Branch Manager Ext: 78628  
Contact Officer name: Andrew Butters Ext: 70317  
Lead Directorate: Justice and Community  
Safety  
Cleared for release Yes  
Information Officer name: David Pryce  
TRIM Ref: MIN:2019/000039-003

**Counter Terrorism - General (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.
- Anyone who singles out any particular group as a target for hatred plays into the hands of terrorists.
- We as a government reject those who seek to impose their world view on others through intimidation and violence.
- We cannot eliminate entirely the risk of terrorism any more than we can eliminate the risk of any 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 partners on the national security challenges that Australia faces.
- These national security challenges continue to evolve, so we need to keep our legislation and capabilities under constant review to meet these emerging issues.
- The ACT Government is committed to ensuring the safety and security of our community, and continues to work closely with ACT Policing and other law enforcement and intelligence agencies to combat terrorism and violent extremism.
- The ACT continues to support community leaders and activities that help promote the vibrant, inclusive and culturally diverse nature of the ACT community while maintaining the rule of law and protecting human rights.
- 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: 20/03/2019  
Cleared by: Bren Burkevics Executive Branch Manager Ext: 78628  
Contact Officer name: Andrew Butters Ext: 70317  
Lead Directorate: Justice and Community  
Safety  
Cleared for release Yes  
Information Officer name: David Pryce  
TRIM Ref: MIN:2019/000039-003

**Safety in Public Places (MPES)**

- The safety of Canberrans as they go about their business in public places remains a key focus for the government.
- While the national terrorism public alert level remains at PROBABLE, there is no specific or credible threat to the ACT. The ACT Government in conjunction with ACT Policing continually reviews its security arrangements within the current risk environment.
- In 2017, the Commonwealth Government launched *Australian's Strategy for Protecting Crowded Places from Terrorism*. The Strategy provides a consistent, national approach to protecting crowded places which can be applied flexibly to suit local circumstances.
- The ACT Government continues to work in partnership with ACT Policing and other law enforcement and intelligence agencies to implement the Strategy and provide for the safety of resident and visitors who enjoy Canberra's public places.
- While ultimate responsibility for event security always lies with event organisers, ACT Policing are proactively engaging with organisers to provide appropriate advice and guidance in accordance with the strategy through both direct engagement and regular crowded places forums.
- From 2019, ACT Policing will deliver a consistent schedule of two crowded places forums per year. These forums will focus on encouraging different sectors to come together and present their strategy alignment considerations, location or event risk mitigation strategies as well as any learning outcomes from the implementation of risk mitigation they may have experienced.
- Additional resourcing for ACT Policing, provided in the 2016-17 ACT Budget over two financial years, has further assisted in the delivery of the crowded places strategy responsibilities, with the half coverage cost of a full time appointment of an ACT Policing Crowded Places staff member.

Cleared as complete and accurate:	20/03/2019	
Cleared by:	Bren Burkevics	Executive Branch Manager
Contact Officer name:	Andrew Butters	Ext: 78628
Lead Directorate:	Justice and Community	Ext: 70317
	Safety	
Cleared for release	Yes	
Information Officer name:	David Pryce	
TRIM Ref:	MIN:2019/000039-003	



- In the 2018-19 budget, the ACT Government allocated over \$1.5 million in funding towards improving the security of public places through CCTV enhancements, security risk assessments and additional resources for ACT Policing to implement the strategy.
- Concerns about national security or terrorism should be reported immediately to the National Security Hotline on 1800 123 400.

**Defence support to National Counter-Terrorism arrangements**  
**(Chief Minister)**

- In 2016, the Commonwealth Government initiated a review of Defence support to national counter-terrorism arrangements in response to the changing nature of the terrorist threat.
- State and Territory police remain, and will continue to remain, the primary responders to any terrorist attack.
- While Defence's primary role in counter-terrorism is offshore, Defence possesses specialist capabilities that could support state and territory governments in responding to an attack.
- The Commonwealth Government in close consultation with all States and Territories, has worked to develop options for practical counter-terrorism engagement and cooperation between the Australian Defence Force (ADF) and State and Territory police.
- Additionally, in 2017 the Commonwealth Government announced proposed amendments to Part IIIAAA of the *Defence Act 1903*.
- Part IIIAAA provides the framework for authorising the ADF to use force to resolve a domestic violence incident, including terrorism, in support of States and Territories.
- The amendments were passed by Parliament on 27 November 2018 and have a six month delayed commencement. The amendments will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident

Cleared as complete and accurate: 20/03/2019  
Cleared by: Bren Burkevics Executive Branch Manager Ext: 78628  
Contact Officer name: Andrew Butters Ext: 70317  
Lead Directorate: Justice and Community  
Safety  
Cleared for release Yes  
Information Officer name: David Pryce  
TRIM Ref: MIN:2019/000039-003

- allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air
- simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident
- enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.

Cleared as complete and accurate:	20/03/2019	
Cleared by:	Bren Burkevics	Executive Branch Manager
Contact Officer name:	Andrew Butters	Ext: 78628
Lead Directorate:	Justice and Community Safety	Ext: 70317
Cleared for release	Yes	
Information Officer name:	David Pryce	
TRIM Ref:	MIN:2019/000039-003	

TRIM Ref: 2019/000031-038

**Portfolio:** Minister for Police & Emergency Services

Attorney-General

**ISSUE: CRIMINAL MOTORCYCLE GANG INCIDENTS**

This QTB focuses on the ACT Policing operational aspects. Information about legislative reform, fortification removal laws, crime scene powers and drive-by shootings can be found in the QTB titled “Serious and Organised Crime Response”.

