ACT Government
Chief Minister, Treasury and Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2023-037

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	29
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [redacted]
To: CMTEDD FOI
Subject: FOI request: Ministerial briefings-CMTEDDFOI 2023-037
Date: Monday, 13 February 2023 12:10:34 PM

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. Learn why this is important

Hi there,

I am seeking access to documents under the *Freedom of Information Act 2016* and I request the following ministerial briefs:

- CMTEDD2022/3373 DLO Request - INPUT - Sister City in Palestine
- CMTEDD2022/3108 Whole of Government Report on COVID-19 Measures – Report 15 covering 1 April – 30 June 2022 Reporting Period
- CMTEDD2022/3497 Jervis Bay Territory service delivery arrangements and Memorandum of Understanding negotiation update
- CMTEDD2022/2298 Independent Reviewer Approval – Built for CBR
- CMTEDD2022/2110 HOSTS letter to Commonwealth Treasury Secretary – health funding reform
- CMTEDD2022/2028 ACT Submission to the Independent Review of Australia's COVID-19 Response
- CMTEDD2022/2525 Procurement for Provision of CIT Futures 2025 and Preceding Contracts

Please exclude duplicates.

Regards

[redacted]

ACT Government
Chief Minister, Treasury and Economic Development

Our ref: CMTEDDFOI2023-037

[redacted]

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 13 February 2023, in which you sought access to following ministerial briefs:

- CMTEDD2022/3373 DLO Request - INPUT - Sister City in Palestine
- CMTEDD2022/3108 Whole of Government Report on COVID-19 Measures – Report 15 covering 1 April – 30 June 2022 Reporting Period
- CMTEDD2022/3497 Jervis Bay Territory service delivery arrangements and Memorandum of Understanding negotiation update
- CMTEDD2022/2298 Independent Reviewer Approval – Built for CBR
- CMTEDD2022/2110 HOSTS letter to Commonwealth Treasury Secretary – health funding reform
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Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 14 March 2023. Following third-party consultation as required under section 38 of the Act and an extension of time granted under section 41 of the Act, the due date is now 20 April 2023.

Decision on access

Searches were completed for relevant information and 26 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access in full to ten documents relevant to your request. I have decided to refuse access to seven documents and grant partial access to nine documents as I consider them to be:

- contrary to the public interest information under schedule 1; and or
- contain information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

In accordance with section 54(2) of the Act my access decisions are detailed further in the following statement of reasons. The documents released to you are provided as **Attachment B** to this letter.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act,
- the content of the documents that fall within the scope of your request,
- the views of third parties consulted under section 38 of the Act,
- the *Human Rights Act 2004*.

Exemptions claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Contrary to the public interest information under schedule 1 of the Act

Documents 13, 16, 19, 20, 21, 25 and 26 (refer **Attachment A**) of the identified documents are entirely composed of or contain information that is considered to be contrary to the public interest under schedule 1 of the Act.

Cabinet information

Documents 13, 16 and 19 (refer **Attachment A**) contain some information that would reveal a deliberation of Cabinet. Therefore, this information is considered to be contrary to the public interest under section 1.6 of schedule 1 of the Act as it contains Cabinet information and is exempt from release.

Under the Act schedule 1, section 1.6 *Cabinet Information* is:

(1) Information—

> *(a) that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or*
>
> *(b) that is an official record of Cabinet; or*
>
> *(c) that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a) or (b); or*
>
> ***(d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).***

The purpose of this exemption is to maintain the confidentiality of the Cabinet process and to uphold the principle of collective ministerial responsibility. This exemption was

discussed in The Commonwealth v Northern Land Council [1993] HCA 24; (1993) 176 CLR 604 (21 April 1993). Paragraph 6 of the decision, states that:

> … it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made.

Legal Professional Privilege

Documents 20 and 25 (refer **Attachment A**) are entirely composed of information that is subject to legal professional privilege and have been withheld from disclosure. Documents 16, and 21 contain some information that is subject to legal professional privilege and the occurrence of this specific information in these documents has been redacted.

Under the Act schedule 1, section 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 is exempt from release.

Law Enforcement

Document 26 is entirely composed of information that is considered contrary to the public interest under schedule 1 section 1.14 and is exempt from release.

Schedule 1, section 1,14 includes -

> *1) Information the disclosure of which would, or could reasonably be expected to—*
>
> > *(a) prejudice the investigation of a contravention or possible contravention of the law in a particular case.*

It is publicly known that the Integrity Commission is investigating the circumstances surrounding the awarding of consultancy contracts by the Canberra Institute of Technology. Due to these ongoing actions, this document has been withheld from disclosure.

<u>Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act</u>

<u>Public Interest</u>

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are

relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure in the public interest under schedule 2 of the Act:

(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.

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

Having reviewed the information requested, I consider the release of these Ministerial briefs could or would reasonably be expected to contribute to discussion of public affairs and enhance the government's accountability.

I also consider the information contained in the briefs being released could or would reasonably inform the community of government decisions including those concerning the Government response to the Independent Review of Australia's Covid-19 Response and reporting measures.

I am satisfied the information contained in these briefs would contribute to positive and informed debate on matters concerning the community, and as such all factors identified in favour of release carry significant weight.

Factors favouring nondisclosure in the public interest under schedule 2 of the Act:

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

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

(x) prejudice intergovernmental relations.

(xii) prejudice an agency's ability to obtain confidential information.

(xvi) prejudice a deliberative process of government.

I consider that the protection of an individual's right to privacy, is a significant factor in the release of this information. Some contact details for ACT government employees, in addition to names of non-ACT government employees who have provided their information to the Government have been removed. I consider that the release of this information could impact their right to privacy and this in my opinion, outweighs the benefit which may be derived from releasing this information.

I therefore weigh the factor for nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information could prejudice their right to privacy under the *Human Rights Act 2004*.

Some information contained in these briefs could or would reasonably be expected to prejudice a deliberative process of government at this time, in addition to intergovernmental relations. Ongoing negotiation between governments concerning

development of memoranda regarding service delivery, could be prejudiced should information be released prematurely. Likewise, information that has been provided to another government, or received from another government with the expectation that it would remain confidential has been redacted.

Some information has been withheld on the basis that it is part of a deliberative process. A deliberative process is the 'thinking process' of government and includes information that is a recommendation used to inform the decision-making process of a Minister or agency. In reviewing the information contained in these briefs, I weigh this factor significantly as prejudice, in the form of interference concerning the integrity of a decision, is likely to occur should this information be released.

Having applied the test outlined in section 17 of the Act and deciding that release of information in the documents concerning personal information, intergovernmental relations, an agency's ability to obtain confidential information and information used in a deliberative process is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Documents 11 and 12 (refer **Attachment A**) contain information regarding the Board of Treasurers. All discussions and papers are treated as confidential by all States and Territories. As such, release of this information could prejudice intergovernmental relations. As outlined in the Ombudsman Guidelines[1] …*disclosure of information may prejudice intergovernmental relations where the information was provided to the ACT government on a confidential basis and disclosure may… result in a loss of trust and cooperation between governments*.

Documents 18 and 23 (refer **Attachment A**) are entirely composed of information that would damage intergovernmental relations and inhibit the ACT's ability to receive confidential information, in addition prejudice deliberative actions.

I consider, on balance, documents 11, 12, 18 and 23 to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are waived for this request.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 26 April 2023. Your personal contact details will not be published.

[1] https://www.ombudsman.act.gov.au/publications/foi-guidelines/4.-ombudsman-guidelines-considering-the-public-interest#_Toc43385578

You may view CMTEDD disclosure log at
https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2023

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman. We recommend using this form *Applying for an Ombudsman Review* to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

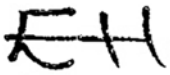
Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740

http://www.acat.act.gov.au/

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Emma Hotham

Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

20 April 2023

ACT Government
Chief Minister, Treasury and Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
I am seeking access to documents under the *Freedom of Information Act 2016* and I request the following ministerial briefs: • **CMTEDD2022/3373 DLO Request - INPUT - Sister City in Palestine** • **CMTEDD2022/3108 Whole of Government Report on COVID-19 Measures –Report 15 covering 1 April – 30 June 2022 Reporting Period** • **CMTEDD2022/3497 Jervis Bay Territory service delivery arrangements and Memorandum of Understanding negotiation update** • **CMTEDD2022/2298 Independent Reviewer Approval – Built for CBR** • **CMTEDD2022/2110 HOSTS letter to Commonwealth Treasury Secretary – health funding reform** • **CMTEDD2022/2028 ACT Submission to the Independent Review of Australia's COVID-19 Response** • **CMTEDD2022/2525 Procurement for Provision of CIT Futures 2025 and Preceding Contracts**	**CMTEDDFOI 2023-037**

1	**1-3**	**CMTEDD2022/2298 Independent Reviewer Approval – Built for CBR**	**25/05/2022**	**Partial release**	**Sch 2.2 (a)(ii)**	**Yes**
2	**4-6**	ATTACHMENT A - Approval to Refer Built for CBR Campaign to the Independent Reviewer	**25/05/2022**	**Partial release**	**Sch 2.2 (a)(ii)**	**Yes**
3	**7-16**	ATTACHMENT C - Built for CBR website content for IR	**25/05/2022**	**Full release**		**Yes**
4	**17-27**	ATTACHMENT D - Built for CBR activation plan - phase 1 - transition to new brand (not for IR)	**25/05/2022**	**Full release**		**Yes**
5	**28**	**CMTEDD2022/3373 DLO Request - INPUT - Sister City in Palestine**	**Undated**	**Full release**		**Yes**
6	**29-31**	**CMTEDD2022/2028 ACT Submission to the Independent Review of Australia's COVID-19 Response**	**19/05/2022**	**Full release**		**Yes**
7	**32-35**	Attachment A - ACT Submission to the Independent Review of Australia's COVID-19 Response	**No date**	**Partial release**	**Sch 2.2 (a)(x)**	**Yes**
8	**36-42**	Attachment B-Announcement and Terms of Reference - Independent review of Australia's COVID-19 response	**04/04/2022**	**Full release**		**Yes**

9	**43-46**	Attachment C - Request for Interview - Independent Review of Australias COVID-19 response	**22/04/2022**	**Full release**		**Yes**
10	**47-50**	**CMTEDD2022/2110 HOSTS letter to Commonwealth Treasury Secretary – health funding reform**	**16/05/2022**	**Partial release**	**Sch 2.2 (a)(x)**	**Yes**
11		Att A - HOSTS letter to the Treasury Secretary	**16/05/2022**	**Exempt**	**Sch 2.2 (a)(x)**	**No**
12		Att B - Technical paper – Health Funding Sustainability	**16/05/2022**	**Exempt**	**Sch 2.2 (a)(x)**	**No**
13	**51-53**	**CMTEDD2022/3108 Whole of Government Report on COVID-19 Measures –Report 15 covering 1 April – 30 June 2022 Reporting Period**	**22/07/2022**	**Partial release**	**Sch 1.1.6**	**Yes**
14	**54-277**	Attach A - COVID-19 WHoG Report on Measures - Report 15 - Reporting Period 1 April - 30 June 2022	**2022**	**Full release**		**Yes**
15	**278**	Attach B - Letter to the Speaker	**26/07/2022**	**Full release**		**Yes**
16	**279-292**	**CMTEDD2022/3497 Jervis Bay Territory service delivery arrangements and Memorandum of Understanding negotiation update**	**31/08/2022**	**Partial release**	**Sch 2.2 (a)(x) Sch 2.2 (a)(xvi) Sch 2.2 (a)(xii) Sch 1 1.6 Sch 1 1.2**	**Yes**
17	**293-294**	Att A – Chief Minister letter to the Hon Kristy McBain MP, Minister for Regional Development, Local Government and Territories – Jervis Bay Territory (JBT) matters	**undated**	**Partial release**	**Sch 2.2 (a)(x) Sch 2.2 (a)(xvi) Sch 2.2 (a)(xii)**	**Yes**
18		Att B – ACT Statement of Intent on JBT MoU – as provided to Infrastructure August 2022	**16/08/2022**	**Exempt**	**Sch 2.2 (a)(x) Sch 2.2 (a)(xvi) Sch 2.2 (a)(xii)**	**No**
19	**295-298**	Att C – ACT Government approach to JBT service requests – August 2022	**undated**	**Partial release**	**Sch 2.2 (a)(x) Sch 2.2 (a)(xvi) Sch 2.2 (a)(xii) Sch 1 1.6**	**Yes**
20		Att D – GSO Advice 637280 – Status of the Jervis Bay Territory (JBT) – 20201222 – SENSITIVE LEGAL	**22/12/2020**	**Exempt**	**Sch 1 1.2**	**No**
21	**299-306**	Att E – ACT Aboriginal and Torres Strait Islander Children's Commissioner and the Jervis Bay Territory	**undated**	**Partial release**	**Sch 2.2 (a)(x) Sch 2.2 (a)(xvi) Sch 1 1.2**	**Yes**
22	**307-370**	Att E.1 – Co-Designing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT	**March 2022**	**Full release**		**Yes**

23		Att F – Request for ACT Government septic system and sewage treatment plant authorisation and regulatory services in the JBT	**undated**	**Exempt**	**Sch 2.2 (a)(x) Sch 2.2 (a)(xvi)**	**Yes**
24	**371-372**	Att F.1 – Authorisation and regulation of septic systems and sewage treatment plants in the ACT – July 2022	**undated**	**Full release**		**Yes**
25		Att F.2 – GSO Advice 634188 – Applicability of Environment Protection Act and Public Health Act legislation to the JBT (context: PFAS contamination) – 20180424 – SENSITIVE LEGAL	**24/04/2018**	**Exempt**	**Sch 1 1.2**	**No**
26		**CMTEDD2022/2525 Procurement for Provision of CIT Futures 2025 and Preceding Contracts**	**08/06/2022**	**Exempt**	**Sch 1.14 (1)**	**No**
Total No of Docs						
26						

Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To:	Chief Minister	**Tracking No.: CMTEDD2022/2298**
Date:	25/05/2022	
From:	Executive Group Manager, CMTEDD Communications & Engagement	
Subject:	Independent Reviewer Approval – Built for CBR	
Critical Date:	27/05/2022	
Critical Reason:	To seek approval from the Independent Reviewer of Campaign Advertising for the Built for CBR brand campaign.	

Recommendations

That you:

1. Note the information contained in this brief and attachments;

Noted / Please Discuss

2. Sign the *Approval to Refer Advertising Campaign to the Independent Reviewer* form at Attachment A.

Signed / Not Signed / Please Discuss

Andrew Barr MLA 1/6/22

Minister's Office Feedback

Background

1. The purpose of the Built for CBR campaign and website is to develop and deliver an overarching infrastructure brand that will unite disparate communications on ACT Government infrastructure projects.
2. The Built for CBR website consolidates and streamlines priority infrastructure content from existing ACT Government directorate platforms to present information that is benefits-focused and user-centered. This site will support the community to stay informed on infrastructure progress taking place across Canberra.
3. The website is being developed in phases over the coming 12 months, with content to be regularly updated and curated by directorates to align to infrastructure project milestones and announcements.
4. ACT Government campaigns over $40,000 or those of a sensitive nature are subject to Independent Review under the *Government Agencies (Campaign Advertising) Act 2009*. They are referred to the Independent Reviewer by the relevant Minister.
5. As the Built for CBR brand will be used widely by government in highly visible communications across the community, and there will be future Built for CBR campaign activity, it is prudent to seek Independent Review of Built for CBR as it is launched.
6. A request for a review is at Attachment A for your approval. A Built for CBR branded campaign presentation (Attachment B) and Built for CBR website content (Attachment C) are included to support this review.

Issues

7. Information about travel disruptions as a direct result of infrastructure and construction works - predominately the raising London Circuit - will be housed on the Built for CBR website. The Built for CBR Project Team are working with the TCCS and MPC communications teams to display content on the Built for CBR website.

Consultation

Internal

8. CMTEDD Communications and Engagement have been working in partnership with all directorates to develop the Built for CBR brand.
9. Consultation has also taken place with the Planning and Infrastructure Subcommittee of Strategic Board with regular status updates presented on progress of Built for CBR.
10. Consultation has occurred with the Office of the Chief Digital Officer and Online Services (ICT) to build the Built for CBR website.

Cross Directorate

11. A Project Working Group with representation from all communications teams has been established to inform directorates/agencies and coordinate the transition to the new brand.

External

12. The Built for CBR brand, was developed using internal ACT Government resources.
13. An external research agency, Sch 2.2(a)(ii) was appointed to conduct evidence-based market research testing on community sentiment towards infrastructure and brand creative concept testing and selection.
14. An external agency, Sch 2.2(a)(ii) was appointed to design the Built for CBR website including structure, landing pages and project pages. Internal resources will be used to develop and maintain the website.

Work Health and Safety

15. Nil.

Risks/Sensitivities

16. Nil.

Communications, media and engagement implications

17. A Built for CBR Brand Guardian has been created to provide guidance to directorates/agencies on the application of the brand across communications and engagement materials and ensure uniformity with the brand identity.
18. A writing guide will form part of this Brand Guardian to ensure that information and communication to the community has a consistent tone and takes a benefits-led approach.
19. An Activation Plan is at Attachment D outlining the communications and engagement activities planned as we launch Built for CBR from 6 June 2022.
20. There is the potential that the new brand and website will attract some media interest, which CMTEDD Communications and Engagement will manage in consultation with your office.

Signatory Name: Trish Johnston
Action Officer: Gerry Murray

Attachments

Attachment	Title
Attachment A	Referral to the Independent Reviewer of Campaign Advertising
Attachment B	Built for CBR branded campaign presentation for IR
Attachment C	Built for CBR website content for IR
Attachment D	Built for CBR Activation Plan - Phase 1 - Transition to new brand (not for IR)

APPROVAL TO REFER ADVERTISING CAMPAIGN TO INDEPENDENT REVIEWER

Governments are required to communicate with citizens to:

- maximise compliance with the law
- inform the community of new, existing, changed or proposed legislation, polices, programs and services
- raise awareness of a planned or new initiative or event
- initiate community consultation
- promote awareness of rights, responsibilities, duties or entitlements
- encourage social cohesion, civic pride, community spirit, tolerance, or
- inform the community about a public policy outcome.