**TALKING POINTS:**

- Countering serious and organised crime by criminal gangs and maintaining public safety is a primary focus for the ACT Government and ACT Policing.
- As at 12 March 2019:
  - There are four known Outlaw Motorcycle Gangs (OMCGs) operating in the ACT.
  - The total number of members associated with ACT chapters of these OMCGs is estimated at approximately 60 people.
- Through Taskforce Nemesis, ACT Policing continues to proactively disrupt criminal gang members to deter and detect criminal activity. This includes the confiscation of criminal assets.
- 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.
- ACT Policing has, and will continue to deploy resources flexibly to ensure an appropriate police response to target and disrupt those seeking to cause harm in our community.
- The Government’s 2018-19 Budget commitment of \$1.594 million over four years to bolster the capability of Taskforce Nemesis provides funding for one Forensic Accountant, one Surveillance Team Member, and associated equipment and training. These funded positions will enhance ACT Policing’s capability to respond to serious and organised criminal activity in the ACT.

Cleared as complete and accurate:	13/03/2019	
Cleared by:	Deputy Director-General	Ext:
Contact Officer name:	ACT Policing	Ext:
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	David pryce	
TRIM Ref:	MIN2019/00031-038	

- The surveillance team member position has been filled.
- Recruitment for the Forensic Accountant is underway. Exact commencement date is dependent on completion of recruitment and security processes.
- Funding allocated to combating Criminal Gangs in August 2016 has been applied, and eight members were appointed to Taskforce Nemesis.
- In 2017, the Federal Government boosted resources for dealing with organised crime through the National Anti-Gangs Squad (NAGS). Taskforce Nemesis works closely with the NAGS and other agencies through an embedded officer, 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.
- ACT Policing has had additional powers available since 2017 that have enhanced our ability to respond to and prosecute criminal gang related acts of violence after the fact.

#### Recent strategic activity

- ACT Policing has established a Whole of Government (WoG) 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 National Anti-Gang Squad model that brings a whole-of-government approach to addressing this issue.
- Members of the working group include ACT Policing, ACT Housing, NSW Police (Monaro LAC), Australian Border Force, Australian Criminal Intelligence Commission, AUSTRAC, Department of Human Services, and the Australian Taxation Office.

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Cleared by:	Deputy Director-General	Ext:
Contact Officer name:	ACT Policing	Ext:
Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	David pryce	
TRIM Ref:	MIN2019/00031-038	

## Recent ACT Policing operational activity

<b>Key Taskforce Nemesis figures (criminal gang related figures)*</b>	<b>2018</b>	<b>1 Jan 2019 to 12 Mar 2019***</b>
Criminal gang members charged**	27	13
Offences charged	78	27
Search warrants executed	100	13
Firearms seized	20	0

\*As at 12 March 2019

\*\*Person may be charged on numerous occasions

- On 11 March 2019, ACT Policing responded to firearm incident in Richardson. Investigations reveal a number of shots were fired into a residential premise. Three people were in the premise at the time, and one person was shot in the arm. The victim was transported by ambulance to hospital for further treatment.
  - While the motive for this attack is one matter subject to ongoing investigation, early investigation indicate the incident may be related to OMCG conflict.
- On 2 March 2019, ACT Policing responded to a firearm incident in Theodore. Investigations reveal a number of shots were fired into three separate residential premises, resulting in one person suffering with non-life threatening injuries. The victim was transported by ambulance to hospital for further treatment.
  - While the motive for this attack is one matter subject to ongoing investigation, early investigation indicate the involvement of former OMCG members and/or associates.
- On 4 February 2019, ACT Policing responded to a reported firearms and arson incident in Kambah. Investigations reveal a number of shots were fired into a residential premise and three vehicles set alight. No people were injured in the incident.
  - ACT Fire and Rescue also attended and extinguished the vehicles.
  - The incident is believed to be targeted and related to OMCG activity.

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- As the matter remains subject to investigation by Taskforce Nemesis, it would be inappropriate to provide further comment.
- On 25 January 2019, Taskforce Nemesis arrested a 30 year-old man for aggravated robbery, inflict grievous bodily harm, make a demand with a threat to kill, and attempting to pervert the course of justice in Oaks Estate on 10 January 2019.
  - The man was the President of the ACT Chapter of the Satudarah OMCG. The man is presently remanded in custody and the matter remains before the court
  - On 31 January 2019, a woman was arrested and charged in relation to this matter. The woman was remanded in custody and the matter remains before the court.
  - On 5 February 2019, a third person was arrested and charged with driving a motor vehicle with offences related to the use of a stolen motor vehicle. The man was subsequently charged in relation to the aggravated robbery and was remanded in custody. This man is believed to be the interim president of the ACT Chapter of the Satudarah OMCG.
  - On 9 March 2019, a fourth person was arrested in relation to this matter. The man was remanded in custody and the matter remains before the court.
  - A fifth offender has been identified and is currently remanded in custody in NSW for unrelated matters. Charges and extradition proceedings are being prepared by ACT Policing.
- On 18 January 2019, a physical altercation was reported at the Southern Cross Club in Woden. Approximately 16 Comanchero OMCG members and a number of Nomads OMCG members were involved in the affray.
  - While members of the public were in close proximity and became fearful for their safety, no members of the public were physically harmed in the incident, however, one Nomads OMCG member suffered facial injuries
  - On 8 February 2019, Taskforce Nemesis executed a search warrant on the residence of a Comanchero member. Five

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- Comanchero members, including the Commander of the ACT Chapter of the Comanchero OMCG, were arrested and charged in relation to the Southern Cross club incident.
- On 12 February 2019, a subsequent Comanchero associate was arrested and charged arising from the same matter.
  - Investigations remain ongoing.
  - On 11 December, 2018, ACT Policing's Criminal Investigations Detectives executed a search warrant on an Isabella Plains residence.
    - During the search police located and seized approximately 134 grams of crystal methamphetamine. Police also seized more than \$20,000 which is believed to be the proceeds of selling methamphetamine.
    - A 51-year-old Isabella Plains man with criminal motorcycle gang links was arrested and taken to the watch house where he was charged with trafficking in a controlled drug other than cannabis.
    - The matter is currently before the court.
  - On 9 November, 2018, ACT Policing's Taskforce Nemesis executed search warrants at the residence of the ACT Nomads President.
    - A significant quantity of cocaine, with an estimated street value of \$100,000, ammunition, cash and a prohibited item were seized by police from the residence.
    - A male has been charged with trafficking a prohibited substance, possessing ammunition, proceeds of crime and possessing a prohibited item.
    - The matter is currently before the court.
  - Between 5 October and 7 October 2018, the Black Uhlans Criminal Motorcycle Gang held a National motorcycle run into Canberra.
    - Approximately 97 Black Uhlan members were identified during targeted police activities by way of a vehicle checkpoint along the Barton Highway.
    - The Black Uhlans do not have an established chapter in the ACT.

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- On 6 September 2018, a senior member of the Nomads OMCG pleaded guilty to charges arising from a violent incident at a Monash Tattoo Parlour on 1 February 2018.
- On 5 September 2018, a previously convicted Comanchero OMCG member completed a sentence of imprisonment arising from a firearms incident in March 2015.
  - Upon completion of his sentence, the Comanchero OMCG member was apprehended by Australian Border Force and has been deported due to visa revocation.
- On 3 September 2018, Taskforce Nemesis extradited a man from Victoria to the ACT in relation to a firearm shooting incident at two Calwell residential properties on 28 June 2018.
  - The man was charged with attempted murder and refused bail. This matter is currently before the court.
- On 25 August 2018, the ACT saw its first Nomads OMCG motorcycle run.
  - There was approximately 30 fully participants in attendance that attracted significant public attention.

## Background

- Developments in criminal gang membership in the ACT have highlighted the fluid nature of the criminal gang operating environment. Criminal gang membership has traditionally been relatively stable, however, changes to criminal gang membership in recent years highlights a shift towards more fluid concepts of membership. Currently, it is not uncommon for club members to 'patch-over' and change membership to other criminal gangs.
- While such '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 gang, and has had a significant impact upon the strength and rivalry between criminal 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 works closely with Police in other jurisdictions by sharing intelligence, best practices, and collaboratively monitoring and combating criminal gangs.

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- The increase in criminal gang members and conflict in the ACT has placed increased resource pressure on ACT Policing requiring ACT Policing to divert considerable resources in support of Taskforce Nemesis.

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**ISSUE: SERIOUS AND ORGANISED CRIME RESPONSE  
(including anti-consorting)**

Criminal gangs are involved in illegal activities across Australia such as drug production and trafficking, vehicle rebirthing, firearms offences, money laundering, extortion and serious assaults.

**TALKING POINTS**

- The ACT Government is strongly committed to responding to the criminal activities of criminal gangs in order to ensure Canberra is a safe and secure community.
- Most recently the ACT Government has committed to the establishment of ACT-specific laws to strip unexplained wealth from people involved with criminal gangs.
- The ACT Government remains of the view that anti-consorting laws are not an effective mechanism for targeting and disrupting criminal gang activity in the ACT.
- ACT Policing has established Taskforce Nemesis – to focus on operational and investigative responses to criminal gang activity.
- The Taskforce is supported by a suite of criminal laws developed by the ACT Government over a number of years, and continued investment to ensure that ACT Policing has the resources it needs to combat criminal gangs in the ACT.
- Over the past 12 months a number of steps have been taken by the ACT Government to help law enforcement effectively target organised crime, including the introduction of crime scene powers, fortification laws and offences related to drive by shooting.
- In 2018 the Government committed \$980,000 to the ACT Office of the DPP to boost their ability to seize criminal assets depriving criminals and criminal organisations of proceeds of crime.

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Lead Directorate:	Justice and Community Safety	
Cleared for release	Yes	
Information Officer name:	Richard Glenn	
TRIM Ref:	2019/000034-028	

- In the 2018-19 Budget, a further \$1.6 million over four years was provided to Taskforce Nemesis. This funds two specialist officers, a forensic accountant and surveillance team member, to bolster the taskforces ability to combat organised crime, strip criminal wealth and improve surveillance capability to monitor the activity of criminal gangs.