Compliance is required with the *Government Agencies (Campaign Advertising) Act 2009* to ensure public money is being used appropriately.

ACT Government advertising and promotion campaigns with expenditure in excess of $40,000 must be reviewed by the Independent Reviewer of Campaign Advertising.

A number of exceptions apply. ACT Government campaigns that are not required to be reviewed include:

- those with a total cost (creative development and media placement) of less than $40,000
- jobs advertising
- tender advertising
- public health or safety campaigns
- campaigns that assist in the preservation of order in the event of an emergency or crisis
- campaigns that help ensure public safety, personal security or that encourage responsible behaviour
- campaigns that promote the ACT as a tourist destination, and
- routine advertising carried out in relation to operational activities.

Exempt campaigns as noted above may be reviewed at the request of the relevant Minister or Chief Executive, including where the subject matter of the campaign may be considered sensitive for any reason.

Please submit this completed and signed form plus the campaign strategy/plan with **all** communications and campaign materials to wholeofgovcomms@act.gov.au.

Allow three working days for reviews to be completed. Your directorate or agency will be invoiced for the cost of the review in accordance with a determination of the ACT Remuneration Tribunal (Part-time office holders).

CAMPAIGN INFORMATION FOR REVIEW

CAMPAIGN NAME:	**ACT Government Infrastructure Program - Built for CBR**
DIRECTORATE/AGENCY:	Chief Minister, Treasury and Economic Development Directorate
CONTACT OFFICER:	Trish Johnston Executive Group Manager, Communications & Engagement
RESPONSIBLE PERSON:	Mr Andrew Barr MLA Chief Minister

CAMPAIGN PURPOSE AND SUMMARY:

The purpose of the Built for CBR campaign is to develop and deliver an overarching brand for ACT Government infrastructure that unites disparate communications and engagement on priority infrastructure projects and initiatives. The campaign will keep community, businesses and industry informed and updated on the status and progress of key government infrastructure projects and capital works programs taking place across the city and in local areas.

Market testing research was undertaken to inform this campaign and evidence-based community sentiments has defined the campaign strategy, preferred creative and implementation methodology.

Built for CBR will create a simple, unified and customer focussed digital experience through a new community-centric website that will be integrated with existing ACT Government channels, such as the Our Canberra newsletter and YourSay Conversations platform.

As the Built for CBR brand will be used widely by government in highly visible communications and campaign activity, we are seeking Independent Review of the campaign as it is launched.

CONTRACTED AGENCIES:

To develop the Built for CBR brand and website, an external research agency, Sch 2.2(a)(ii) was appointed to conduct evidence-based market research on community sentiments towards infrastructure and brand creative concept testing and selection. This qualitative research was undertaken through online focus groups with a mix of age, gender, cultural identity, occupation, and location from the Canberra community.

To create the Built for CBR website an external agency, Sch 2 2(a)(ii) was appointed to develop and design the website structure and a series of templates for content pages, including landing pages and project pages.

An external photographer, Richard Poulton, was commissioned to undertake location photography for the Built for CBR website and future campaign assets and materials.

Brand strategy and creative development, as well as website development, has been undertaken in-house.

MEDIA / CHANNELS USED:

To support the launch of the Built for CBR website, a public information campaign through the Our Canberra print and digital editions will promote the website as well as key infrastructure projects and disruption as a result of infrastructure. Further promotion of the website will take place across ACT Government social media channels and across digital screens in ACT Government shopfronts.

CAMPAIGN DATES:

Built for CBR will launch on 6 June through a new dedicated website, supported by a public information campaign in the June edition of Our Canberra.

A communications, marketing and advertising campaign is scheduled for August-October 2022 with no determination on the end date at this stage. Additional approvals for this phase will be sought prior to launch.

Start date:	June 2022

End date:	Not determined
BUDGET:	
CAMPAIGN ACTIVITY	**COST *(excluding GST)***
Market testing research	$22,540
Website design	$17,845
Campaign Photography: Location shoot Talent fees	 $14,000 $5,000
Other, *please specify*	
TOTAL	**$59,385**

PLEASE PROVIDE THE FOLLOWING INFORMATION
Will Ministers and/or MLAs be involved in the campaign? Yes Minister's communication channels maybe used to promote the *Built for CBR* messages.
Will public servants be involved? No
Are all campaign materials clearly identified as a government campaign? Yes, ACT Government branding/logo to appear across all Built for CBR materials.
Is there compliance with Guideline 4: Avoiding the misuse of public funds? Including a clear audit trail regarding decision-making and procurement policy and procedures for tendering, obtaining services and employing consultants followed. Yes
What action is proposed to draw information to the attention of disadvantaged groups and individuals? Campaign materials use of plain English.

CERTIFICATION BY RESPONSIBLE PERSON (Guideline 5.31)
I authorise this advertising campaign to be reviewed by the Independent Reviewer.

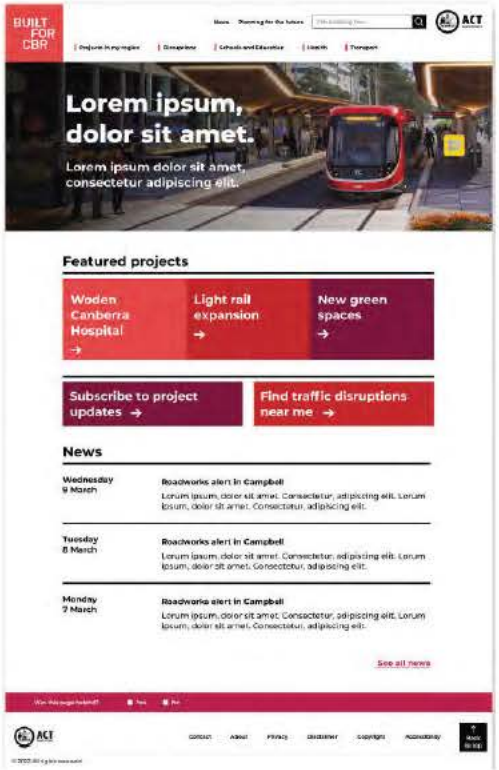
Signed:

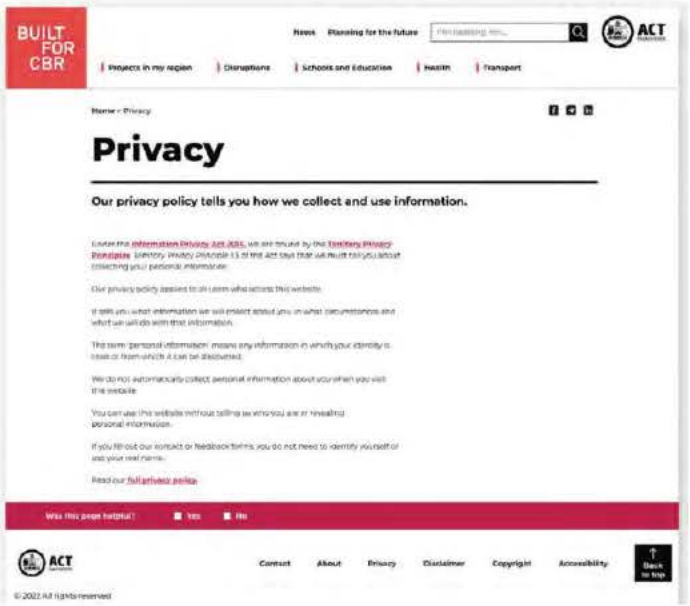
Built for CBR – Website (www.builtforcbr.act.gov.au)

Homepage + top navigation pages

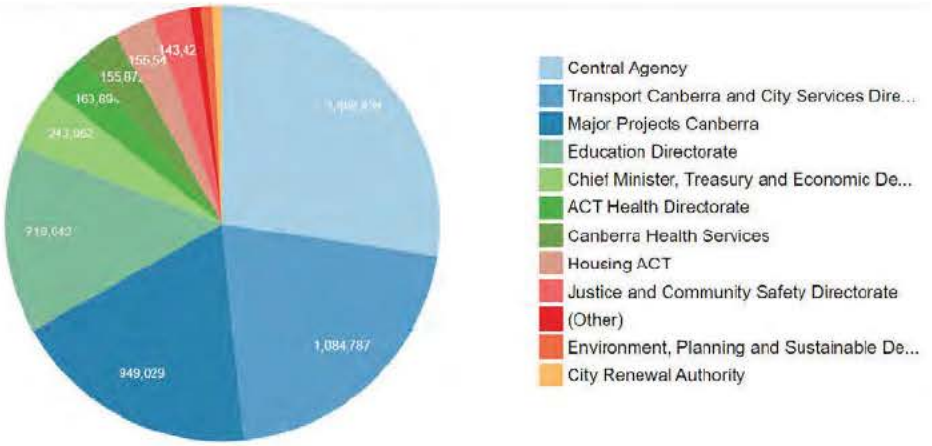
Top navigation includes the following pages:

- Homepage
- Projects in my region
- Travel impacts
- Schools and Education
- Health
- Transport
- About
- Building for the Future

Page (and design examples)	Content
Homepage 	**Homepage includes the following features:** • **Carousel of images** – will scroll through three key images. At launch this will include a series of images that will link through to four 'landing pages': Health, Schools and Education, Transport and Project in my region. • **Featured projects section** – buttons will link to project web pages. Key projects featured at launch will Raising London Circuit, Kingston Arts Precinct, Light Rail Stage 2A. • **Subscribe to project updates button** –button to link through to page with existing sign-up options from across government. • **Find out more about travel impacts –** will link through to 'Travel impacts' content page. • **News section** – list of latest news updates, which will be integrated with infrastructure related Our Canberra articles and ACT Government media releases.

Page (and design examples)	Content
About Content page (The 'About' page is to provide context on the 'Built for CBR' website) Example of design of standard content page:  	Readability: 61/100. Grade 7 **Heading:** About **Content:** Canberra's population is expected to reach 500,000 people in the next 10 years. Built for CBR has been established to keep the community informed on the progress of infrastructure projects that are happening right across the city. Built for CBR is not just about new infrastructure projects. It is about maintaining, upgrading and revitalising existing infrastructure to meet the needs of the Canberra community and to help create local jobs. Canberra is one of the most liveable cities in the world, and high quality, sustainable infrastructure will be the key to supporting the lifestyle Canberrans love over the coming decades. This ambition, to deliver infrastructure that meets the needs of Canberrans is infrastructure that is Built for CBR. The infrastructure projects that feature on this site are projects that are in the ACT Government's infrastructure pipeline. More information is on the Building for the Future page(link to Building for the Future). **re doing** At the end of most pages on this site, you'll see the question 'Was this page helpful?'. It's anonymous and will help the ACT Government improve its web content for everyone. The ACT Government values your comments and suggestions, and although each and every message is read, we can't always provide a personal response. Our Privacy Policy(link to privacy page) tells you what information is collected about you, in what circumstances and what we will do with that information.

Page (and design examples)	Content
Building for the Future Content page Page design as above for standard content page example.	**Readability:** 55/100, grade 9 **Heading:** Building for the Future **Content:** The ACT Government is building for Canberra's future to ensure Canberra remains one of the most liveable cities in the world for decades to come. Established just over 100 years ago on Ngunnawal land, Canberra has become one of the most progressive and inclusive in Australia. As the city grows, strengthening connections and striving to meet the needs of the community is the focus for future infrastructure decisions. As a city, we respond and adapt to climate change. We embrace new technologies, and the ACT Government is focused on ensuring infrastructure projects are well planned and thoughtfully delivered. Over the coming years, the ACT Government will be delivering on the infrastructure priorities outlined in the ACT Government's Infrastructure Plan but also what comes next to support the future of the city. Investing in infrastructure is a key element of the ACT Government's strategy to deliver services to our community, protect and create jobs, and improve the long-term wellbeing of Canberrans.

Page (and design examples)	Content
	***Graphic on Infrastructure Investment – existing graphic on "capital works program by agency funding allocation" from CMTEDD website [snip below])  To view the details of the ACT's infrastructure program rolling out across Canberra, read the ACT Infrastructure Plan. To view the status and progress of projects detailed in the Infrastructure Plan, view the Projects Pipeline.
Health Landing page Example of design of Landing page:	Readability 49/100 – grade 10 **Heading:** Health The ACT Government is investing in new health facilities to provide more healthcare services, where and when you need them. **Content:** The ACT Government is making record investments in services and infrastructure so the health care needs of Canberrans are met today and into the future. This includes building new facilities and upgrading existing ones so that Canberrans have access to a range of public health services, where and when they need them. Community engagement, planning, site preparation and construction is already underway on health infrastructure projects across Canberra, including:

Page (and design examples)	Content
	- construction on the $624 million Canberra Hospital Expansion Project - $50.05 million expansion of Centenary Hospital for Women and Children - community engagement and planning for future northside hospital services and four new health facilities in the community to build on our existing network of Walk-in Centres and Community Health Centres. A state-of-the-art Critical Services Building is the centrepiece of the Canberra Hospital Expansion Project. It will have 60 new intensive care treatment spaces, 147 emergency department treatment spaces, 156 inpatient beds and 22 operating theatres. Along with expanding Canberra's healthcare capacity, the Canberra Hospital Expansion Project is creating new jobs. Around 500 jobs will be created during the construction stage, helping with the Canberra's economic recovery from COVID-19. Recruitment for more health workers is set to start ahead of the project's completion in 2024.
Transport Landing page Page design as above for landing page example.	Readability 52/100 Grade 10 **Heading:** Transport The ACT Government is investing in a public transport system that provides flexible, reliable and sustainable transport options for Canberrans. **Content:** The ACT Government is building a modern public transport system that is safe, connected, and efficient to serve the needs of Canberrans now and into the future. A modern transport system will contribute to Canberra's status as one of the most liveable in the world.

Page (and design examples)	Content
	Canberra's growing transport system will give people greater choice over how and when they travel. The future public transport network will allow people to easily move between transport options, regardless of where they live and work, disability or background. It will continue to ensure Canberra remains one of the most liveable cities in the world by supporting the people moving between their homes, jobs and services across the city. Since the ACT Government's commitment to move to 100 per cent renewable electricity, transport is now Canberra's single largest source of emissions. Moving towards a zero emissions public transport fleet is a practical way to support Canberrans to take everyday action on climate change. Some of the major transport projects the ACT Government is working on include: • building light rail to Woden • building a new light rail ready public transport interchange in Woden • raising London Circuit • purchasing 90 electric buses to replace fuelled buses in the Transport Canberra fleet • expanding the shared e-scooter network to more areas of Canberra • upgrading major roads across Canberra • improving road and footpath safety around schools These projects will support thousands of jobs across the construction and transport industries in the coming years.
Schools and Education Landing page Page design as above for landing page example.	Readability 52/100 – grade 9 **Heading:** Schools and education The ACT Government is investing in public education, so every local school is a great school. **Percentage of budget graphic (to be inserted)** **Content:** Every child in Canberra has access to a great public school close to home. The ACT Government is investing record amounts in ACT public schools to meet current and future education needs.

Page (and design examples)	Content
	As Canberra continues to grow, the ACT Government is building new public schools and upgrading education facilities across Canberra. This means people moving to new suburbs and growing regions can access public education close to where they live. Every ACT public school has improvements every year with many of these upgrades required to ensure inclusive facilities so that all students can take full advantage of educational opportunities. Local families in Gungahlin, Strathnairn, Narrabundah and Garran will benefit from new and improved school infrastructure. A new primary (P-6) school and Early Childhood Education Centre in Strathnairn, Ginninderry is expected to open in 2025. Major infrastructure projects to modernise facilities and better meet the learning needs of communities include the expansion of Margaret Hendry School and the Garran Primary School and Narrabundah College modernisation projects. Design and construction of two high schools are underway to meet the rapid growth in Gungahlin which is one of the fastest growing regions in Australia. East Gungahlin high school in Kenny and North Gungahlin high school in Taylor are expected to open in 2024. The ACT Government is also investing in vocational education and training by building a contemporary and sustainable CIT campus in the heart of Woden. When completed, CIT Woden will support up to 6,500 students to learn each year. The campus will prepare Canberrans with the skills and training required for tomorrow's careers.
Projects in my region Landing page Page design as above for landing page example.	Readability 50/100 Grade 9 **Heading:** Projects by region The ACT Government is investing in local suburbs to ensure Canberra remains one of the most liveable cities in the world. **Percentage of budget graphic (to be inserted)** **Content:**

Page (and design examples)	Content
	The ACT Government has begun work on Canberra's biggest ever suburban infrastructure program. As part of this, there is investment happening in every suburb across Canberra. The ACT Government listened to the Canberra community through the Better Suburbs Citizens' Forum to understand the priorities for these upgrades. This community decision-making helps shape and guide how the ACT Government plans and designs suburban upgrades. The suburban infrastructure projects underway in regions across Canberra, include: • improving water quality wetlands through the Healthy Waterways program • upgrading roads, community footpaths and street lighting • improving sportsgrounds across Canberra to meet the needs of local sports teams • protecting urban infrastructure tree canopies • upgrading local playgrounds, dog parks and recreation areas • upgrades to local shopping centres These projects will help ensure Canberra remains vibrant, beautiful and liveable today and in the coming decades. The ACT Government will continue to work with the community on future plans through the YourSay Conversations platform and with our community partners. You can find out more on the City Services website. **Featured projects by region:** *links off to existing pages on the City Services website.* Belconnen - City Services (act.gov.au) Central - City Services (act.gov.au) Gungahlin - City Services (act.gov.au) Tuggeranong - City Services (act.gov.au) Woden, Weston Creek and Molonglo - City Services (act.gov.au) Completed projects - City Services (act.gov.au) Programs - City Services (act.gov.au)

Page (and design examples)	Content
Travel impacts Landing page Page design as above for standard content page example.	Readability 52/100 – Grade 9 **Heading:** *Travel impacts* Stay up to date with traffic and transport disruptions in the ACT. **Content:** With construction to change travel through the city over the coming years, the ACT Government will work with the community to minimise its impact by telling you early and often about upcoming traffic changes and delays. The most significant travel impacts in the city are expected to start in early 2023 as main construction works scale up to raise London Circuit. These impacts are expected to lead to increased travel times from Canberra's southside into the city, with some flow-on impacts across the wider transport network. They will include traffic, bus and pedestrian changes and temporary road and lane closures. And with around 60,000 cubic metres of fill needed to raise the current road, there will be considerable truck movements in and out of the area. The ACT Government will provide real-time traffic information to drivers via road message boards using new cameras at intersections and new traffic sensors. The ACT Government is also installing temporary traffic lights at key intersections in the city. The improved traffic monitoring will help to provide faster responses to accidents or issues before they cause congestion. Thank you for your patience while the changes made today, help to make for a better Canberra of tomorrow. **Plan ahead** *Rethink your route, rethink your routine* ahead of construction starting later this year. This could mean travelling outside peak times or finding other ways to travel to the city such as walking, cycling or e-scooting. Public transport services will continue to operate every day. Certain bus routes may be diverted away from construction zones and travel times may increase on some services. To see the public transport and active travel routes that will connect you to the city, go to **transport.act.gov.au/region** **Stay up to date** Register to receive information about travel impacts via email. **Public transport service alerts**

Page (and design examples)	Content
	Stay up to date with the latest public transport service alerts. **Road closures** Check the latest local road and footpath closures. **Journey times** When traveling around our city, keep an eye out for live traffic information on our roadside signs. Plan your journey in real time using a mapping platform such as Google maps or Apple Maps. You can also use the Transport Canberra Journey Planner to pick the best public transport routes to suit your needs. **Construction updates** Register to receive regular construction updates for Raising London Circuit, the new CIT Campus Woden, or Light Rail to Woden.