### *Anti-consorting laws*

- The ACT Government has consistently not supported the introduction of anti-consorting laws. The Government remains unconvinced that these laws are the appropriate legislative mechanism for targeting criminal groups such as OMCGs. The fact is criminal gangs haven't stopped operating where these laws have been introduced.
- In jurisdictions that have had such laws in place for some time, most prominently in NSW following the review by the NSW Ombudsman, there is also evidence that anti-consorting laws disproportionately target vulnerable people including youth, people who are homeless, and Aboriginal and Torres Strait Islander people.
- The ACT Government's strong measures to tackle criminal gangs are evidence based. We have actively targeted the financial motivations behind organised crime by funding more police and prosecutors to seize criminal assets, and we are working with the Commonwealth and other jurisdictions to develop new ways of targeting unexplained wealth. That work has and will continue to show concrete results.
- The ACT Government is committed to laws that are evidence based and just and equitable for the entire ACT community.
- We'll keep monitoring the evidence as it becomes available about both the human rights impact and effectiveness in preventing crime of any new legislation.

### Crime scene powers and drive-by shootings

- The *Crimes (Police Powers and Firearms Offence) Amendment Act 2017* commenced on 8 December 2017.

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- 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 created 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.
- These new laws are being effectively used by ACT Policing to support its work to combat criminal groups in the ACT.

### Fortification removal laws

- Fortifications are structures designed to stop or hinder uninvited entry to premises.
- The *Crimes (Fortification Removal) Amendment Bill 2017* was passed in February 2018.
- The Bill provides the Chief Police Officer with the power to apply to the Magistrates Court for an order that the occupier of the premises remove fortifications on the premises. The Bill also prohibits the establishment of fortifications on certain premises.
- These laws will help make the ACT a hostile environment for criminal gangs to prevent the establishment of fortified premises such as criminal gang club houses.
- The *Crimes (Fortification Removal) Amendment Act 2017* commenced on 1 September 2018.

### ACT Unexplained wealth

- The ACT Government has committed to adopt an unexplained wealth scheme for the ACT.

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- These new powers will complement existing confiscation of criminal assets laws in the ACT by deterring people from engaging in criminal activity and depriving people of their criminal profits.
- ACT Policing and the ACT Director of Public Prosecutions will be able to target those involved in drug trafficking or other serious organised criminal activity and those masterminding or directing criminal activity at arms-length.

### National Unexplained Wealth

- The Commonwealth Unexplained Wealth Legislation Amendment Bill 2018 passed Parliament on 19 September 2018.
- The Bill extends Commonwealth unexplained wealth orders to ACT offences.
- Unexplained wealth laws provide a valuable tool to law enforcement to confiscate assets where a person linked to criminal activity cannot reasonably demonstrate that these assets have been lawfully obtained. These mechanisms complement traditional law enforcement responses.
- The Commonwealth scheme has been developed through consultation with states and territories over the past four years. The ACT has been part of these discussions, remaining vigilant in its commitment to work as part of the ongoing national effort to disrupt, disable and dismantle the activities of organised crime.
- On 6 December 2018 the Attorney-General signed the Inter-Governmental Agreement for the Scheme on behalf of the ACT. The IGA will allow the ACT to benefit from key aspects of the scheme including preferable treatment under new equitable sharing arrangements.

### **Background**

At the meeting of the Council of Attorneys-General (CAG) held on 8 June 2018, participants agreed that organised crime is a serious and pervasive threat to the community. In recognition of this, participants agreed to have regard to the statement of guiding principles when developing legislative responses to combat organised crime. The principles will be considered in further detail at the first CAG meeting in 2019.

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As at 30 January 2019, ACT Policing has identified four Outlaw Motorcycle Gangs (OMCGs) that operate in the ACT with a total number of members associated with the ACT chapters of these Criminal Gangs estimated at approximately 60 people.

The ACT Government remains strongly committed to embracing practical legislative measures to address serious and organised crime in order to keep Canberra a safe and secure community.

#### Anti-Consorting Laws

On 20 February 2019, shadow Attorney-General, Mr Jeremy Hanson MLA CSC, introduced the Crimes (Anti-Consorting) Bill 2019.

Consorting laws make it an offence to associate with a person after being issued with a warning to refrain from associating with that person.

All jurisdictions except the ACT have consorting law schemes. Consorting law schemes differ in each jurisdiction. Some legislative schemes have been found to be invalid by the High Court. The Victorian model is the only model that requires law enforcement to demonstrate a link between the association of two people and the commission of a criminal offence. Obtaining evidence to support this belief may be challenging in an operational context.

The Human Rights Commission (HRC) has provided advice to Mr Hanson on the Bill noting that the Bill's reliance on largely unfettered police discretion is, in their view, incompatible with human rights. The HRC has provided advice on amendments to the Bill they view necessary to make it compatible with human rights.

The ACT Government has not supported the introduction of consorting laws to date due to the lack of evidence for their effectiveness and the significant human rights implications.

#### *Recent media*

- On 28 August 2018 [media](#) reported on an image of the Nomads OMCG on Mount Ainslie, which lead to renewed calls for anti-consorting laws from Mr Hanson.
- On 15 November 2018 the [media](#) published an article reporting on the Annual Report hearing conducted on 14 November 2018 in the Police and Emergency Services (JACS) portfolio. The report makes reference to the ACT Opposition party indicating Mr Hanson will attempt to introduce anti-consorting laws for a second time in either late 2018 or early 2019.
- On 29 January 2019 [media](#) reported that the number of bikie gangs with chapters operating inside Canberra has grown to five with the arrival of the European outlaw motorcycle gang Satudarah. Please see QTB 'OMCG Incidents' for ACTP operational information on this issue.

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MIN:2019/000034-016

**Portfolio/s:** Attorney-General

**ISSUE: CHILD ABUSE ROYAL COMMISSION – CRIMINAL JUSTICE REFORMS**

**Talking points:**

- Child abuse is unacceptable and ensuring the safety of children in our community is a top priority for the ACT Government.
- In June 2018, I presented the ACT Government’s formal response to the approximately 300 recommendations of the Royal Commission that relate to State and Territory governments.
- Our response shows our clear, unambiguous commitment to protecting children, and righting wrongs.
- It demonstrates our intention to effect cultural change within organisations and the broader community, and to ensure the failures of the past are not permitted to continue.
- The response to the Royal Commission’s 85 criminal justice recommendations shows our strong commitment to improving the ACT criminal justice system’s response to child sexual abuse, through both legislative and non-legislative reforms.
- The ACT has long been a leader in adopting survivor-focused criminal laws, and already had in place a number of measures recommended by the Royal Commission.
- We are continuing to improve our criminal justice system and the Government has made significant progress on implementing the criminal justice recommendations since the release of the Royal Commission’s report. For example:
  - We have created a new offence for failure to protect a child from child sexual abuse
  - We have created two new grooming offences
  - We have improved the way child sexual abuse offenders are sentenced
  - We have improved the way victims give evidence in court

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TRIM Ref: MIN:2019/000034-016

- We have implemented an offence of maintaining a sexual relationship so that the ongoing sexual relationship is criminalised, rather than just the individual sexual acts; and
- We have created a procedural mechanism for charging offences as a ‘course of conduct’

*Royal Commission Criminal Justice Legislation Amendment Bill 2019*

- In February, we introduced the Royal Commission Criminal Justice Legislation Amendment Bill 2019.
- The Bill will:
  - create a new offence for failing to report a sexual offence committed against a child;
  - make ministers of religions mandated reporters;
  - clarify the application of the reportable conduct scheme to information disclosed in a religious confession;
  - remove an outdated common law presumption that, prior to 1985, a male under 14 years was ‘incapable’ of having sexual intercourse;
  - extend special measures available to witnesses in proceedings to a person making a victim impact statement; and
  - make other minor technical amendments to the Ombudsman Act 1989 relating to the application of the reportable conduct scheme to religious bodies.
- The Bill makes clear that obligations to report child abuse still apply even if the information is disclosed in a religious confession.
- The amendments to reporting requirements are based on consultation and an analysis report prepared by The Hon. Justice Julie Dodds-Streeton.
- The Government is progressing further reforms in consultation with stakeholders.

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*Intermediary scheme*

- The Government accepted in-principle the Royal Commission’s recommendations that an intermediary scheme should be established to help prosecution witnesses with a communication difficulty in a child sexual abuse prosecution.
- Work is proceeding within Government to provide advice on an appropriate model for an ACT intermediary scheme, following the Intermediary Forum hosted by the Victims of Crime Commissioner in October last year. This provided a valuable insight from NSW and Victoria where schemes have been piloted in the last few years.
- The Government will continue to work with stakeholders and the ACT community as we progress the implementation of the ACT Government’s response to recommendations for criminal justice reforms.

**Key Information**Royal Commission Criminal Justice Legislation Amendment Bill 2018 (the Bill)

- The Bill was passed in December 2018 and:
  - creates a new offence in the Crimes Act 1900 of failure by a person in authority, in a relevant institution, to protect a child from the risk that a sexual offence will be committed against the child;
  - creates a procedural mechanism for charging offences as a ‘course of conduct’ for child sexual abuse;
  - amends the sentencing provisions in the Crimes (Sentencing) Act 2005 so that sentences for child sexual abuse must be sentenced according to current sentencing practice rather than the sentencing practice at the time of the offending, while retaining the principle that a sentence must not exceed the maximum that applied at the time of the offence; and
  - amends the Evidence (Miscellaneous Provisions) Act 1991 to:
    - include principles for dealing with child witnesses;
    - harmonise the structure and definitions within chapter 4, which contains the Special Measures available to witnesses in proceedings; and

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- extend the availability of certain measures to more categories of witnesses, including witnesses with disability, family members of, and people in a special relationship with, particular vulnerable witnesses and for all child witnesses.
- make consequential amendments to other legislation as a result of the changes to the Evidence (Miscellaneous Provisions) Act.

## Criminal Justice Reforms

- The Government's full response to the Royal Commission's recommendations was released on 15 June 2018.
- A consultation process about the criminal justice reforms was supported by a series of factsheets and information available on the ACT Government's YourSay website and the Justice and Community Safety Directorate website.
- The Justice and Community Safety Directorate has been consulting directly with a range of key stakeholders in the justice system and more broadly to inform the Government's approach to legislative reform in this space. This includes consultation with the Sexual Assault Reform Program (SARP) Reference Group.