BUILT FOR CBR

ACT Government

ACTIVATION PLAN

Phase 1 – Transition to new brand (May-August 2022)

Built for CBR will be implemented in phases. Phase one will focus on laying the foundations of the new brand through the development of key channels, the development of campaign assets and establishing content planning for earned and owned media. It will also be focussed on transitioning the new brand across government.

Key deliverables include:

- Development of campaign governance, including brand guardian, digital writing guide and design and campaign assets.
- Campaign narrative development.
- Development of and launch of the new website (phase 1).
- Establishment of Image Library – audit of existing imagery and capturing new (Built for CBR photoshoot).
- Cross-directorate presentations on use of the brand.
- Proactive content planning and delivery across earned and owned channels for key milestones and announcements.
- Industry and stakeholder engagement, including through new Woden Renewal Hub.

The news function of the Built for CBR website is linked to Our Canberra (OC) digital and will also link through to YourSay Conversations where applicable for current engagement on infrastructure projects. All Built for CBR social media will also be issued through already established ACT Government social media channels.

Built for CBR will launch on 6 June 2022. This activation plan outlines the communications and engagement activities to launch the campaign as we commence transitioning to the new brand across government in the coming months.

Activation plans for future phases of Built for CBR will be developed. These phases include:

- Phase 2 – Creating equity in the brand – August through December 2022 (to contain first campaign burst)
- Phase 3 – Building longevity and activating the brand – January through July 2023
- Phase 4 – Brand maintenance – July 2023 through July 2024
- Phase 5 – Brand review and evolution – August 2024 through July 2025

A Built for CBR Project team has been established in the CMTEDD Communications and Engagement Division to manage the implementation of Built for CBR from a whole of government perspective.

Directorates/agencies will continue to lead all project delivery communications and engagement activities and will be responsible for rolling out the Built for CBR brand in accordance with the Brand Guardian and Writing Guide.

Built for CBR PR/Events Kit

Campaign assets are being created for directorates/agencies to book and use at major media announcements and community/stakeholder events and activities. Assets include:

- Flags for outdoor use
- Pull up banners
- Branded lectern signage
- A-frame with branding
- Ceremonial shovel
- Ceremonial ribbon
- High vis vests/hard hats
- Gazebo with branding
- Branded corflute
- Branded 1.8m x 10m mesh banner

Public information

Month	Messages	What	Audience	Materials
June	**Promotion through OC June Newsletter – Infrastructure Edition** Message – check out the new Built for CBR website	- OC monthly newsletter June edition - Infrastructure focus - Lift out on Raising London Circuit/upcoming travel impacts	- All Canberra residential households (200,000+)	Print and digital newsletters

			- OC Subscriber Base (50,000+ digital)	
June	**Promotion through social media** Message – check out the new Built for CBR website ***Note:*** *through establishment phase, focus of website promotion will be on organic and SEO.*	- Social media (ACT Govt and directorate channels) - Web stories (ACT Government websites)	- All Canberrans	- Digital assets (social media tiles and web banners)
End of June/early July	**Promotion through social media** Messages: - Infrastructure is the connecting thread that brings our community to life. - Our city has grown over the past 10-years and our population continues to grow.	- Social media (ACT Govt channels) - Built for CBR website	- All Canberrans	- Video
June-August	**Earned and owned proactive PR–** **promoting the benefits of the Built for CBR infrastructure** Current content ideas: Dickson Common Ground Raising London Circuit works approved (Coranderrk St traffic lights) MRF (FOGO) facility Canberra Hospital Expansion Project update CIT Woden project update	- work with directorates to deliver stories across earned and owned channels	- All Canberrans - Media (local outlets)	- Web news stories - Newsletter articles - Social media - Media pitches

June	**Promotion through Woden Renewal Hub, Access Canberra, ACT Libraries** Message – check out the new Built for CBR website	- Woden Renewal Hub - Access Canberra Shopfronts - ACT Libraries	- All Canberrans	- Built for CBR DL (hardcopy) - Digital asset for screens at facilities - Access Canberra script - Access Canberra on-hold message
July/August	**Media – Pre-budget infrastructure announcements** Message – ACT Government investment in priority infrastructure and Canberra as a modern, progressive 21st century city.	- work with directorates to support these announcements across earned and owned channels	- All Canberrans - Media (local outlets)	- Web news stories - Newsletter articles - Social media - Media pitches - PR/Event Kit for directorate use

Stakeholder engagement

The purpose of this activity will be to inform key stakeholders in the infrastructure sector in the ACT and other interested groups of the new Built for CBR website and work underway across government to improve the way the community receive information and keep updated on ACT Government infrastructure projects.

Month	Key stakeholder groups	What	Audience	Materials
June	**Planning and Construction Industry Chief Executive Reference Group (PACICERG)** *ACT Government* - Representation from Minister Gentleman's office - Representation from Minister Vassarotti's office - EPSDD - TCCS - CMTEDD (Deputy Under Treasurer)	- Email to members	- Internal - Sector	- Email (link to new website)

	- MPC - ACT Chief Engineer - ACT Government Architect - CRA - SLA - Access Canberra *Sector* - National Capital Authority - Icon Water - Housing Industry Association ACT - Property Council - Australian Institute of Architects - Planning Institute of Australia - Professionals Australia - Institute of Landscape Architects - Canberra Business Chamber - Real-estate Institute of the ACT - Consult Australia - Engineers Australia - Master Builders Association			
June	**Infrastructure sector (additional)** *Industry bodies* - Infrastructure Partnerships - Roads Australia - Construction Industry Training Council *Government* - Infrastructure Australia - Infrastructure NSW -Infrastructure Victoria	- letter from ACT Government representative (Chief Engineer, Adrian Piani – TBC) - Woden Renewal Hub		- Letter - Built for CBR (DL)

June	**Community councils (local)**	- letter from ACT Government representative (Chief Engineer, Adrian Piani – TBC) - Woden Renewal Hub		- Letter to Chair/President of Council - Built for CBR (DL)

Internal communications

The purpose of this activity is to arm our biggest advocates – our leaders and staff – will information about the new Built for CBR branded campaign and website.

Month	Key stakeholder groups	What	Materials
June	ACT Executive – Chief Minister/Ministers	- Media messaging	- Talking points/Q&A (for use if needed)
June-August	All staff	- Head of Service/WHoG message - Directorate intranet news articles - ACT Govt wallpaper	- Email - Wallpaper artwork - DRAFT article content provided to directorates
May/June	Cross-directorate	- Briefing to Planning and Infrastructure Sub-Committee - Briefing to Disruption Taskforce	- Presentations to committees
June/July	Communications teams	- Webpage on C&E Portal (internal) - Presentations to Creative Hub members on how to use the Brand	- Presentation on Brand Guardian
June	Infrastructure leads	- Email from Adrian Piani (TBC)	- Email

Priority infrastructure projects

To ensure a cohesive whole of government approach, all infrastructure projects will transition from the current ACT Government Signage Guidelines to the new Built for CBR brand from May 2022. However, with several projects and programs of work already underway and in market, it is acknowledged that transitioning to the new brand will happen over an extended period across government.

From June:

- **New and commencing infrastructure projects** – immediate application of the Built for CBR branding across all communications and engagement materials.
- **Infrastructure projects currently in progress** – use of Built for CBR branding on physical signage, hoarding and other hard copy communication materials to occur as new materials are developed, or at a planned time in the project for signage and other materials to be updated. All digital assets and materials that can be updated, should be transitioned onto new branding in as timely a manner as practical.

A list of confirmed and commenced projects that will transition to Built for CBR branding, noting more projects will be added as project scopes are confirmed:

Directorate (+ supporting directorate)	Project	Description	Co-funded	Project Cost	Project Status	Built for CBR Brand (in-market)
ACTH (MPC)	**Canberra Hospital Master Plan Implementation - Yamba Drive carpark**	Design and feasibility work for implementation of Canberra Hospital Master Plan commencing with the Yamba Drive car park	No	Under $20M	Design	
ACTH (MPC)	**Watson Health Precinct redevelopment - Ted Noffs and CatholicCare redevelopment**	Proof of concept design works. 2022-23 Business Case developed for construction funding	No	Under $20M	Design	
ACTH (MPC)	**Watson Health Precinct redevelopment - Aboriginal and Torres Strait Islander Residential Rehabilitation facility**	Grant funding provided to Winnunga Nimmytijah for proof-of-concept design works	No	Under $20M	Design	

ACTH (MPC)	**Eating Disorder Residential Rehabilitation facility**	Proof of Concept design works nearing completion for construction of facility at Coombs	Yes - Australian Government	Under $20M	Design	
ACTH (MPC)	**Northside Hospital Planning**	Planning works associated with developing Business Case for the construction of a new	No	Under $20M	Planning	
ACTH (MPC)	**Southside Hydrotherapy Pool**	Proof of concept design works. 2022-23 Business case developed for construction funding	No	Under $20M	Design	
ACTH	**Karralika Isabella Plains upgrades**	Upgrades to Heating, ventilation, and air conditioning (HVAC)	Yes - Australian Government	Under $20M	Commencement	
ACTH (CSD)	**Canberra Hospital Master Plan Implementation**	Feasibility and Proof of Concept to commence implementation of Master Plan infrastructure. Business Case developed for 2022-23 ACT Budget.	No	$400M+	Planning	
Calvary (ACTH)	**Calvary Public Hospital Bruce Capital Works Program**	Implementation of Strategic Asset Master Plan and associated capital improvements at Calvary Public Hospital Bruce	No			
EDU (MPC)	**Garran Primary School**	Modernisation and redevelopment of the Primary School	No	$62M	Q1 2023	Q1 2023
EDU (MPC)	**Narrabundah Primary School**	Modernisation	No	$32M	Q1 2023	Q1 2023
EDU (MPC)	**East Gungahlin High School**	New school	No	$85M	Underway- November 2021	Potential to have fence wrap installed soon

EDU (MPC)	**Strathnairn Primary (P-6) and Early Childhood Education Centre**	New school	No	$62M	Q1 2023	Q1 2023
EDU (MPC)	**Capital Upgrades Projects and Transportable Units**	Each financial year up to 50 upgrades occurring at any one time. Relocatable Learning Units (transportable units) are installed to increase student capacity and provide additional learning spaces	No	TBA	Immediate	Immediate
CHS (MPC)	**Cancer Research Centre**	New specialist cancer research facilities at the Canberra Region Cancer Centre to offer treatment, research, supportive therapies, and emotional support in a single, integrated facility	No	<$20m	Construction commencement Aug 2022 (Construction completion June 2023)	
CHS (MPC)	**Expanding Pharmacy Services**	Redesign and refurbishment of the main Pharmacy dispensary, and a new Compounding Specialised Medications Room in the Canberra Region Cancer Centre	No	<$20m	Construction commencement July 2023 (Construction completion April 2024)	
CHS (MPC)	**Medical Imaging Expansion at Canberra Hospital**	Upgrade ageing critical MRI and CT imaging equipment to improve and expand diagnostic imaging capabilities at Canberra Hospital	No	<$20m	Construction commencement June 2022 (Construction completion November 2022)	
CHS (MPC)	**Weston Creek Imaging**	A new medical imaging outpatient service at the Weston Creek Walk-in Centre	No	<$20m	Construction commencement July 2022 (Construction	

					completion November 2022)	
CSD	**Gugan Gulwan Aboriginal Corporation New Accommodation**	A fit for purpose, culturally designed facility to enable the Gugan Gulwan Youth Aboriginal Corporation to enhance delivery of services to Aboriginal and Torres Strait Islander people, and young people	No	<$20M	Demolition to commence Nov 2022	
TCCS	**Monaro Highway Upgrade Program**	Early weeks to enable the future construction of the new Lanyon Drive interchange. (Note these commenced in January 2022)	Yes - Australian Government	$100M-$250M	Underway	May/June 2022 Fencewrap only as signage already in place
TCCS	**Duffy shop upgrades**	Upgrading local shopping centre precincts across the city over the next four years	No	Under $20M	Late May 2022	May/June 2022 Fencewrap only as signage already in place
TCCS	**Campbell shop upgrades**	As above	No	Under $20M	Late May 2022	May/June 2022 Fencewrap only as signage already in place
TCCS	**Belconnen Bikeway S2**	Delivering a dedicated bikeway connecting the Belconnen Town Centre, the University of Canberra, Radford College and the CIT's Bruce campus	Yes - Australian Government	Under $20M	May-22	May/June 2022 Fencewrap to be considered for site compound and fencing around works area
TCCS	**Cotter Road pavement widening**	Sealed shoulder for the Uriarra cycle loop.	Yes - Australian Government	$100M-$250M	May/June 2022	May/June 2022 Fencewrap to be considered for site

						compound and fencing around works area
TCCS	**Central Canberra signalisations**	Three key intersections will be signalised along Novar Street and Kent Street in Yarralumla and Deakin to improve traffic flow, capacity and safety	Yes - Australian Government	Under $20M	June 2022	Signage is already in place. Fencewrap to be considered pending NCA endorsement
TCCS	**Woden Bus Depot**	Recommissioning of the old bus depot at Woden	No	$20M - $50M	June 2022	Signage and fencewrap
TCCS (MPC)	**Coranderrk signalisation**	DISRUPTION - traffic lights installed at the intersection of Parkes Way and Coranderrk Street along with extension of the right-turning lanes from Parkes Way into Coranderrk Street	No	Under $20M	May 2022	May 2022 Signage and fencewrap pending NCA endorsement
TCCS (CRA)	**Sydney and Melbourne Building - laneway improvements and stormwater upgrades.**	Laneway improvements to help create attractive small-scale spaces, improve safety and connectivity and reinforce the buildings' role as a distinctive gateway to the city	No	Under $20M	June 2022	June 2022 Signage and fencewrap
JACS (MPC)	**Acton Station**	New emergency services (fire and ambulance) station	No	$20M - $50M	Project design has commenced - Final Sketch Plan	Existing signage in market

ACT Government
Chief Minister, Treasury and Economic Development

DLO Request Container:
CMTEDD2022/3373

RESPONSE TO DLO REQUEST

*** <u>All information provided should be factual</u>.**
Electronic approval at Executive Branch Manager level is required.

Subject:

Sister City relationship in Palestine

Response:

Thank you for your email dated 28 July 2022 about forming a Sister City relationship with Palestine.

The ACT Government's international efforts are guided and focused through Canberra's *International Engagement Strategy.* Any future formal agreements are made with special consideration of this *Strategy*.

For a Sister City Agreement (SCA) to be established it would require going through the *International Formal Agreements Framework* and the Commonwealth's *Foreign Arrangements Scheme Act.*

With consideration of the *Strategy,* the *Framework*, limited resources and what would require a concerted effort from both sides to be a successful Agreement Canberra will not be entering into any new arrangements at this time.

I thank you for your understanding on this matter.

Chief Minister, Treasury and Economic Development Directorate

To:	Chief Minister	**Tracking No.: CMTEDD2022/2028**
Date:	19/05/2022	
CC:	Minister for Health Head of Service	
From:	Coordinator General Whole of Government COVID-19 (Non-health) Response & Deputy Director General, Policy and Cabinet	
Subject:	ACT Submission to the Independent Review of Australia's COVID-19 Response	
Critical Date:	03/06/2022	
Critical Reason:	To provide a timely submission to the Review Panel	

Recommendations

That you:

1. Note the information contained in this brief; and

Noted / Please Discuss

2. Agree to the ACT Submission to the Independent Review of Australia's COVID-19 Response at Attachment A, to be provided to the review team by the Head of Service.

Agreed / Not Agreed / Please Discuss

Andrew Barr MLA 1/6/22

Minister's Office Feedback

Background

1. On 4 April 2022, the Paul Ramsay Foundation, Minderoo Foundation and the John and Myriam Wylie Foundation announced an Independent Review of Australia's COVID-19 Response (the Review) and its impact on the community. The announcement and Terms of Reference are included at Attachment B.

2. The Review anticipates delivering its final report with recommendations by September or October 2022.

Issues

3. As you are aware, the ACT Head of Service, Kathy Leigh, received an invitation from Peter Shergold to participate in a confidential interview to learn about the ACT's response to the COVID-19 pandemic (Attachment C).

4. You previously agreed to the proposal for senior executives to participate in a joint interview with the Review Panel (see CMTEDD2022/1819).