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MIN:2019/000034-035

**Portfolio/s:** Attorney-General**ISSUE: COMMONWEALTH REDRESS SCHEME FOR SURVIVORS OF INSTITUTIONAL SEXUAL ABUSE****Talking points:**

- The ACT Government acknowledges the nature and impact of the abuse suffered by victims of child sex sexual abuse. Many survivors of child sexual abuse suffer long lasting and severe harms that can affect them for the rest of their lives.
- The ACT Government is working closely with the Commonwealth and other jurisdictions to implement the Redress scheme in a manner that ensures that it meets the needs of survivors.
- The Scheme started on 1 July 2018 and will run for 10 years.
- The Scheme will offer access to psychological counselling, a direct personal response from the responsible institution and a monetary payment of up to \$150,000.
- All state and territory governments have now joined the Redress scheme.
- In addition, a growing number of non-government institutions have announced their participation in the Scheme. The Commonwealth has indicated this achieves coverage of over 90 percent of anticipated claimants.
- Survivors will be able to access legal and community support services to assist through the redress application process.
- The Commonwealth has established a dedicated telephone helpline (1800 737 377) and website ([www.nationalredress.gov.au](http://www.nationalredress.gov.au)) to provide information for survivors and their families about the Scheme.

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TRIM Ref: MIN:2019/000034-035

- Based on actuarial estimations using population data, the experience of previous schemes and Royal Commission private hearings it is estimated that there will be 225 applications with ACT Government liability out of an estimated total of 830 across the ACT over the 10 years of the scheme. The Commonwealth will be responsible for claims pre self-government (11 May 1989) and non-government institutions will be liable for the balance.
- Modelling undertaken by the Commonwealth Government when designing the scheme estimated that the average payment of redress would be \$76,350.
- The Commonwealth continues to receive applications to the Scheme. As of 31 January 2019 the ACT Government has received requests for information in relation to two applications. These were referred to the Education Directorate to assist with relevant information, and responses have been provided to the redress scheme operator to assist it to make a decision on the applications.
- The ACT is continuing to work with the Commonwealth Department of Human Services - the Scheme Operator - to ensure that applications in relation to ACT Government institutions are responded to effectively.
- This includes work being undertaken by the Justice and Community Safety Directorate, together with other ACT directorates to manage several aspects of the scheme, including identifying the relevant information required in order to respond to applications made by survivors.
- Victim Support ACT will be coordinating the provision of counselling services where counselling support is a component of redress in relation to abuse which occurred in ACT government institutions.
- The Restorative Justice Unit is supporting the provision of direct personal responses from representatives of ACT government institutions.

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- Victim Support ACT will receive and coordinate the initial contact of applicants seeking a direct personal response, and will facilitate the referral of these applicants to the Restorative Justice Unit

**Key Information**

- The Redress Scheme commenced 1 July 2018.
- The Redress Scheme includes psychological counselling, a direct personal response and payments for up to \$150,000.

*Who is eligible for redress?*

- A person is eligible if:
  - the person, when they apply, is an Australian citizen
  - was sexually abused as a child
  - the abuse occurred before the start of the scheme
  - one or more of the institutions participating in the scheme was responsible for the abuse.

*How the application process works*

- The Scheme is being administered by the Commonwealth through the Department of Human Services, which receives applications from those seeking redress. In this context the DHS is Scheme Operator under the legislation establishing the Scheme.
- DHS then requests information from the institution or institutions the applicant has identified in their application as those in which the abuse occurred.
- Institutions have a timeframe in which to respond with relevant information (from their records) to assist the Scheme Operator to assess the application and make a decision about whether to make an award of redress and, if so, what monetary amount to award.
- Independent decision makers have been appointed by the scheme operator to make these assessments. Jurisdictions, including the ACT, have had an opportunity to nominate people who could be suitable for appointment as an independent assessor. The ACT has currently nominated three independent decision makers. One of these nominations, Mr John Hinchey, the former Victims of Crime Commissioner, has been appointed by the Scheme. The other two ACT nominations have been received by the Scheme Operator and will be considered in any further appointment rounds.

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- An application for redress is approved by an independent decision maker if there is a reasonable likelihood that the person meets the eligibility criteria – i.e. that they were sexually abused as a child and one of more of the participating institutions is responsible for the abuse.
- If it is assessed that this test is met the application for redress must be approved and the amount of a redress payment determined, as well as the psychological and counselling component of redress for the person.

*Application of the scheme to people in gaol or who have convictions*

- A person cannot apply for redress if they are in gaol, unless the Scheme Operator determines there are exceptional circumstances justifying the application.
- A person who is sentenced to imprisonment for 5 years or longer is not entitled to redress unless the scheme operator is satisfied that providing redress would not bring the scheme into disrepute or adversely affect public confidence in or support for the scheme.
- In considering whether there are exceptional circumstances justifying an application from a person in gaol or whether an application from a person sentenced to more than 5 years imprisonment would bring the scheme into disrepute, the Scheme operator will seek views from the Attorneys-General of the jurisdictions where the person is, relevantly, in gaol, was sentenced to imprisonment and where the abuse is stated to have occurred.
- The ACT has advised that in these cases, the ACT will support the position that the person's application should be accepted. This is on the basis that there should be no discrimination against victims or survivors of institutional child sexual abuse, having regard to their status as prisoners or people who have been sentenced to a period of imprisonment. It recognises that the life path of some victims and survivors, including offending, will often be linked to the person's experience of abuse and the impact of this on their life.

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Cleared for release	Yes	
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TRIM Ref:	MIN:2019/000034-035	

*Participating institutions*

- All State and Territory governments have joined the scheme.
- The most recent advice from the Commonwealth on 11 February 2019 is that a number of non-Government institutions have recently joined the Scheme, including Jewish Care (Victoria) Inc., and The Legacy Club of Brisbane Limited. Two further Catholic Religious Orders have also joined the scheme: De La Salle Brothers and Institute of Sisters of Mercy of Australia and Papua New Guinea. Additionally, institutions that have undertaken steps to joining the Scheme include: Christian Brothers, Marist Brothers Australia, Baptist Churches Western Australia and Baptist Churches Tasmania.
- The Commonwealth published a web page on 28 February 2019 which lists non-Government institutions named in the Commission which have not yet joined the Scheme, their intention to join and the timeframe which in which the Institutions expect to be formally declared as participating institutions. The Commonwealth continues to work with these organisations to assist them to join the Scheme.

*Claims to date*

- The most recent information from the Scheme Operator (1 February 2019) is that approximately 2700 applications have been received.
- While, to date, the ACT Government has only been requested to provide information in response to two applications, it should be noted that any applications relating to abuse which occurred pre-self-government are being responded to by the Commonwealth. JACS is continuing to work with the Commonwealth to ascertain the number of these applications, with the aim being to provide a more complete picture of claims relating to ACT Government agencies.

**As at 1 February 2019, 51 redress payments had been made. Funding for ACT redress**

In the 2018-19 Budget, the Government allocated \$13.9 million for the first four years of the National Redress Scheme, it is estimated that it will cost approximately \$30 million over the life of the Scheme.

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MIN:2019/000034-017

**Portfolio/s:** Attorney-General

**ISSUE: RESIDENTIAL TENANCIES**

**Talking points:**

Residential Tenancies Amendment Act 2019

- The Residential Tenancies Amendment Act 2019 (the Act) was passed by the Legislative Assembly and notified on 4 March 2019.
- The Act will amend the *Residential Tenancies Act 1997* to provide fairer outcomes for tenants.
- The amendments in the Act include:
  - making it easier for tenants to keep pets in rental properties
  - making it easier for tenants to make modifications in rental properties
  - refining the domestic violence and personal protection order provisions to assist the ACT Civil and Administrative Tribunal (ACAT) to address practical issues that have arisen with current drafting
  - allowing tenants to vacate with no penalty during a fixed term when notice of a ‘no cause’ termination has been given
  - providing that a tenant does not need to pay a ‘break lease’ fee if the lessor finds a replacement tenant, subject to reasonable costs and
  - requiring lessors to apply to ACAT for any rental increase in excess of a prescribed amount (the rental consumer price index plus ten per cent) unless the tenant has agreed to the increase.
- These amendments are the result of extensive consultation with renters, landlords and community groups.
- The amendments will support vulnerable people to be secure in their homes. This is a priority for the Government and will make Canberra a stronger, safer and more connected city.

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TRIM Ref:	MIN:2019/000034-017	



- The amendments will commence on a date that I determine, which will be no later than 4 March 2020.
- I have asked JACS to work with relevant stakeholders including the ACAT, REIACT and tenants advocacy groups to ensure that the community is ready for the changes in the amendment Act before the Government decides to commence the legislation.

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MIN:2019/000034-049

**Portfolio/s:** Attorney-General**ISSUE: ELECTORAL AMENDMENT BILL 2018****Talking points:**

- The Electoral Amendment Bill 2018 (the Bill) meets a key government election commitment by banning political donations from property developers.
- The Bill was debated and agreed in principle on 12 February 2019. Debate on the detailed stage has been adjourned to a future sitting day. The Bill will increase public confidence in our democratic system of government by removing perceived bias and strengthening our electoral reporting framework.
- The Bill introduces an offence for a property developer or close associate of a property developer to give a gift to a political entity, and an offence for a political entity to accept a gift from these people. A political entity includes an MLA or a political party, and a close associate includes an officer of a corporation and their domestic partner.
- The Bill also amends the Electoral Act to treat the total amount of a fundraising contribution as a 'gift' for the purpose of reporting thresholds. Previously donations of up to \$250 did not need to be reported.

*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. The Government has considered the High Court decisions closely when developing this Bill.
- Queensland electoral legislation is currently before the High Court in the matter of *Gary Douglas Spence v Queensland*. The Government is intervening in that case to protect the interests of the Territory.

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TRIM Ref: MIN:2019/000034-049

**Key Information***Relevant High Court matters**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 Australian Constitution and the *Constitution Act 1902* (NSW), and were inconsistent with provisions of the *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 parties, candidates and third-party campaigners are 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 make it unlawful for a third party campaigner to act in consort with another person or persons to incur electoral expenditure which exceeds the applicable cap (*Electoral Funding Act* section 35).
- The plaintiffs challenged these provisions on the grounds that they impermissibly burden the implied freedom of political communication guaranteed under the Constitution.
- The defendants argued that the purpose of section 29(10) was to prevent the drowning out of voices in the political process by the distorting influence of money.
- The High Court found that the reduction in the cap applicable to third-party campaigners in section 29(10) was not demonstrated to be reasonably necessary to achieve the defendant's stated purpose. As a result, section 29(10) was held to be invalid. The High Court found it was not necessary to answer the validity of section 35 as there was no applicable cap upon which the section could operate.