5. However, following further discussions with senior executives in CMTEDD, you supported the ACT providing a short written submission to the Review Panel in place of a joint interview.

6. A written submission has subsequently been prepared for your agreement at Attachment A.

7. The submission outlines areas where the ACT Government has worked successfully to support the ACT community throughout the COVID-19 pandemic. It also identifies some of the key concerns the ACT holds regarding the current federal architecture and proposes improvements to this structure.

8. Upon your agreement to the submission, the Head of Service will write to the review Secretariat to lodge the ACT's written submission.

Financial Implications

9. Not applicable.

Consultation

Internal

10. The draft submission was shared for comment with Senior Executives from Policy and Cabinet Division and Treasury.

Cross Directorate

11. Executives from Health Directorate, including the Chief Health Officer, Canberra Health Services, reviewed and provided input to the ACT submission.

External

12. Not applicable.

Work Health and Safety

13. Not applicable.

Benefits/Sensitivities

14. Participating in the Review provides an opportunity to discuss the ACT Government's response to the COVID-19 pandemic.

15. The ACT understands that all other states and territories have already or will engage in an interview with the Review Panel.

Communications, media and engagement implications

16. The report, once finalised later in 2022, may attract media attention. Any media response will be developed as the report's findings are made available.

Signatory Name:	Leesa Croke	Phone:	73751
Action Officer:	Edwin Crump	Phone:	50237

Attachments

Attachment	Title
Attachment A	ACT Submission to the Independent Review of Australia's COVID-19 Response
Attachment B	Announcement and Terms of Reference - Independent Review of Australia's COVID-19 Response
Attachment C	Request for Interview - Independent Review of Australia's COVID-19 Response

ACT Government

Independent Review of Australia's COVID-19 Response

ACT Government Submission

ACT Response

The ACT Government welcomes the opportunity to provide a submission to the Independent Review of Australia's COVID-19 Response. The ACT Government has taken a managed approach to our COVID-19 response, with a primary public health objective of limiting community transmission and severe disease.

The ACT's response to COVID-19 has been one of the best in the world. It's a powerful demonstration of what can be achieved when a community works together to keep each other safe.

The ACT Government invested heavily to support our hospitals, testing facilities, contact tracing teams, quarantine facilities and mass vaccination centres. We allocated resources where they were needed, reached out to vulnerable communities, and embraced innovation and digital service delivery, moving many of our government services online.

We communicated openly, honestly and regularly. The community responded by following health advice. We also understood the significant risk COVID-19 presented to our most vulnerable. We acted quickly to adapt our services and work with non-government partners to support those in our community who found quarantine most difficult, providing accommodation, food, financial support as well as personal protective equipment, in-reach testing and vaccination.

Even though ACT Government measures and early action through the National Cabinet have proved highly successful in responding to COVID-19 in the ACT and the Nation as a whole, there is room for improvement and we have identified areas for further consideration, where improvements could support a more effective and streamlined response to future pandemic crises.

National Cabinet and the post-Conran Review of Federal Architecture

In 2020, the federal architecture was fundamentally reset following the Conran Review. Alongside the National Cabinet, states and territories routinely met with the Australian Government to guide the national COVID-19 response. Sch 2.2(a)(x)

Sch 2.2(a)(x)

Health Funding Reform

National health funding reform is an ongoing issue. The National Partnership Agreement for the COVID-19 Response (the COVID NPA) established a structure for financial assistance to the states and territories for expenditures related to the prevention and management of COVID-19. However, there is an urgent requirement to review and update the COVID NPA to address issues that have emerged since it was originally agreed, and specific schedules added. Sch 2.2(a)(x)

Economic Supports

Throughout the COVID-19 pandemic the ACT Government has provided a wide range of measures and financial supports to businesses and ACT residents affected by the pandemic and the impacts of public health orders. Since the beginning of the pandemic, the ACT Government has committed more than $475 million in government assistance to support local businesses.

Sch 2.2(a)(x)

Managed Quarantine Arrangements

While the Australian Government is constitutionally responsible for quarantine, on 27 March 2020, National Cabinet agreed to 14-day quarantine conditions for repatriated Australian citizens and other international arrivals, including that designated facilities would be determined by the relevant state or territory government.

The ACT has used a successful combined model of hotel and home quarantine to manage the unique circumstances in the ACT including the number of diplomatic residences within Canberra and our position as the Nation's capital which required the ACT to support government officials that live in or regularly travel to Canberra for work. The National Review of Hotel Quarantine, undertaken by Jane Halton AO, noted that the ACT adopted a holistic approach towards hotel quarantine with a strong emphasis on the mental and physical wellbeing of returnees.

Sch 2.2(a)(x)

Supply Chain Challenges

The world has experienced severe, ongoing supply chain issues as a result of the pandemic. This has led to both short term and longer-term issues, particularly when combined with other significant events including natural disasters and international unrest. The ACT has supported work through the National Coordination Mechanism to coordinate a national approach to address supply constraints. Improved communication to

states and territories about available assistance would support an enhanced response to supply chain challenges.

National Medical Stockpile

The ACT would welcome the function and operational arrangements of the National Medical Stockpile (NMS) being reviewed and provision of greater clarity of purpose and scope, to support the strategic use of its resources in a more effective way. Further clarity on when and how states and territories can access the stockpile, and what resources are available, would support improved health response planning and operations.

Vaccine Rollout and Production

The ACT's strong vaccination program has seen the territory become one of the most vaccinated jurisdictions in the world. However, the initial vaccine rollout program was delayed and there was a lack of early clarity around division of responsibility for the delivery of the vaccine program that hindered early planning. Leveraging off pre-existing arrangements under the NIP, and utilising State and Territory expertise in operational arrangements would have had significant benefit.

Sch 2.2(a)(x)

Insights from the pandemic: An independent review of Australia's COVID-19 response

Apr 4, 2022 | Latest News Statement

JOINT MEDIA STATEMENTFROM THE PAUL RAMSAY FOUNDATION, MINDEROO FOUNDATION AND THE JOHN AND MYRIAM WYLIE FOUNDATION

Three of Australia's prominent philanthropic foundations have joined together to establish an independent review of the country's response to the COVID-19 pandemic and its impact on the community with the goal of improving future health crisis responses.

The Paul Ramsay Foundation, Minderoo Foundation and the John and Myriam Wylie Foundation today announced the review, which will be steered by review chair Professor Peter Shergold AC.

Professor Shergold will be joined by panel members Jillian Broadbent AC, Doherty Institute Director Professor Sharon Lewin AO, former Young Australian of the Year

Isobel Marshall, and University of Queensland Chancellor Peter Varghese AO. Thew eview panel will be supported by research and analysis from e61 Institute.w

Paul Ramsay Foundation CEO Professor Glyn Davis AC said the review wasw specifically designed to be independent and philanthropy-led, and sets out tow ensure the lessons from Australia's pandemic experience are captured so thatw they may be used to strengthen policies and actions in response to future crises.w

"We need to be more ready and resilient for whatever comes next – it's criticalw that we know more about the effects and consequences of the pandemic so thatw our response is tailored to have the greatest impact in improving the health,w security, and happiness of Australians, especially for future generations," saidw Professor Davis.w

The funders of this review have each committed to an independent approach, with the review process and its conclusions at the discretion of the Panel, and freew of editorial or policy direction from the funders. The Review will deliver its finalw eport with recommendations by September 2022.w

Professor Peter Shergold, AC, review Chair, commented on the importance of thew eview: "While governments will no doubt reflect on the experiences and resultsw of their own policies, this review will provide a valuable independent examination.w We aim to deliver incisive and practical recommendations that will assistw governments, business, civil society and the broader community to mitigate thew impact of future health crises and create a more resilient society."w

Members of the public are invited to provide a submission to the Review ddressing one or all of the following questions:w

1. What impact did the pandemic have on you and your community?w
2. What worked well, and what didn't work well, in governments' policy responsesw to reduce the impact of the pandemic on you and your community?w
3. What should be done now to better prepare for the next health crisis?w
4. What other issues would you like to raise with the Panel?w

Submissions are limited to 1,500 words and can be lodged online at w.e61.in/covid-review . The closing date is **31 July, 2022** Submissions will bew treated as confidential and will only be referenced in the final report with writtenw permission.w

ia contact: Pia Akerman, 0412 346 746w

The Review Panel

- **Professor Peter Shergold AC:** Professor Shergold has worked at the highest levels of Australian public policy, including as Secretary of the Department of the Prime Minister and Cabinet, and led numerous reviews on major government programs. He is currently Chair of the AMP Foundation, Crescent Institute, and the Centre for Social Impact.
- **Jillian Broadbent AC:** With an extensive career in banking in Australia and overseas, Ms Broadbent is a leading company non executive director who has previously sat on the board of organisations including the Reserve Bank, the Clean Energy Finance Corporation, SBS and Qantas. She is currently a director at Macquarie, the Sydney Dance Company and the National Portrait Gallery Board Foundation.
- **Professor Sharon Lewin AO:** Leading infectious diseases expert and virologist, Professor Sharon Lewin, is the inaugural Director of the Doherty Institute. She is also Laureate Professor of Medicine at The University of Melbourne and a National Health and Medical Research Council (NHMRC) Practitioner Fellow.
- **Isobel Marshall:** Ms Marshall was named Young Australian of the Year in 2021 in recognition of her work as a social entrepreneur, co-founding TABOO to help women around the world by breaking down stigma around menstruation and providing greater access to hygiene products. She is also a full-time student at the University of Adelaide, where she is studying a Bachelor of Medicine (MBBS) and a Bachelor of Surgery.
- **Peter Varghese AO** Peter Varghese is Chancellor of The University of Queensland and has had an extensive career in public service and diplomacy spanned 38 years, including senior positions in foreign affairs, trade policy and intelligence. Most recently, he served as Secretary of the Department of Foreign Affairs and Trade (2012-2016).

Independent review of Australia's COVID-19 response

Terms of Reference

The Independent Panel has been asked to review Australia's response to the COVID-19 pandemic to provide a small number of practical, high-impact recommendations on how Australia can become a more resilient nation that is better prepared for future health crises.

Background

Australia has navigated the profound challenges of the COVID-19 pandemic wellb compared to many countries, but it has had a major impact on our country andb our people. Decision makers have had to deal with unprecedented health, social,b economic and humanitarian considerations quickly, with essentially no roadmapb to guide them.b

As we look ahead to a post-COVID-19 world, this is an important moment ofb opportunity to consider crucial lessons we can learn from the pandemic, so thatb we are better prepared and more resilient for the next potential crisis. This is theb opportunity to ensure we understand consequences – both intended andb unintended – of decisions and actions taken and analyse what worked well andb what did not.b

The funders of this review have therefore commissioned a report to considerb these vital questions. The funders believe that an independent, philanthropy-ledb process will provide a particularly valuable perspective for our future nationalb planning for, and response to, such a situation. The decisions made throughoutb the pandemic were made in real time under enormous pressure. The review aimsb to ensure future decision-makers are equipped with practical insights and a clearb articulation of the lessons learned from our collective experience this time round.b It will look to the future. It will consider whether stated objectives were met, andb what doing better might look like based on the reviewers' expertise andb experience, including the challenge of balancing conflicting public policyb objectives.b

The objective is to help Australia deal effectively with a similar crisis in future –b one which is unlikely to be the same as we have recently experienced, butb evertheless will again require exceptional crisis management skills to be applied,b and better.b

While this review will focus on dealing with a global health pandemic on ourb shores, some of its perspectives could be also of benefit in thinking ahead to howb Australia deals effectively with other large-scale challenges it may face in future,b of whatever nature.b

cope of the review

The review will cover core issues and potential improvements from the threeb phases of the COVID-19 pandemic:

1. Preparation: including risk monitoring, the availability of data, access to skills,’ he adequacy of emergency plans and protocols, and the flexibility of Australia’s’ communities, policies, and markets’
2. Response: including communication, managing policy trade-offs, governance,’ government coordination, knowledge and data sharing between and within state-’ ational governments and the public; logistics and supply chains; our ability to’ adapt as the crisis evolved; and the inclusiveness and effectiveness of our policy’ responses’
3. Recovery: including the adequacy and effectiveness of policy supports’ provided; the distribution of those supports across the community; whether the’ post-COVID recovery is inclusive of vulnerable communities; and how we are’ learning from the successes and shortcomings in our policy responses.’

Process

The independent review will draw on extensive consultations across the’ community (including with government, civil society, academia, business, peak’ dustry bodies, labour unions, and individual members of diverse communities)’ along with data analysis, policy analysis and desktop research led by a research’ eam at the e61 Institute. The review will publish a report centred on a small’ umber of practical, high-impact recommendations.’

Submissions

We want to hear from you! The Panel invites you to provide a submission to the’ Review addressing one or all of the following questions:’

1. What impact did the pandemic have on you and your community?’
2. What worked well, and what didn’t work well, in governments’ policy responses’ reduce the impact of the pandemic on you and your community?’
3. What should be done now to better prepare for the next health crisis?’
4. What other issues would you like to raise with the Panel?’

Please submit your response online at www.e61.in/covid-review Please limit your’ submission to ’**,500 words** . Submissions will be treated as confidential and will’ ly be referenced in the final report with your written permission.’

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Partnerships for potential

The Paul Ramsay Foundation acknowledges the Traditional Owners of Country throughout Australia. We pay our respects to Elders past and present.

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From:	COVID Review
To:	Leigh, Kathy
Subject:	Request for Interview: Independent Review of Australia"s COVID-19 response
Date:	Friday, 22 April 2022 4:44:43 PM
Attachments:	Independent Covid Review - letter to Kathy (ACT).pdf

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Kathy,

The Paul Ramsay Foundation, Minderoo and Tanarra Capital have established an Independent Panel to conduct a Review of Australia's response to the COVID-19 pandemic. The e61 Institute has been engaged to support the panel in distilling key learnings from Australia's response and potential policy solutions to improve our resilience to future crises. Further information on the Review can be found here.

We would like to interview you to hear your perspectives and recommendations for this important project. Please see attached an invitation from the Chair of the Panel, Peter Shergold, which includes more information. The interview will take approximately 30 minutes and will be treated as confidential. You will not be quoted or identified in the final report and you will not be asked to disclose anything that is confidential. Further details on the interview are available in the Ethics Compliance note.

Is there a time you would be available in the weeks from Tuesday 26th April – Thursday 28th April or Tuesday 17th May - Thursday 2nd June?

Please use this online booking tool to self-book your preferred time, or alternatively reply to this email with your preferred times. The meeting can be conducted in-person in Canberra or remotely. Please note your preference when making the booking or replying.

Thank you for your help with this project, we look forward to hearing from you.

Kind regards,

Judianne

Independent Review of Australia's COVID-19 Response Secretariat

On behalf of Peter Shergold, Chair of Independent Review of Australia's COVID-19 Response

Independent Review of Australia's COVID-19 response

Dear Kathy

As you may have read in the press, three of Australia's prominent philanthropic foundations have joined together to establish an independent review of Australia's response to the COVID-19 pandemic and its impact on the community. I have spoken with Head of the Australian Public Service, Phil Gaetjens and am working with PM&C to ensure our Review engages effectively and efficiently with the Commonwealth.

I note, with appreciation, that Phil has already emailed you on 12 April 2022. I am writing to personally to convey that I hope to have your support and the engagement of your senior public servants in this important project.

The Paul Ramsay Foundation, Minderoo Foundation and the John and Myriam Wylie Foundation announced the review on 4 April 2022. Details can be found at https://paulramsayfoundation.org.au/2022/04/04/insights-from-the-pandemic-an-independent-review-of-australias-covid-19-response/.

The review will be oversighted by an independent panel. I will chair the group. The other members are the eminent business leader, Jillian Broadbent AC; Doherty Institute Director, Professor Sharon Lewin AO; former Young Australian of the Year, Isobel Marshall; and University of Queensland Chancellor, Peter Varghese AO. The review panel will be supported by a secretariat from the e61 Institute which will receive submissions and undertake extensive consultations, research and analysis.

The reason that I and my fellow panel members have agreed to take on this project is because of the explicit determination of the funders that it be an independent and non-partisan assessment. There is no intention to point fingers of blame at individuals, organisations or governments. Quite simply, we wish to identify what has gone well over the last two years, what has not gone well, what directions were changed as a result and, most importantly, what lessons we can learn to be better prepared for the next health crisis.

The findings of the review will be free of editorial or policy direction from the funders. I hope that the review will deliver its final report with recommendations by September/October 2022.

A critical source of insight for the report will be consultations with government, business, civil society and academia, along with individuals directly impacted by the pandemic. Officials in federal, state and territory governments will be especially importantly given their

valuable insights into how we can better prepare for the next health crisis. The public submissions made by government departments to the *Select Committee on COVID-19*, testimonies in Senate Estimates and public statements made by the Prime Minister, Premiers, Ministers and health officials throughout the pandemic provide important context for the independent review which we hope to build on through further consultations with government officials.

I would greatly appreciate your support in this important project. Be assured that these interviews will be treated as confidential. The comments of participants will be shared with the independent panel but will not be attributed to individuals in the report. Neither you nor your staff will be quoted. Interviewees will not be asked to disclose anything confidential. All data and information from these interviews will be stored on secure servers and will not be released for any other purpose.

Attached to this letter is a list of topics that we wish to explore as part of the review – which relate to Australia's preparation for, response to, and recovery from the COVID-19 pandemic – along with some specific individuals who may have particularly valuable insights on these topics. If you and your staff are willing to be engaged in the review, please email us at covidreview@e61.in and we will arrange a convenient time for the consultation. Consultations can be in person or virtual, and we are also inviting written submissions via www.e61.in/covid-review.

Please don't hesitate to get in touch with me at p.shergold@westernsydney.edu.au if you have any questions/or concerns. I would be happy to discuss any further conditions that you would wish to set on the participation of public servants in your jurisdiction.

I have separately written to your Chief Minister seeking his support for the review.

Kind regards

Peter Shergold

Chair

Attachment – Independent review consultations topics and individuals

Topics for discussion in consultations:

We will review each phase of the pandemic – preparation, response and recovery – to learn lessons that will better prepare us for the next health crisis

Individuals for consultations:

Department	Name	Reason
ACT Health	Kerryn Coleman	Health response
ACT Treasury	Representative	Economic response
ACT Community Services	Representative	Social policy implications

Chief Minister, Treasury and Economic Development Directorate

To:	Treasurer
Tracking No.:	CMTEDD2022/2110
Date:	16/05/2022
From:	Executive Branch Manager, Macroeconomics, Modelling and Federal Financial Relations
Subject:	HOSTS letter to Commonwealth Treasury Secretary – health funding reform
Critical Date:	20/05/2022
Critical Reason:	Sch 2.2(a)(x)

- UT 18/05/2022
- DUT 18/05/2022

Recommendations

That you:

Sch 2.2(a)(x)

Noted / Please Discuss

2. Note that your office has been consulted on these materials, Sch 2.2(a)(x) and

Noted / Please Discuss

3. Note that as you are the Chair of the Board of Treasurers in 2022, the ACT Under Treasurer has sent the correspondence at **Attachment A** to the Commonwealth Treasury Secretary.

Noted / Please Discuss

Andrew Barr MLA 26/5/22

Minister's Office Feedback

Background

Sch 2.2(a)(x)

Sch 2.2(a)(x)

Sch 2.2(a)(x)

Signatory Name:	Chris Roberts, Executive Branch Manager, Macroeconomics, Modelling and Federal Financial Relations	Phone:	x74081
Action Officer:	Blake Ford, Senior Director Federal Financial Relations	Phone:	x58781

Sch 2.2(a)(x)

Chief Minister, Treasury and Economic Development Directorate

To:	Manager of Government Business	**Tracking No.: CMTEDD2022/3108**
Date:	22/07/2022	
CC:	Chief Minister	
From:	Executive Branch Manager - Cabinet, Assembly and Government Business	
Subject:	Whole of Government Report on COVID-19 Measures – Report 15 covering 1 April – 30 June 2022 Reporting Period	
Critical Date:	**29/07/2022**	
Critical Reason:	The Report must be provided to the Speaker for out of session circulation to Members by 29 July 2022.	

Recommendations

That you:

1. Note the information contained in this brief;

Noted / Please Discuss

2. Agree to out of session circulation by 29 July 2022; and subsequent tabling in the Assembly on 2 August 2022 of the Whole of Government Report on COVID-19 Measures Report 15 (Attachment A); and

Agreed / Not Agreed / Please Discuss

3. Sign the letter to the Speaker requesting out of session circulation to Assembly Members at Attachment B.

Signed / Not Signed / Please Discuss

Mick Gentleman MLA 26/7/2022

Minister's Office Feedback

Background

1. The *COVID-19 Emergency Response Act 2020* (the Act) commenced on 8 April 2020.

2. The Act states that for each month that a COVID-19 declaration is in force, the responsible Minister for a COVID-19 measure must prepare a report for the Legislative Assembly on the application of the measure. This report must be presented to the Legislative Assembly within one month after the end of the month to which the report applies.

Sch 1 1.6

4. The *COVID-19 Emergency Response Legislation Amendment Act 2021* (the Act 2021) was notified on 19 February 2021. The Act 2021 contained amendments to the reporting requirements set out in the *COVID-19 Emergency Response Act 2020*, from monthly to quarterly, beginning from 2021.

Issues

5. Under subsections 3(2)(a) and 3(3) of the Act, a report must be tabled within 1-month after the end of the reporting period to which the report applies and the responsible Minister must give the report to the Speaker before the end of the 1-month period if there are no sitting days in the last 7 days of the 1-month period.

6. The Speaker will circulate the report to Members of the Legislative Assembly under subsection 3(3)(b) of the Act, and the Minister must present the report to the Legislative Assembly on the next sitting day after the end of the 1-month period pursuant to subsection 3(3)(c)(i) of the Act.

7. The reports at Attachment A were signed off by the responsible Minister's in accordance with the Act, which states in subsection (3)(1) that 'for each reporting period that a COVID-19 declaration is in force, the responsible Minister for a COVID-19 measure must prepare a report for the Legislative Assembly on the application of the measure.'

8. Ministers have agreed and signed a separate report for each measure/amendment contained within both the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

9. A letter to the Speaker is provided for your signature at Attachment B seeking out of session circulation to Members by 29 July 2022. Following out of session circulation to Members, the Report will be listed for tabling in the Assembly on 2 August 2022.

Financial Implications

10. Nil

Consultation

Internal

11. Nil

Cross Directorate

12. Directorates were responsible for providing the information for each reportable measure and for preparing the reports for clearance by the responsible Minister.

External

13. Nil

Work Health and Safety

14. Nil

Benefits/Sensitivities

15. Nil

Communications, media and engagement implications

16. Nil

Signatory Name:	Sam Tyler	Phone:	54365
Action Officer:	Rachel Gilks	Phone:	76472

Attachments

Attachment	Title
Attachment A	Report 15 – Reporting Period 1 April – 30 June 2022
Attachment B	Letter to the Speaker requesting out of session circulation to Members

2022

THE LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

TENTH ASSEMBLY

Report on COVID-19 Measures - Report No. 15 (1 April to 30 June 2022)

Tabled pursuant to ***COVID-19 Emergency Response Act 2020, s3***

Presented by
Mick Gentleman MLA
Manager of Government Business
29 July 2022

Background

On 2 April 2020 the COVID-19 Emergency Response Bill 2020 was passed in the Legislative Assembly. The C*OVID-19 Emergency Response Act 2020* the Act) commenced on 8 April 2020.

The Act was subsequently amended by both the *COVID-19 Emergency Response Legislation Amendment Act 2020* which commenced on 14 May 2020 and the *COVID-19 Emergency Response Legislation Amendment Act 2021* the Act 2021) which commenced on 20 February 2021. The Act 2021 contained amendments to the reporting requirements set out in the *COVID-19 Emergency Response Act 2020*, from monthly to quarterly, beginning from 2021.

The Act states that for each reporting period that a COVID-19 declaration is in force, the responsible Minister for a COVID-19 measure must prepare a report for the Legislative Assembly on the application of the measure.

Report No.15

Report No.15, for the reporting period of 1 April – 30 June 2022, contains reporting on the measures contained in the *COVID-19 Emergency Response Act 2020*; and the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The measures are reflected in amendments to the following:

- *Bail Act 1992*
- *Children and Young People Act 2008*
- *Corrections Management Act 2007*
- *Court Procedures Act 2004*
- *COVID-19 Emergency Response Act 2020*
- *Crimes Act 1900*
- *Crimes Sentence Administration) Act 2005*
- *Crimes Sentencing) Act 2005*
- *Drugs of Dependence Act 1989*
- *Education Act 2004*
- *Evidence Miscellaneous Provisions) Act 1991*
- *Family Violence Act 2016*
- *Financial Management Act 1996*

- *Firearms Act 1996*
- *Gaming Machine Act 2004*
- *Gaming Machine Regulation 2004*
- *Human Rights Commission Act 2005*
- *Leases (Commercial and Retail) Act 2001*
- *Long Service Leave (Portable Schemes) Act 2009*
- *Payroll Tax Act 2011*
- *Personal Violence Act 2016*
- *Powers of Attorney Act 2006*
- *Prohibited Weapons Act 1996*
- *Rates Act 2004*
- *Residential Tenancies Act 1997*
- *Taxation Administration Act 1999*

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Bail Act 1992*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Undertakings to appear given in court by audio visual link.

Purpose of measure:

- This measure supports the continued effective operations of the courts. These amendments will allow courts to receive undertakings via remote means as opposed to requiring an accused to appear in person.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- Relevant stakeholders are aware of the changes in procedure.

Cost of the measure:

- Nil.

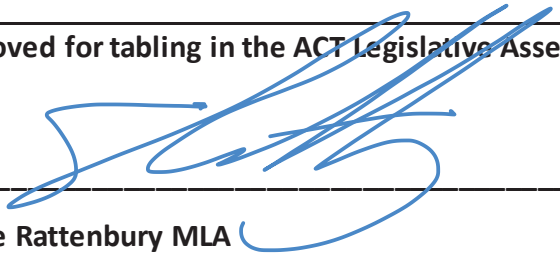
	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- The Court's case management system does not currently collect data on this measure.

- As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Attorney-General

Date: 21/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.3] New section 28 (2A)

insert

(2A) During a COVID-19 emergency, an undertaking—

(a) may be in writing or given before the court; and

(b) if given before the court, must be recorded by the court.

[1.4] New section 28 (6) and (7)

insert

(6) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(7) This subsection and subsections (2A) and (6) expire on the day the *COVID-19 Emergency Response Act 2020*, expires.

[1.5] Dictionary, definition of *undertaking to appear*

after

section 28 (1)

insert

or (2A)

[1.6] Dictionary, definition of *undertaking to appear*

omit

or (2A)

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.3] Section 28 (7)

substitute

(7) This subsection and subsections (2A) and (6) expire on the day the *COVID-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Assistant Minister for Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Amend s 149 to allow the DG to declare that an emergency exists in relation to a detention place for the period of not more than the duration of the COVID-19 emergency. Safeguards include review every 28 days and advice to Minister.

Purpose of measure:

- The measure allows a declaration of emergency at Bimberi Youth Justice Centre if the Director-General, Community Services Directorate believes that an emergency exists in relation to COVID-19 that threatens or is likely to threaten:
  - Good order or security at the place; or
  - The safety of anyone at the place or elsewhere.
- This measure would enable certain actions to occur, namely:
  - restrict any activity at the place;
  - restrict access in, or to or from, the place or any part of the place;
  - restrict communications between a young detainee and anyone else; and
  - authorise a police officer or public servant to exercise any function exercisable by a youth detention officer under the criminal matters' chapters in accordance with any direction by the Director-General.
- In taking any action the Director-General must ensure that the action taken is necessary and reasonable in the circumstances.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- Should a declaration of emergency at Bimberi Youth Justice Centre be imposed, the families for young people in detention along with oversight agencies would be notified. Those oversight agencies include :
  - Children and Young People Commissioner
  - Public Advocate
  - Inspectorate of Correctional Services and
  - Official Visitors for Children and Young People.
- Engagement will also occur with Justice Health Services and the Education Directorate who provide services to Bimberi.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted during the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Emma Davidson MLA
Assistant Minister for Families and Community Services

Date: 11/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.1] New section 149 (2A)

insert

(2A) However, if the emergency relates to a COVID-19 emergency, the director-general may declare that an emergency exists in relation to the detention place for a period of not more than the duration of the COVID-19 emergency.

[1.2] New section 149 (3A) to (3D)

insert

(3A) If 1 or more declarations under subsection (2A) are in force for a consecutive period of 28 days or more, the director-general must—

(a) at least every 28 days, conduct a review of whether there are reasonable grounds for continuing the declaration; and

(b) as soon as practicable after a review, advise the Minister in writing about any measures taken in response to the emergency under the declaration.

(3B) The first annual report prepared by the director-general under the *Annual Reports (Government Agencies) Act 2004* after an emergency declaration ends must include information about the measures taken in response to the emergency while the declaration was in force.

(3C) A failure by the director-general to comply with subsection (3A) or (3B) does not affect the validity of the declaration.

(3D) A declaration made under subsection (2A) must be revoked if the director-general no longer believes there are reasonable grounds for the declaration.

[1.3] New section 149 (8) and (9)

after the note, insert

(8) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(9) The following provisions expire 12 months after the day this subsection commences:

(a) this subsection;

(b) subsection (2A);

(c) subsections (3A) to (3D);

(d) subsection (8).

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Assistant Minister for Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: New s 241A (COVID-19 local leave permit) and amend s 242 (COVID-19 interstate leave). These amendments allows leave to be granted to young detainees for the duration of the COVID-19 emergency to ensure the health and safety of young detainees, other detainees and staff.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- Should a declaration of emergency at Bimberi Youth Justice Centre be imposed, the families for young people in detention along with oversight agencies would be notified. Those oversight agencies include :
  - Children and Young People Commissioner
  - Public Advocate
  - Inspectorate of Correctional Services and
  - Official Visitors for Children and Young People.
- Engagement will also occur with Justice Health Services and the Education Directorate who provide services to Bimberi.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- If a COVID-19 leave permit is to be granted, consultation will occur with the young person's family and care team, in their best interests to plan for adequate community-based supports.
- General information will be provided to oversight bodies, through the Bimberi Oversight Group.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This measure has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Emma Davidson MLA
Assistant Minister for Families and Community Services

Date: 11/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.4] New section 241A

in division 6.8.1, insert

241A Local leave permits—COVID-19 emergency response

(1) The director-general may, during the COVID-19 emergency period, give a young detainee a written permit to be absent from a detention place, and to be in another place in the ACT, because of the COVID-19 emergency (a ***COVID-19 local leave permit***).

Note The power to make an instrument includes the power to amend or repeal the instrument (see Legislation Act, s 46).

(2) A COVID-19 ***local leave permit*** may be given for the period the director-general considers appropriate, but not longer than 7 days after the day the COVID-19 emergency period ends.

(3) A COVID-19 ***local leave permit*** must state the following:

(a) that the permit is given because of the COVID-19 emergency;

(b) the period for which the leave is granted;

(c) any conditions to which the leave is subject.

(4) A COVID-19 ***local leave permit*** is subject to the following conditions:

(a) any condition prescribed by regulation;

(b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

(i) the director-general believes on reasonable grounds is necessary and reasonable; and

(ii) is stated in the permit.

Example—condition stated in permit

a condition prohibiting association with a particular person or being near a particular place

(5) A COVID-19 local leave permit authorises the young detainee to be absent from the detention place in accordance with the permit unescorted.

(6) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(7) This section expires 7 days after the day the COVID-19 emergency period ends.

[1.5] New section 242 (3A)

insert

(3A) Despite subsection (3) (e), during the COVID-19 emergency period, the director-general may give a young detainee an interstate leave permit for the period the director-general considers appropriate, but not longer than 7 days after the day the COVID-19 emergency period ends, if—

(a) the purpose of the leave is related to the COVID-19 emergency; and

(b) the period for which the leave is granted is stated in the permit.

[1.6] New section 242 (6A)

insert

(6A) Despite subsections (4) to (6), if an interstate leave permit will, or is likely to, expire during the COVID-19 emergency period, the director-general may extend the permit for the period the director-general considers appropriate.

[1.7] New section 242 (7A)

insert

(7A) However, subsection (7) (a) does not apply to an interstate leave permit if—

(a) the permit is given during the COVID-19 emergency period; and

(b) the purpose of the leave is related to the COVID-19 emergency.

[1.8] New section 242 (9) and (10)

insert

(9) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(10) The following subsections expire 7 days after the day the COVID-19 emergency period ends:

(a) this subsection;

(b) subsection (3A);

(c) subsection (6A);

(d) subsection (7A);

(e) subsection (9).

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.7] Section 241A (1)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency period

[1.8] Section 241A (6)

substitute

(6) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means a period during which a COVID-19 emergency is in force.

[1.9] Section 241A (7)

omit

7 days after the day the COVID-19 emergency period ends

substitute

at the end of a 7-day period during which no COVID-19 emergency has been in force

[1.10] Section 242 (3A)

omit

during the COVID-19 emergency period

substitute

during a COVID-19 emergency period

[1.11] Section 242 (6A)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency period

[1.12] Section 242 (7A) (a)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency period

[1.13] Section 242 (9)

substitute

(9) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means a period during which a COVID-19 emergency is in force.

[1.14] Section 242 (10)

omit

7 days after the day the COVID-19 emergency period ends

substitute

at the end of a 7-day period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Assistant Minister for Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Consequential amendment to s245 (Lawful temporary absence from detention place).

Purpose of measure:

- Under the COVID-19 leave scheme, a young person, who is in custody at Bimberi Youth Justice Centre, either on remand or sentenced, may be granted approval, via a COVID-19 local or interstate leave permit to be in the community under conditions of the leave permit.
- This will allow some young people in Bimberi to return home if further lockdown or isolation measures are required. This ensures they can keep connected with their family and fulfil their social distancing obligations. Young people on leave will continue to be supervised in the community during this time.
- The primary purpose of this option is to provide leave permits for lower risk and vulnerable young people, rather than for young people who are high risk and have committed serious offences.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- If a COVID-19 leave permit is to be granted, consultation will occur with the young person's family and care team, in their best interests to plan for adequate community-based supports.
- General information will be provided to oversight bodies, through the Bimberi Oversight Group.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Emma Davidson MLA
Assistant Minister for Families and Community Services

Date: 11/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020 **Date notified: 13 May 2020**	
[1.15]	**New section 245 (1) (ba)**
	insert (ba) a COVID-19 local leave permit under section 241A;
[1.16]	**New section 245 (5)**
	insert (5) This subsection and subsection (1) (ba) expire at the end of a 7-day period during which no COVID-19 emergency has been in force.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Assistant Minister for Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Amend s 287 (Meaning of behaviour breach) to include contravention of a COVID-19 permit.

Purpose of measure:

- Under the COVID-19 leave scheme a young person who is in custody at Bimberi Youth Justice Centre, either on remand or sentenced, may be granted approval via a COVID-19 local or interstate leave permit to be in the community, under conditions of the leave permit.
- This will allow some young people in Bimberi to return home if further lockdown or isolation measures are required. This ensures they can keep connected with their family and fulfil their social distancing obligations. Young people on leave will continue to be supervised in the community during this time.
- The primary purpose of this option to provide leave permits for lower risk and vulnerable young people, rather than for young people who are high risk and have committed serious offences.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- If a COVID-19 leave permit is to be granted, consultation will occur with the young person's family and care team, in their best interests to plan for adequate community-based supports.
- General information will be provided to oversight bodies, through the Bimberi Oversight Group.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Emma Davidson MLA
Assistant Minister for Families and Community Services

Date: 11/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.17] New section 287 (1) (sa)

insert

(sa) contravening a condition of a COVID-19 local leave permit under section 241A;

[1.18] New section 287 (3)

insert

(3) This subsection and subsection (1) (sa) expire at the end of a 7-day period during which no COVID-19 emergency has been in force.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: Amend s 384 (Appraisal Orders) to allow the Childrens Court to determine the most appropriate timeframe for an appraisal order in the circumstances of a public health emergency.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- This measure provides time for gathering information and conducting appraisals and acknowledges that there is likely to be a reduction in critical staff available for this work.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Acting for
Rachel Stephen-Smith MLA
Minister for Families and Community Services

Date: 11 / 07 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.9] New section 384 (3) to (5)

after the notes, insert

(3) However, for an appraisal order made during the COVID-19 emergency period—

(a) the length of the appraisal order is to be decided by the Childrens Court; and

(b) the length of any temporary parental responsibility provision in the appraisal order is to be decided by the Childrens Court.