*High Court Precedent on banning political donations from property developers**McCloy v New South Wales [2015]*

- In *McCloy v New South Wales* [2015] (McCloy case), 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

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purpose. The NSW Government argued that a history of corruption and undue influence in planning decisions over a lengthy period of time contributed to the law being reasonably appropriate and adapted.

- The High Court upheld the validity of NSW provisions banning donations from property developers 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 Queensland (still before the Court)*

- The High Court is still deciding *Gary Douglas Spence v Queensland (Spence v QLD)*. *Spence v QLD* considers whether Queensland's laws banning political donations from property developers are unconstitutional.

- Sch 1, s1.2



*Greens Party Amendments*

- The Greens Party has flagged an intention to move a number of amendments to the Bill as follows;
  - expand the class of prohibited donors to include a 'gambling business', and amend the definition of 'close associate' to include 'lobbyists'.
  - reinstate the \$10,000 cap on gifts that was in place from 2012 until it was abolished in 2015
  - amend the expenditure cap to be \$60,000 for a non-party grouping and in any other case, \$42,045
  - impose a cap on the payments that parties can receive for administrative expenditure in any given year. The cap would enforce a limit of an amount equivalent to five times the amount payable for the year for a member of the Legislative Assmebly under sextion 215C of the Electoral Act.
  - reduce the current canvassing distance around polling places. The amendments would change the distance from 100 metres to six metres.

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Portfolio/s: Chief Minister, Health & Wellbeing, Attorney-General, Police & Emergency Services

**ISSUE: Government Position on Drugs of Dependence (Personal Cannabis Use) Amendment Bill**

**Talking points:**

- The Government takes a clear harm minimisation approach to drug use in our community.
- We do not condone personal use of cannabis and we know there are health risks for individuals that do use it. However, we also acknowledge the simple reality that it's happening Canberra.
- We want to provide an appropriate scheme for those individuals who are already using cannabis and will continue to do so, acknowledging that outright prohibition can bring people into contact with the justice system unnecessarily and prevent people seeking help when they need it.
- The ACT has decriminalised personal use of small amounts of cannabis for some time, and the parameters of the Private Members Bill are largely consistent with the scheme already in place.
- The Government supports the Private Members Bill in principle, but notes this is a complex issue that requires proper consideration and debate.
- The Government has indicated it will move a number of amendments to improve the Bill. This includes limiting the number of legal plants to two per person and introducing a household limit; distinguishing between 'wet' and 'dry' cannabis; and adding restrictions intended to prevent children and young people coming into contact with cannabis.
- The Government will provide advice on its amendments to the inquiry being undertaken by the Standing Committee on Health, Ageing and Community Services.

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Director

Andrew Mehrton

Chief Minister, Treasury and  
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**Key Information**

- We want to put these measures in place to move focus away from small personal users of cannabis so that police efforts can go where they are really needed.
- We know there is still some uncertainty about how these changes will unfold given the complex legal environment. The government is supporting these changes as a trial and will monitor and review their impacts over the coming years.
- We want to think this through and take on board the feedback we receive, noting our approach in principle is to support cannabis reform. To that end, the Government has announced it will seek to make amendments to:
  - Retain a limit of two plants per person – in line with the current SCON regime – and introduce a further total household limit;
  - Provide more effective and implementable restrictions to ensure children are not exposed to cannabis smoke;
  - Ensure cannabis is securely stored in a way that is not accidentally accessible to children or other vulnerable people;
  - Restrict cannabis growing to enclosed, private residences where a clear nexus of ownership can be established;
  - Distinguish between wet and dry cannabis to reflect differences in weight at different stages of processing.
- These amendments will aim to address implementation challenges with the bill as it stands, and include clear definitions that will support ACT Policing to clearly distinguish between small-scale, individual cannabis users and those involved in more serious or organised crime.
- The Government also intends that the legislation include provision for a mandatory review to take place not more than two years after legalisation occurs, with the full impacts and effects of this change being evaluated at that point to guide further policy reform.
- Whilst no other Australian jurisdiction has legalised the personal use of cannabis, National and ACT surveys show community support for the decriminalisation and/or legalisation of cannabis for personal use.

**Background Information – may not be suitable for public disclosure**

- Under current ACT legislation, the *Drugs of Dependence Act 1989* (Drugs Act), it is an offence to possess cannabis or to cultivate cannabis plants, including in small quantities for personal use.
- The Drugs Act also allows for the use of a Simple Cannabis Offence Notice (SCON) as an alternative to an arrest for the possession of cannabis, if the offence is possession of cannabis weighing no more than 50 grams or possession of no more than two

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cannabis plants. A SCON is effectively a \$100 fine which, if paid within 60 days, and avoids a criminal conviction being recorded for the offender.

- On 28 November 2018, Michael Pettersson MLA introduced the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill) into the ACT Legislative Assembly.
- The Bill proposes to legalise the personal cultivation, possession and use of small amounts of cannabis for persons aged 18 or older; possession and use of up to 50 grams of cannabis and cultivation of up to four cannabis plants.
- For persons under 18 years of age it would remain an offence to possess cannabis or cannabis plants and SCONs would continue to be available for use by police.
- The Bill includes other minor elements such as new offences for smoking cannabis in public places or near children; and consequential amendments to the *Criminal Code 2002* (ACT) and the *Medicines, Poisons and Therapeutic Goods Act 2008*.

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