(4) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(5) This subsection and subsections (3) and (4) expire 6 months after the day the COVID-19 emergency period ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.19] Section 384 (3)

omit

during the COVID-19 emergency period

substitute

during a COVID-19 emergency

[1.20] Section 384 (4)

substitute

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.21] Section 384 (5)

omit

6 months after the day the COVID-19 emergency period ends

substitute

at the end of a 6-month period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: New s 400A (Voluntary care agreements extension) (VCAs). VCAs due to end during the emergency are extended until 3 months after the day the COVID-19 emergency period ends. To remove any doubt, s 401 (enabling a party to a VCA to end the agreement) still applies.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- This measure will allow voluntary care agreements to remain in place during a public health emergency, and for this time not to count towards the maximum amount of time that a voluntary care agreement can be in place.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Acting for
Rachel Stephen-Smith MLA
Minister for Families and Community Services

Date: 11/ 07/ 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.10] New section 400A

insert

400A Voluntary care agreements—extension—COVID-19 emergency response

(1) This section applies if a voluntary care agreement will, or is likely to, end (other than because of section 401) during the COVID-19 emergency period.

(2) The voluntary care agreement is extended until 3 months after the day the COVID-19 emergency period ends.

(3) A period of extension under subsection (2) is not to be considered in working out—

(a) the total length of a voluntary care agreement and proposed extension under section 400 (1) (a); or

(b) how long a child or young person has been cared for under a voluntary care agreement under section 400 (1) (b).

(4) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(5) This section expires 3 months after the day the COVID-19 emergency period ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.22] Section 400A (1)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency period

[1.23] Section 400A (4)

substitute

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means a period during which a COVID-19 emergency is in force.

[1.24] Section 400A (5)

omit

3 months after the day the COVID-19 emergency period ends

substitute

at the end of a 3-month period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: Amend s 410 (Emergency Action) to allow the DG to apply to the Childrens Court for a two working day extension of the period for which the DG has parental responsibility following Emergency Action. This is to allow the DG to file relevant material when seeking an interim child protection order.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- This measure can only be granted by the Childrens Court and provides for additional time for the Director-General to file relevant material to the Court when seeking an interim child protection order during a public health emergency.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

_____

Acting for
Rachel Stephen-Smith MLA
Minister for Families and Community Services

Date: 11 / 07 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.11] New section 410 (2) to (5)

insert

(2) However, the director-general may apply to the Childrens Court for an extension of the period mentioned in subsection (1) (a) or (b) if—

(a) the period for which the director-general has daily care responsibility for the child or young person will, or is likely to, end during—

(i) the COVID-19 emergency period; or

(ii) the 6 months following the COVID-19 emergency period; and

(b) there are exceptional circumstances justifying the extension.

(3) The Childrens Court may extend the period mentioned in subsection (1) (a) or (b) for up to 2 more days.

(4) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(5) This subsection and subsections (2) to (4) expire 6 months after the day the COVID-19 emergency period ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.25] Section 410 (2) (a) (i) and (ii)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency

[1.26] Section 410 (4)

substitute

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.27] Section 410 (5)

omit

6 months after the day the COVID-19 emergency period ends

substitute

at the end of a 6-month period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: Amend s 423 (Offence provision - care and protection orders) to prevent a person from being subject to the offence provision where it is not reasonably practical for a person to comply with a care and protection order because of the impact of the COVID 19 emergency. This amendment means that parties will not be penalised where they are unable to fulfil their obligations under a care and protection order due to the public health emergency.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- This measure means parents and staff will not be penalised if it is not possible to comply with all of the requirements of a Care and Protection Order due to the public health emergency.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Acting for
Rachel Stephen-Smith MLA
Minister for Families and Community Services

Date: 11 / 07 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.12] New section 423 (2) to (4)

after the notes, insert

(2) This section does not apply if—

(a) the contravention happened during—

(i) the COVID-19 emergency period; or

(ii) the 3 months following the COVID-19 emergency period; and

(b) it was not reasonably practicable for the person to comply with the order because of the COVID-19 emergency.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

(3) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(4) This subsection and subsections (2) and (3) expire 3 months after the day the COVID-19 emergency period ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.28] Section 423 (2) (a) (i) and (ii)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency

[1.29] Section 423 (3)

substitute

(3) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.30] Section 423 (4)

omit

3 months after the day the COVID-19 emergency period ends

substitute

at the end of a 3-month period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: Amend s 454 (Assessment Orders) to allow the Childrens Court to determine the most appropriate length of an order for the assessment of a family's situation and a child's needs in the public health emergency.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- This measure provides time for gathering information and undertaking assessments and acknowledges that there is likely to be a reduction in critical staff and specialist health and therapeutic professionals available to complete this work.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	**-**	**-**	**-**	**-**

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Acting for
Rachel Stephen-Smith MLA
Minister for Families and Community Services

Date: 11/ 07/ 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.13] New section 454 (3) to (5)

after the notes, insert

(3) Also, during the COVID-19 emergency period, the Childrens Court may extend an assessment order for any period the court considers necessary for the assessment to be properly completed.

(4) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(5) This subsection and subsections (3) and (4) expire 6 months after the day the COVID-19 emergency period ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.31] Section 454 (3)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency

[1.32] Section 454 (4)

substitute

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.33] Section 454 (5)

omit

6 months after the day the COVID-19 emergency period ends

substitute

at the end of a 6-month period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Families and Community Services

Legislation: *Children and Young People Act 2008*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: New s 514EAA so that 'Approved Carer' approvals that are due to expire during the emergency are extended until 6 months after the COVID-19 emergency period ends.

Consequential amendments to align the language of how a COVID-19 emergency and expiry of the amendments is described.

Purpose of measure:

- This change will ensure children can remain in safe, stable and secure care arrangements with a foster or kinship carer during the time of the public health emergency.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This change will ensure children can remain in safe, stable and secure care arrangements with a foster or kinship carer during the time of the public health emergency.
- For the reporting period 1 April to 30 June 2022, 58 Carer Approvals have been extended.

Approved for tabling in the ACT Legislative Assembly

Emma Davidson

Acting for
Rachel Stephen-Smith MLA
Minister for Families and Community Services

Date: 11/ 07/ 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.14] New section 514EAA

after section 514E, insert

514EAA Approved carers—extension of approvals—COVID-19 emergency response

(1) This section applies if an approved carer approval will, or is likely to, expire during—

(a) the COVID-19 emergency period; or

(b) the 6 months following the COVID-19 emergency period.

(2) The approval is extended until 6 months after the day the COVID-19 emergency period ends.

(3) In this section:

COVID-19 emergency period means the period during which the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, is in force.

(4) This section expires 6 months after the day the COVID-19 emergency period ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.34] Section 514EAA (1) (a) and (b)

omit

the COVID-19 emergency period

substitute

a COVID-19 emergency period

[1.35] Section 514EAA (3)

substitute

(3) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means a period during which a COVID-19 emergency is in force.

[1.36] Section 514EAA (4)

omit

6 months after the day the COVID-19 emergency period ends

substitute

at the end of a 6-month period during which no COVID-19 emergency has been in force

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Corrections Management Act 2007*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Amend s26 to allow the Director-General to declare that an emergency exists in relation to the correctional centre for a period associated with a COVID-19 Public Health Emergency Declaration.

Purpose of measure:

- To ensure that the Commissioner, ACT Corrective Services (ACTCS), as delegate of the Director-General, has the power to declare an emergency at the Alexander Maconochie Centre where required in order to enable appropriate responses to be enacted within an extended timeframe to manage the risks associated with COVID-19.

Alignment of measure

- ACT only initiative.

Promotional and public awareness campaigns undertaken

- N/A – amendment not yet utilised.

Stakeholder engagement undertaken

- Following the ACT going into lockdown on 12 August 2021, the Commissioner, ACTCS, has been providing staff, detainees and stakeholders with updated COVID-19 related information as needed. The frequency of messaging is dependant on the situation and is reviewed as the situation changes.
- Updates are provided to the following stakeholders:
    - ACTCOSS
    - Aboriginal and Torres Strait Islander Elected Body
    - Legal Aid ACT
    - ACT Ombudsman
    - Aboriginal Legal Services NSW/ACT
    - Human Rights Commission

- Corrections Official Visitors
- Winnunga Nimmityjah Aboriginal Health and Community Services
- Inspector of Correctional Services
- Prisoner Aid ACT
- Women's Centre for Health Matters.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	**-**	**-**	**-**	**-**

Where measurable, provide details on the monthly and cumulative impact

- This measure has not been used to date and no declaration has been made under this amendment.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 24 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.15] New section 26 (2A)

insert

(2A) However, if the emergency relates to a COVID-19 emergency, the director-general may declare that an emergency exists in relation to the correctional centre for a period of not more than the duration of the COVID-19 emergency.

[1.16] New section 26 (3A) to (3D)

insert

(3A) If 1 or more declarations under subsection (2A) are in force for a consecutive period of 28 days or more, the director-general must—

(a) at least every 28 days, conduct a review of whether there are reasonable grounds for continuing the declaration; and

(b) as soon as practicable after a review, advise the Minister in writing about any measures taken in response to the emergency under the declaration.

(3B) The first annual report prepared by the director-general under the *Annual Reports (Government Agencies) Act 2004* after an emergency declaration ends must include information about the measures taken in response to the emergency while the declaration was in force.

(3C) A failure by the director-general to comply with subsection (3A) or (3B) does not affect the validity of the declaration.

(3D) A declaration made under subsection (2A) must be revoked if the director-general no longer believes there are reasonable grounds for the declaration.

[1.17] New section 26 (6) and (7)

insert

(6) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(7) The following provisions expire 12 months after the day this subsection commences:

(a) this subsection;

(b) subsection (2A);

(c) subsections (3A) to (3D);

(d) subsection (6).

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.4] Section 26 (7)

omit
12 months after the day this subsection commences

substitute
on the day the *COVID-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Corrections Management Act 2007*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Allow a person to be detained in a police cell for up to 48 hours (increased from 36 hours).

Purpose of measure:

- To allow a person to be detained in a police cell for up to 48 hours to reduce the risk of infection within the Alexander Maconochie Centre.

Alignment of measure

- ACT only initiative.

Promotional and public awareness campaigns undertaken

- N/A - this amendment has not yet been utilised.

Stakeholder engagement undertaken

- The amendment has not yet been utilised.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This measure has not been used to date and has not yet been commenced by Ministerial notice.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 21 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.37] New section 30 (2A)

insert

(2A) Despite subsection (2) (a), during a COVID-19 emergency, a detainee (other than a young detainee) may be detained continuously at a police cell for a period not longer than 48 hours (the ***allowed period***).

[1.38] New section 30 (6) and (7)

insert

(6) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(7) This subsection and subsections (2A) and (6) expire 12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.5] Section 30 (7)

substitute

This subsection and subsections (2A) and (6) expire on the day the *COVID-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Corrections Management Act 2007*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Leave for COVID-19

Purpose of measure:

- To allow the Commissioner, ACT Corrective Services (ACTCS), to grant a COVID-19 leave permit to a detainee where necessary to manage the risks of COVID-19 in a correctional centre, by granting leave to a detainee according to strict risk assessment with primary consideration to community safety.

Alignment of measure

- ACT only initiative.

Promotional and public awareness campaigns undertaken

- N/A – this amendment has not yet been utilised.

Stakeholder engagement undertaken

- The ACT Bar Society, ACT Policing and the Human Rights Commission were consulted on the development of guidelines under this amendment.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This measure has not been used to date and has not yet been commenced by Ministerial notice.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 21 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.39] New part 12.3

insert

Part 12.3 COVID-19 leave

216A Application—pt 12.3

(1) This part applies to a full-time detainee—

(a) if the detainee is serving a sentence of imprisonment for a relevant offence; and

(b) if a nonparole period has been set for the detainee—whether or not the nonparole period has ended.

(2) In this section:

family violence offence—see the *Family Violence Act 2016*, dictionary.

nonparole period—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

relevant offence means an offence other than the following:

(a) a serious violent offence;

(b) a sexual offence;

(c) a family violence offence.

serious violent offence means an offence against—

(a) any of the following provisions of the *Crimes Act 1900*, punishable by a maximum term of imprisonment of 10 years or more:

(i) part 2 (Offences against the person);

(ii) part 2A (Industrial manslaughter); or

(b) the Criminal Code, section 310 (Aggravated robbery).

sexual offence means an offence against any of the following provisions of the *Crimes Act 1900*:

(a) part 3 (Sexual offences);

(b) part 4 (Female genital mutilation);

(c) part 5 (Sexual servitude).

216B Definitions—pt 12.3

In this part:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 leave permit—see section 216C (1).

216C COVID-19 leave permit

(1) The director-general may, during a COVID-19 emergency, give the detainee a written permit (a ***COVID-19 leave permit***) to be absent from the correctional centre.

(2) However, the director-general must only give a COVID-19 leave permit to a detainee if—

(a) the director-general considers that giving the permit—

(i) would support the security and good order of the correctional centre; and

(ii) would reduce the likelihood of an outbreak or spread of the coronavirus disease 2019 (COVID-19) in the correctional centre; and

(iii) is otherwise appropriate; and

(b) the detainee agrees in writing to the permit and any conditions to which the permit is subject.

(3) In considering the matters mentioned in subsection (2) (a), the director-general must have regard to—

(a) any guidelines under section 216G; and

(b) in relation to subsection (2) (a) (iii)—the following matters:

(i) the likelihood that any victim of the detainee, or the victim's family, will be subject to violence or harassment by the detainee, having regard to the detainee's conduct while serving their sentence of imprisonment;

(ii) whether, if given a COVID-19 leave permit, the detainee will have a suitable place to stay during their absence from the correctional centre.

(4) For subsection (3), the director-general may have regard to any information available to the director-general in relation to the detainee and any victim of the detainee, including any victim impact statement.

(5) If the director-general gives a COVID-19 leave permit to a detainee, the director-general must take reasonable steps to give written notice of the permit to a victim of the detainee.

(6) In this section:

victim, of a detainee, means a person who suffers harm because of an offence by the detainee.

216D COVID-19 leave permit—duration

(1) A COVID-19 leave permit may be given for the period the director-general considers appropriate.

(2) However, the period must not begin earlier than—

(a) if the detainee's sentence of imprisonment is shorter than 1 year—60 days before the day the term of the detainee's sentence ends; or

(b) if the detainee's sentence of imprisonment is 1 year or longer—120 days before the day the term of the detainee's sentence ends.

216E COVID-19 leave permit—content

A COVID-19 leave permit must state the following:

(a) that the permit is given because of a COVID-19 emergency;

(b) the period for which the leave is granted;

(c) any conditions to which the leave is subject;

(d) that, if the permit is cancelled for breach of a condition, the detainee may be arrested without warrant.

Note A police officer may, without warrant, arrest a person who is a prisoner unlawfully at large (see *Crimes Act 1900*, s 214).

216F COVID-19 leave permit—conditions

(1) A COVID-19 leave permit is subject to the following conditions:

(a) that the detainee live at a stated place;

(b) that the detainee must not commit—

(i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or

(ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;

(c) that the detainee comply with any reasonable direction given to them by the director-general;

(d) that the detainee otherwise be of good behaviour;

(e) any condition prescribed by regulation;

(f) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

(i) the director-general believes on reasonable grounds is necessary and reasonable; and

(ii) is stated in the permit.

Example—condition stated in permit

a condition prohibiting association with a particular person or being near a particular place

(2) The director-general may cancel a detainee's COVID-19 leave permit if the director-general believes on reasonable grounds that the detainee has breached a condition of the permit.

216G Guidelines for COVID-19 leave permits

(1) The director-general must make guidelines in relation to the operation of this part.

(2) A guideline must include a statement that human rights have been considered in making the guideline.

(3) A guideline—

(a) must be available for inspection by anyone at each correctional centre; and

(b) may be made available for inspection at any other place decided by the director-general.

(4) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

216H Effect—pt 12.3

Nothing in this part—

(a) requires the director-general to consider giving a COVID-19 leave permit in relation to a detainee; or

(b) prevents a detainee from applying for, or being granted, a parole order under the *Crimes (Sentence Administration) Act 2005*.

216I Expiry—pt 12.3

The following provisions expire 120 days after the day the *COVID-19 Emergency Response Act 2020* expires:

(a) this part;

(b) dictionary, definitions of ***COVID-19 emergency*** and ***COVID-19 leave permit***.

[1.40] Dictionary, new definitions

insert

COVID-19 emergency, for part 12.3 (COVID-19 leave)—see section 216B.

COVID-19 leave permit, for part 12.3 (COVID-19 leave)—see section 216C (1).

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.7] Section 216I

omit

120 days after the day

substitute

on the day

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Corrections Management Act 2007*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Amend s205 to extend leave permit to 28 days. A permit may be cancelled for breach of a condition or if no longer required.

Purpose of measure:

- To support the operations of ACT Corrective Services (ACTCS) in responding to, or managing, the risks associated with COVID-19 in a correctional centre, particularly in the event of a positive test result for one or more detainees.
- Extending the duration of a leave permit under the *Corrections Management Act 2007* in these circumstances from seven days provides a reasonable duration for leave that would allow a response to a positive case of COVID-19.

Alignment of measure

- ACT only initiative.

Promotional and public awareness campaigns undertaken

- The *Corrections Management (COVID-19 Temporary Leave) Operating Procedure 2020* has been notified and is available at: https://www.legislation.act.gov.au/ni/2020-256/

Stakeholder engagement undertaken

- Following the ACT going into lockdown on 12 August 2021, the Commissioner, ACTCS, has been providing staff, detainees and stakeholders with updated COVID-19 related information as needed. The frequency of messaging is dependant on the situation and is reviewed as the situation changes.
- Updates are provided to the following stakeholders:
    - ACTCOSS
    - Aboriginal and Torres Strait Islander Elected Body
    - Legal Aid ACT
    - ACT Ombudsman

- Aboriginal Legal Services NSW/ACT
- Human Rights Commission
- Corrections Official Visitors
- Winnunga Nimmityjah Aboriginal Health and Community Services
- Inspector of Correctional Services
- Prisoner Aid ACT
- Women's Centre for Health Matters.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This measure has not been used to date.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 21 / 2 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.18] New section 205 (2A)

insert

(2A) Despite subsection (2) (b), while this provision is in force, the permit must include the period for which leave is granted, being—

(a) not longer than 28 days; or

(b) if the permit is granted for the purpose of receiving long-term medical treatment or palliative care and on the advice of a doctor appointed under section 21—not longer than 3 months.

[1.19] New section 205 (4) and (5)

insert

(4) The director-general may cancel a detainee's local leave permit if—

(a) the detainee breaches a condition of the permit; or

(b) the leave is no longer needed for the purpose for which the permit was granted.

(5) The following provisions expire 12 months after the day this subsection commences:

(a) this subsection;

(b) subsection (2A);

(c) subsection (4).

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.6] Section 205 (5)

omit

12 months after the day this subsection commences

substitute

on the day the *Covid-19 Emergency Response Act 2020* expires

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Corrections Management Act 2007*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Amend s205 to permit up to 3 months leave for medical/palliative care on the advice of a doctor appointed under s21 of the *Corrections Management Act 2007* (CM Act). A permit may be cancelled for breach of a condition or if no longer required.

Purpose of measure:

- To support the operations of ACT Corrective Services (ACTCS) in responding to, or managing, the risks associated with COVID-19 in a correctional centre, particularly in the event of a positive test result for one or more detainees.
- Extending the duration of a leave permit under the CM Act in these circumstances from seven days provides a reasonable duration for leave that would allow a response to a positive case of COVID-19.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- The *Corrections Management (COVID-19 Temporary Leave) Operating Procedure 2020* has been notified and is available at: https://www.legislation.act.gov.au/ni/2020-256/

Stakeholder engagement undertaken

- Following the ACT going into lockdown on 12 August 2021, the Commissioner, ACTCS, has been providing staff, detainees and stakeholders with updated COVID-19 related information as needed. The frequency of messaging is dependant on the situation and is reviewed as the situation changes.
- Updates are provided to the following stakeholders:
    - ACTCOSS
    - Aboriginal and Torres Strait Islander Elected Body
    - Legal Aid ACT

- ACT Ombudsman
- Aboriginal Legal Services NSW/ACT
- Human Rights Commission
- Corrections Official Visitors
- Winnunga Nimmityjah Aboriginal Health and Community Services
- Inspector of Correctional Services
- Prisoner Aid ACT
- Women's Centre for Health Matters.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The measure has not been used to date.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 21 / 7 / 2021

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.18] New section 205 (2A)

insert

(2A) Despite subsection (2) (b), while this provision is in force, the permit must include the period for which leave is granted, being—

(a) not longer than 28 days; or

(b) if the permit is granted for the purpose of receiving long-term medical treatment or palliative care and on the advice of a doctor appointed under section 21—not longer than 3 months.

[1.19] New section 205 (4) and (5)

insert

(4) The director-general may cancel a detainee's local leave permit if—

(a) the detainee breaches a condition of the permit; or

(b) the leave is no longer needed for the purpose for which the permit was granted.

(5) The following provisions expire 12 months after the day this subsection commences:

(a) this subsection;

(b) subsection (2A);

(c) subsection (4).

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.6] Section 205 (5)

omit

12 months after the day this subsection commences

substitute

on the day the *Covid-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Court Procedures Act 2004*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Allow timeframes to be decided by the court when adjourning or dismissing a youth justice matter on care and protection grounds.

Purpose of measure:

- To allow flexibility in the otherwise strict timeframe for reports such as in cases where a young person in need of care and protection presents at court with flu-like symptoms and needs to be tested for COVID-19.
- In this circumstance, it is unlikely that results would be available quickly to determine whether it is safe to engage directly with the young person and their family.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- Relevant stakeholders are aware of the changes.

Cost of the measure:

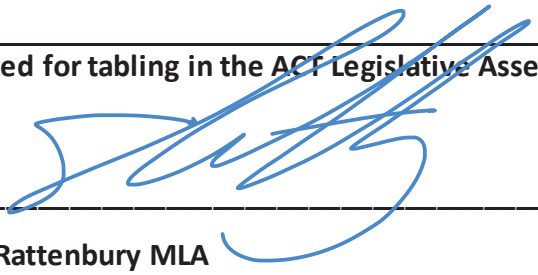
- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- The Court's case management system does not currently collect data on this measure.
- As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Attorney-General

Date: 21 / 7 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.41] New section 74LA

insert

74LA Alteration of time periods during COVID-19 emergency

(1) This section applies during a COVID-19 emergency period.

(2) For section 74K (1) (b), the court may adjourn the proceeding for a period longer than 15 days if the court considers it appropriate in the circumstances.

(3) For section 74K (2), the period of 2 working days does not apply but the court must give a statement of reasons as soon as practicable in the circumstances.

(4) For section 74L (2), the court may determine a period longer than 15 days for the director-general to tell the public advocate and the court about action taken or proposed (or that no action is proposed) if the court considers it appropriate in the circumstances.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means the period—

(a) beginning on the day this section commences; and

(b) ending at the end of a 1-month period when no COVID-19 emergency has been in force.

(6) This section expires at the end of the COVID-19 emergency period.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolios: Chief Minister

Attorney-General

Legislation: *COVID-19 Emergency Response Act 2020*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- COVID-19 measures that are subordinate laws and disallowable instruments must be presented on the first sitting day after notification.

Purpose of measure:

- To require COVID-19 measures that are subordinate laws and disallowable instruments to be presented on the second sitting day after notification, instead of within 6 sitting days as provided for in the Legislation Act, section 64 (1).

Alignment of measure:

- ACT initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- Nil.

Cost of the measure:

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- For the period 1 April–30 June 2022 no instruments to which s 3A applies were made.
- For the period 1 January–31 March 2022 one instrument to which s 3A applies was made.
    - The Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2022 was notified on 24 March 2022 and was presented by 6 April 2022.
- For the period 1 October–31 December 2021 two instruments to which s 3A applies were made.
    - The Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2021 (No 2) was notified on 6 December 2021 and was presented by 9 February 2022.
    - The Leases (Commercial and Retail) COVID-19 Emergency Response Declaration Revocation 2021 was notified on 16 December 2021 and was presented by 9 February 2022.
- For the period 1 July–30 September 2021 three instruments to which s 3A applies were made.
    - The Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2021 was notified on 31 August 2021 and was presented on 16 September 2021.
    - The Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3) and the Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021 were notified on 1 September 2021 and were presented on 16 September 2021.
    - The two instruments for presentation from the preceding period were presented on 3 August 2021.
- For the period 1 April–30 June 2021 three instruments to which s 3A applies were made.
    - The Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 was notified on 22 April 2021 and was presented on 11 May 2021.
    - The Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 2) and the Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2021 (No 2) were notified on 30 June 2021 and must be presented by no later than 4 August 2021.

- For the period 1 January–31 March 2021 two disallowable instruments to which s 3A applies were made:

    - the Taxation Administration (Payroll Tax—Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2021; and

    - the Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2021 were notified on 20 Janaury 2021.

  Both were presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on 9 February 2021.

- For the period 1–31 December 2020 no instruments to which s 3A applies were made.

- For the period 1–30 November 2020 no instruments to which s 3A applies were made.

- For the period 1–31 October 2020 no instruments to which s 3A applies were made.

- For the period 1–30 September 2020 four disallowable instruments to which section 3A applies were made.

    - The Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 3) was notified on 4 September 2020.

    - The Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2020 and the Taxation Administration (Payroll Tax–Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2020 were notified on 9 September 2020.

    - The Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2) was notified on 10 September 2020.

  These were presented presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on the first sitting day of the Tenth Assembly.

- For the period 1–31 August 2020 two disallowable instruments to which section 3A applies were made.

    - The Rates (Instalment Dates) Determination 2020 was notified on the 11 August 2020 and was presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on 13 August 2020.

    - The Gaming Machine (Emergency Community Purpose Contribution – Local Live Performance Industry) Declaration 2020 was notified on 26 August 2020 and was presented presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on 27 August 2020.

- For the period 1–31 July 2020 two disallowable instruments to which section 3A applies were made.
    - The Taxation Administration (Owner Occupier Duty) COVID-19 Exemption Scheme Determination 2020 was notified on the 2 July 2020; and
    - The Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2) was notified on the 21 July 2020.

  Both were presented presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on 23 July 2020.

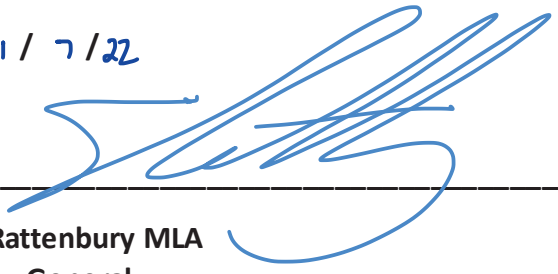
- For the period 1–30 June 2020 one disallowable instrument to which section 3A applies was made.
    - The Gaming Machine (Emergency Community Purpose Contribution – Club Employees) Declaration 2020 was notified on 11 June 2020 and presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on 18 June 2020.

- For the period 1–31 May 2020 one disallowable instrument to which section 3A applies was made.
    - The Long Service Leave (Portable Schemes) COVID-19 Emergency Leave Determination 2020 (No 1) was notified on the 20 May 2020 presented in accordance with section 3A (Presentation of subordinate laws and disallowable instruments) on 21 May 2020.

Approved for tabling in the ACT Legislative Assembly

Andrew Barr MLA
Chief Minister

Date: 21 / 7 / 22



Shane Rattenbury MLA
Attorney-General

Date: 21 / 7 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.44] New section 3A

insert

3A Presentation of subordinate laws and disallowable instruments

(1) This section applies to a subordinate law or disallowable instrument made after the commencement of this section under a power given under a COVID-19 measure.

(2) The Legislation Act, section 64 (1) applies in relation to the subordinate law or disallowable instrument as if the reference in that subsection to 6 sitting days were a reference to the first sitting day.

(3) In this section:

COVID-19 measure—see section 3 (4).

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.11] Section 3A (2)

omit

first sitting day

substitute

second sitting day

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April– 30 June2022**

Portfolio: Chief Minister

Legislation: *COVID-19Emergency Response Act 2020*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- The amendment introduces a mechanism to allow the witnessing of wills, powers of attorney, health directions and affidavits by audiovisual link, as an alternative to in-person witnessing of these documents.

Purpose of measure:

- The measure was introduced to address concerns raised by the legal profession about the difficulties that had arisen in ensuring that important legal documents could be witnessed given social distancing and movement restrictions arising from the COVID-19 emergency.
- In particular, there were concerns about at-risk or vulnerable individuals who were not able to attend a practitioner's office but had a need to make, vary or revoke a will or powers of attorney during the COVID-19 public health emergency.
- The amendment provides a way for wills, powers of attorney, health directions and affidavits to be witnessed by audiovisual link, while including a range of procedural safeguards to ensure that the integrity of the signing and witnessing process is maintained while using the audiovisual link.

Alignment of measure:

- The measure aligns with the approach taken in NSW and adopts the procedures used in that jurisdiction to verify audiovisual witnessing.

Promotional and public awareness campaigns undertaken:

- JACS notified the ACT Law Society, Legal Aid ACT and the Public Trustee and Guardian about the commencement and effect of the measure.
- The ACT Law Society has published guidelines on the electronic witnessing of documents for the use of its members on 13 May 2020 (content available to members only). It is considering revising the guidelines to include more detailed guidance for legal practitioners.

Stakeholder engagement undertaken:

- The measure was taken in response to representations from the ACT Law Society and the legal profession.
- The Law Society's Elder Law and Succession Law Committee was consulted about this amendment.

Cost of the measure:

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- The measure provides an additional pathway for the witnessing of wills, powers of attorney, health directions and affidavits by audiovisual link.
- As these documents are not necessarily required to be registered or monitored by the ACT Government, it is not possible to directly measure the use of this method of witnessing on a monthly or cumulative basis.

Approved for tabling in the ACT Legislative Assembly

Andrew Barr MLA
Chief Minister

Date: 21 / 7 /22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.45] New sections 4 and 5

insert

4 Witnessing and attestation of certain documents

(1) This section applies during the COVID-19 emergency period.

(2) Despite any other territory law—

(a) if the signature of a relevant document is required under a territory law to be witnessed, the signature may be witnessed by audiovisual link; and

(b) arrangements in relation to witnessing signatures and the attestation of documents, including the following, may be made by audiovisual link:

(i) certifying matters required under a territory law;

(ii) swearing or affirming the contents of an affidavit; and

(c) a requirement in a territory law for the presence of a witness, signatory or other person is satisfied if the witness, signatory or other person is present by audiovisual link.

(3) A person witnessing the signing of a relevant document by audiovisual link (the ***witness***) must—

(a) observe the person signing the document (the ***signatory***) sign the document in real time; and

(b) confirm the signature was witnessed by signing the document or a copy of the document; and

(c) be reasonably satisfied the document the witness signs is the same document, or a copy of the document, signed by the signatory; and

(d) endorse the document, or the copy of the document, with a statement—

(i) of the method used to witness the signature of the signatory; and

(ii) that the document was witnessed in accordance with this section.

(4) Without limiting how a witness may confirm a signature was witnessed for subsection (3) (b), the witness may—

(a) sign a counterpart of the document as soon as practicable after witnessing the signing of the document; or

(b) if the signatory scans and sends the witness a copy of the signed document electronically—countersign the document as soon as practicable after witnessing the signing of the document.

(5) In this section:

audiovisual link means a system of 2-way communication linking different places so that a person at any of them can be seen and heard at the other places.

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means the period—

(a) beginning on the day this section commences; and

(b) ending at the end of a 3-month period during which no COVID-19 emergency has been in force.

relevant document means—

(a) an affidavit; or

(b) a will; or

(c) a health direction under the *Medical Treatment (Health Directions) Act 2006*; or

(d) a general power of attorney or an enduring power of attorney under the *Powers of Attorney Act 2006*.

(6) This section expires at the end of the COVID-19 emergency period.

5 Expiry—Act

(1) This Act expires at the end of a 12-month period during which no COVID-19 declaration has been in force.

(2) In this section:

COVID-19 declaration—see section 3 (4).

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Crimes Act 1900*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Sworn warrants applied for and transmitted electronically.

Purpose of measure:

- These amendments were necessary to ensure the ongoing operation of the courts and ACT Policing, by ensuring that the physical presence of police officers at the court is not required for the purpose of obtaining a warrant.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- Relevant stakeholders are aware of the changes in procedure.

Cost of the measure:

- Nil.

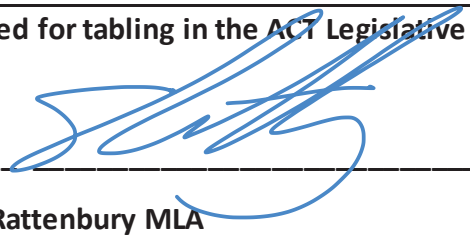
	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- From the commencement of the measure until 31 May 2020 thirty seven (37) warrants were applied for.
- For the period 1–30 June 2020 seventy (70) warrants were applied for.
- From 6 July 2020 the court resumed in person warrant appointments but continued to accept and process electronic applications in exceptional circumstances.
- For the period 1–31 July 2020 seven (7) warrants were applied for and processed electronically.
- For the period 1–31 August 2020 three (3) warrants were applied for and processed electronically.
- For the period 1–30 September 2020 zero (0) warrants were applied for and processed electronically.
- For the period 1–31 October 2020 zero (0) warrants were applied for and processed electronically.
- For the period 1–30 November 2020 zero (0) warrants were applied for and processed electronically.
- For the period 1–31 December 2020 zero (0) warrants were applied for and processed electronically.
- For the period 1 January 2021 – 31 March 2021 zero (0) warrants were applied for and processed electronically.
- For the period 1 April 2021 – 30 June 2021 zero (0) warrants were applied for and processed electronically.
- For the period 1 July 2021 – 30 September 2021 thirty four (34) warrants were applied for and processed electronically.
- For the period 1 October 2021 – 31 December 2021 seventy five (75) warrants were applied for and processed electronically.
- For the period 1 January 2022 – 31 March 2022 zero (0) warrants were applied for and processed electronically.
- For the period 1 April 2022 – 30 June 2022 zero (0) warrants were applied for and processed electronically.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Approved for tabling in the ACT Legislative Assembly



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Shane Rattenbury MLA
Attorney-General

Date: 21 / 7 / 22

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.46] New section 194A

insert

194A Additional provisions during COVID-19 emergency

(1) This section applies if a COVID-19 emergency is in force.

(2) For section 194 (1) and (2), an information on oath may be given by—

(a) giving the issuing officer an electronic version of an affidavit that includes the signature of the person making the affidavit and the signature of the person taking the affidavit; or

(b) giving the issuing officer—

(i) an electronic version of an affidavit that includes in any place where a signature appears in the original affidavit, the name of the person whose signature it is; and

(ii) an undertaking that the person making the affidavit has possession of the original affidavit, signed in accordance with law; or

(c) giving the issuing officer—

(i) an electronic version of an affidavit that includes the signature of the person making the affidavit; and

(ii) a statement, under oath by telephone or other electronic audiovisual means, by the person making the affidavit that every statement in the affidavit is true.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(3) For section 194 (1) and (2), a warrant may be issued by giving the applicant for the warrant an electronic version of the warrant.

(4) For section 205 (Warrants by telephone or other electronic means)—

(a) an issuing officer may complete and sign an electronic version of the warrant; and

(b) if an issuing officer completes and signs an electronic version of the warrant—

(i) the applicant need not complete a form of warrant and give or transmit it to the issuing officer; but

(ii) if the information required to be provided in the application was not sworn, the applicant must give or transmit the information, duly sworn, to the issuing officer before the day after the warrant expired or was executed, whichever is the earlier.

(5) For subsection (4), a warrant is taken to be signed by the issuing officer if the issuing officer's name is written in the place where the signature is required.

(6) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(7) This section expires on the first day no COVID-19 emergency is in force.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.12] Section 194A (7)

substitute

(7) This section expires on the day the COVID-19 *Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April– 30 June 2022**

Portfolio: Corrections

Legislation: *Crimes (Sentence Administration) Act 2005*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Insert a provision in part 5.3 and part 6.2 to allow the Director-General to take an offender to have performed community service work in accordance with a direction for the work period under section 46 and section 91. These provisions will apply during the COVID-19 emergency.

Purpose of measure:

- To enable community based offenders to be compliant with their Community Service Work Condition and comply with COVID 19 restrictions.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- The ACT Corrective Services (ACTCS) *Community Service Work Credit Scheme Policy 2020* and *COVID-19 Community Service Work Credit Scheme Community Instruction 2020* has been published on the ACT Government Open Access Register here:
    - http://202.47.4.18/resources/uploads/ACTCS/publications/Signed_-_Community_Service_Work_Credit_Scheme_Policy_2020.PDF
    - http://202.47.4.18/resources/uploads/ACTCS/publications/Signed_-_Community_Service_Work_Credit_Scheme_Community_Instruction_2020.PDF
- Offenders who are eligible for this Scheme have been verbally contacted and directed not to attend their community service work site.

Stakeholder engagement undertaken

- Following the ACT going into lockdown on 12 August 2021, the Commissioner, ACTCS, has been providing staff, detainees and stakeholders with updated COVID-19 related information as needed. The frequency of messaging is dependant on the situation and is reviewed as the situation changes.
- Updates are provided to the following stakeholders:
    - ACTCOSS

- Aboriginal and Torres Strait Islander Elected Body
- Legal Aid ACT
- ACT Ombudsman
- Aboriginal Legal Services NSW/ACT
- Human Rights Commission
- Corrections Official Visitors
- Winnunga Nimmityjah Aboriginal Health and Community Services
- Inspector of Correctional Services
- Prisoner Aid ACT
- Women's Centre for Health Matters.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- For the period 1 April to 30 June 2022, no offenders were granted COVID-19 Community Service Scheme hours as community service work gradually resumed in late October 2021.
- For the period 1 January - 31 March 2022, no offenders were granted COVID-19 Community Service Scheme hours as community service work gradually resumed in late October 2021.
- For the period 1-31 December 2021, one offender was granted a total of three COVID-19 Community Service Scheme hours for the reason stated above.
- For the period 1-30 November 2021, two offenders were granted a total of 11 COVID-19 Community Service Scheme hours for the reason stated above.
- All Community Service Work operations ceased at the commencement of the ACT-wide COVID-19 lockdown on 12 August 2021. The lockdown meant that offenders were unable to access any community service scheme hours, and

would have been unfairly penalised for such, if they were not credited hours automatically each week.

- For the period 1-31 October 2021, 41 offenders were granted a total of 486 COVID-19 Community Service Scheme hours for the reason stated above.
- For the period 1-30 September 2021, 17 offenders were granted a total of 422 COVID-19 Community Service Scheme hours for the reason stated above.
- For the period 1-31 August 2021, 16 offenders were granted a total of 296 COVID-19 Community Service Scheme hours for the reason stated above.
- For the period 1-31 July 2021, no offenders were granted COVID-19 Community Service Scheme hours.
- For the period 1 to 30 June 2021, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 31 May 2021, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 30 April 2021, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 31 March 2021, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 28 February 2021, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 31 January 2021, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 31 December 2020, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1 to 30 November 2020, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 29 September to 31 October 2020, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 28 August to 28 September 2020, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1-27 August 2020, no offenders have been granted COVID-19 Community Service Scheme hours.
- For the period 1-31 July 2020, no offenders have been granted COVID-19 Community Service Scheme hours.

- For the period 8 April 2020 to 30 June 2020, one offender was granted COVID-19 Community Service Scheme hours. This offender was deemed a vulnerable person due to their age and has been granted a total of 38 hours.
- The total breakdown is included below:

Date	Credit	Hrs Worked
April 2020	COVID-19 Hours Credited	16
May 2020	COVID-19 Hours Credited	22
June 2020	COVID-19 Hours Credited	0
July 2020	COVID-19 Hours Credited	0
August 2020	COVID-19 Hours Credited	0
September 2020	COVID-19 Hours Credited	0
October 2020	COVID-19 Hours Credited	0
November 2020	COVID-19 Hours Credited	0
December 2020	COVID-19 Hours Credited	0
January 2021	COVID-19 Hours Credited	0
February 2021	COVID-19 Hours Credited	0
March 2021	COVID-19 Hours Credited	0
April 2021	COVID-19 Hours Credited	0
May 2021	COVID-19 Hours Credited	0
June 2021	COVID-19 Hours Credited	0
July 2021	COVID-19 Hours Credited	0
August 2021	COVID-19 Hours Credited	296
September 2021	COVID-19 Hours Credited	422
October 2021	COVID-19 Hours Credited	486
November 2021	COVID-19 Hours Credited	11
December 2021	COVID-19 Hours Credited	3
January 2022	COVID-19 Hours Credited	0
February 2022	COVID-19 Hours Credited	0

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

March 2022	COVID-19 Hours Credited	0
April 2022	COVID-19 Hours Credited	0
May 2022	COVID-19 Hours Credited	0
June 2022	COVID-19 Hours Credited	0
Total	**COVID-19 Hours Credited**	**1,256**

Approved for tabling in the ACT Legislative Assembly

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Mick Gentleman
Minister for Corrections

Date: 21 / 7 / 2022

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.20] New section 47A

insert

47A Intensive correction orders—community service work—failure to report etc—COVID-19 emergency

(1) This section applies if—

(a) an offender fails to report to do community service work for a period (a ***work period***) in accordance with a direction under section 46; and

(b) the failure happens during the COVID-19 emergency, whether before, on or after the commencement of this section; and

(c) the director-general is satisfied that the offender's failure to report for the work period is because of the COVID-19 emergency.

(2) The offender is taken to have done the community service work in accordance with the direction for the period, not more than 8 hours for each week or part of a week during the work period, decided by the director-general.

[1.22] New section 92A

insert

92A Good behaviour orders—community service work—failure to report etc—COVID-19 emergency

(1) This section applies if—

(a) an offender fails to report to do community service work for a period (a ***work period***) in accordance with a direction under section 91; and

(b) the failure happens during the COVID-19 emergency, whether before, on or after the commencement of this section; and

(c) the director-general is satisfied that the offender's failure to report for the work period is because of the COVID-19 emergency.

(2) The offender is taken to have done the community service work in accordance with the direction for the period, not more than 8 hours for each week or part of a week during the work period, decided by the director-general.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.15] Section 322A

substitute

322A Expiry—COVID-19 emergency amendments

The following provisions expire on the day the *COVID-19 Emergency Response Act 2020* expires:

(a) this section;

(b) section 47A;

(c) section 59A;

(d) section 62 (2) (d);

(e) section 64 (3A);

(f) section 92A;

(g)section 102A;

(h) section 126 (2A) and (2B);

(i) section 127 (2A);

(j) section 143A;

(k) section 322AA;

(l) dictionary, definition of ***COVID-19 emergency***.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Crimes (Sentence Administration) Act 2005*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Administrative sanctions imposed by DG for minor breaches by community based offenders.

Purpose of measure:

- To allow Community Corrections Officers to take actions in relation to minor breaches of orders during the public health emergency to reduce the burden on the Sentence Administration Board and Courts during this time.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- The *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020* has been notified and is available at: https://www.legislation.act.gov.au/ni/2020-611/

Stakeholder engagement undertaken

- Engagement has occurred directly with the Sentence Administration Board (SAB) who have a stake in the utilisation of this amendment. Arrangements have been put in place to address SAB input.
- Following the ACT going into lockdown on 12 August 2021, the Commissioner, ACT Corrective Services, has been providing staff, detainees and stakeholders with updated COVID-19 related information as needed. The frequency of messaging is dependent on the situation and is reviewed as the situation changes.
- Updates are provided to the following stakeholders:
    - ACTCOSS
    - Aboriginal and Torres Strait Islander Elected Body
    - Legal Aid ACT
    - ACT Ombudsman
    - Aboriginal Legal Services NSW/ACT
    - Human Rights Commission

- Corrections Official Visitors
- Winnunga Nimmityjah Aboriginal Health and Community Services
- Inspector of Correctional Services
- Prisoner Aid ACT
- Women's Centre for Health Matters.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- For the period 1 April to 24 June 2022, thirteen formal warnings were given under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*. Due to data migration to the new ACTCS record system CORIS, extraction of formal warnings are provided up to 24 June 2022. ACTCS anticipates minimal variations in data after this date.
- For the period 1 to 31 March 2022, two formal warnings were given under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*.
- For the period 1 to 28 February 2022, four formal warnings were given under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*.
- For the period 1 to 31 January 2022, three formal warnings were given under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*.
- For the period 1 to 31 December 2021, no formal warnings were given and no applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020.*
- For the period 1 to 30 November 2021, no formal warnings were given and no applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*.
- For the period 1 to 31 October 2021, one formal warning was given and two applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of two unique offenders.

- For the period 1 to 30 September 2021, two formal warnings were given out, and two applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of three unique offenders.
- For the period 1 to 31 August 2021, three formal warnings were given out, and three applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of three unique offenders.
- For the period 1 to 31 July 2021, one formal warning was given out, and two applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of three unique offenders.
- For the period 1 to 30 June, one formal warning was given out, and two applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of three unique offenders.
- For the period 1 to 31 May, one formal warning was given out under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*.
- For the period 1 to 30 April 2021, six formal warnings were given out, and four applications of discretion were applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of seven unique offenders.
- For the period 1 to 31 March 2021, 11 offenders received a formal warning, and six offenders had discretion applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of 14 unique offenders.
- For the period 1 to 28 February 2021, seven offenders received a formal warning, and nine offenders had discretion applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of nine unique offenders.
- For the period 1 to 31 January 2021, three offenders received a formal warning, and seven offenders had discretion applied under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020,* representing a total of eight unique offenders.
- For the period 1 to 31 December 2020, four offenders received a formal warning under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020.*
- For the period 1 to 30 November 2020, eight offenders received a formal warning under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020.*
- For the period 1 to 30 November 2020, a further six offenders were considered under the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020* with no further action taken.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 24 / 7 /2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.47] New section 59A

insert

59A Corrections officer's actions for breach of intensive correction order obligations—COVID-19 emergency

(1) This section applies if, during a COVID-19 emergency, a corrections officer believes on reasonable grounds that an offender has breached any of the offender's intensive correction order obligations (an ***alleged breach***).

(2) The corrections officer may take any 1 of the following actions in relation to the alleged breach:

(a) record the alleged breach and take no further action;

(b) give the offender, or arrange for the offender to be given, a warning that further alleged breaches may result in a report to the board under section 59;

(c) report the alleged breach to the board.

Note The director-general may also give an offender a direction in relation to an intensive correction order (see s 46 and s 54).

(3) In considering whether to take any action under subsection (2) and, if so, what action to take, the corrections officer—

(a) must have regard to the following matters:

(i) the nature and circumstances of the offence;

(ii) the personal circumstances of the offender;

(iii) the offender's history of compliance with the intensive correction order;

(iv) the likelihood that any victim of the offender, and the victim's family, will be subject to violence or harassment by the offender, having regard to the offender's conduct under the intensive correction order;

(v) the purposes of sentencing under the *Crimes (Sentencing) Act 2005*, section 7 (c) and (d); and

(b) may have regard to any action previously taken in relation to the alleged breach or any earlier breaches or alleged breaches of the order.

(4) If the corrections officer proposes to take action under subsection (2), the corrections officer must tell the offender, orally or in writing—

(a) the nature of the alleged breach; and

(b) that the corrections officer proposes to take action in relation to the alleged breach and the action proposed to be taken; and

(c) that the offender may request that the board deal with the alleged breach; and

(d) the offender may make submissions, orally or in writing, to the corrections officer about the alleged breach and the action proposed to be taken within 7 days after being told about the alleged breach.

(5) If an offender makes a request under subsection (4) (c), the corrections officer must report the alleged breach to the board.

(6) If an offender makes any submissions under subsection (4) (d), the corrections officer must—

(a) if the submissions are made orally—make a record of the submissions; and

(b) consider the submissions before taking the proposed action.

(7) If a corrections officer gives an offender, or arranges for an offender to be given, a warning under subsection (2) (b), the officer must notify the board, in writing, of the warning.

Note The board may conduct an inquiry to decide whether an offender has breached an intensive correction order obligation (see s 62).

[1.48] New section 62 (2) (d)

insert

(d) after receiving a report from a corrections officer under section 59A (5) (Corrections officers' actions for breach of intensive correction order obligations—COVID-19 emergency).

[1.49] New section 102A

insert

102A Corrections officer's actions for breach of good behaviour obligations—COVID-19 emergency

(1) This section applies if, during a COVID-19 emergency, a corrections officer believes, on reasonable grounds, that an offender has breached any of the offender's good behaviour obligations (an ***alleged breach***).

(2) The corrections officer may take any 1 of the following actions in relation to the alleged breach:

(a) record the alleged breach and take no further action;

(b) give the offender, or arrange for the offender to be given, a warning that further alleged breaches may result in referral to the sentencing court;

(c) report the alleged breach to the sentencing court.

Note The director-general may also give an offender a direction in relation to a good behaviour order under s 87.

(3) In considering whether to take any action under subsection (2) and, if so, what action to take, the corrections officer—

(a) must have regard to the following matters:

(i) the nature and circumstances of the offence;

(ii) the personal circumstances of the offender;

(iii) the offender's history of compliance with the good behaviour order;

(iv) the likelihood that any victim of the offender, or the victim's family, will be subject to violence or harassment by the offender, having regard to the offender's conduct under the good behaviour order;

(v) the purposes of sentencing under the *Crimes (Sentencing) Act 2005*, section 7 (c) and (d); and

(b) may have regard to any action previously taken in relation to the alleged breach or any earlier breaches or alleged breaches of the order.

(4) If the corrections officer proposes to take action under subsection (2), the corrections officer must tell the offender, orally or in writing—

(a) the nature of the alleged breach; and

(b) that the corrections officer proposes to take action in relation to the alleged breach and the action proposed to be taken; and

(c) that the offender may request the alleged breach is dealt with by the sentencing court; and

(d) the offender may make submissions, orally or in writing, to the corrections officer about the alleged breach and the action proposed to be taken within 7 days after being told about the alleged breach.

(5) If an offender makes a request under subsection (4) (c), the corrections officer must arrange for the offender to be brought before the sentencing court to have the alleged breach dealt with.

(6) If an offender makes any submissions under subsection (4) (d), the corrections officer must—

(a) if the submissions are made orally—make a record of the submissions; and

(b) consider the submissions before taking the proposed action.

(7) In this section:

offender—see section 102 (4).

[1.50] New section 143A

insert

143A Corrections officer's actions for breach of parole obligations—COVID-19 emergency

(1) This section applies if, during a COVID-19 emergency, a corrections officer believes on reasonable grounds that an offender has breached any of the offender's parole obligations (an ***alleged breach***).

(2) The corrections officer may take any 1 of the following actions in relation to the alleged breach:

(a) record the alleged breach and take no further action;

(b) give the offender, or arrange for the offender to be given, a warning that further alleged breaches may result in a report to the board under section 143;

(c) report the alleged breach to the board.

Note The director-general may also give an offender a direction in relation to parole (see s 138).

(3) In considering whether to take any action under subsection (2) and, if so, what action to take, the corrections officer—

(a) must have regard to the following matters:

(i) the nature and circumstances of the offence;

(ii) the personal circumstances of the offender;

(iii) the offender's history of compliance with the parole order;

(iv) the likelihood that any victim of the offender, or the victim's family, will be subject to violence or harassment by the offender, having regard to the offender's conduct under the parole order;

(v) the purposes of sentencing under the *Crimes (Sentencing) Act 2005*, section 7 (c) and (d); and

(b) may have regard to any action previously taken in relation to the alleged breach or any earlier breaches or alleged breaches of the order.

(4) If the corrections officer proposes to take action under subsection (2), the corrections officer must tell the offender, orally or in writing—

(a) the nature of the alleged breach; and

(b) that the corrections officer proposes to take action in relation to the alleged breach and the action proposed to be taken; and

(c) that the offender may request that the board deal with the alleged breach; and

(d) the offender may make submissions, orally or in writing, to the corrections officer about the alleged breach and the action proposed to be taken within 7 days after being told about the alleged breach.

(5) If an offender makes a request under subsection (4) (c), the corrections officer must report the alleged breach to the board.

(6) If an offender makes any submissions under subsection (4) (d), the corrections officer must—

(a) if the submissions are made orally—make a record of the submissions; and

(b) consider the submissions before taking the proposed action.

(7) If a corrections officer gives an offender, or arranges for an offender to be given, a warning under subsection (2) (b), the officer must notify the board in writing of the warning.

Note The board may, at any time, conduct an inquiry to decide whether an offender has breached a parole obligation (see s 146).

[1.51] New section 322AA

before section 322A, insert

322AA Guidelines for corrections officer's actions for certain breaches—COVID-19 emergency

(1) The director-general must make guidelines in relation to the operation of the following provisions:

(a) section 59A (Corrections officers' actions for breach of intensive correction order obligations—COVID-19 emergency);

(b) section 102A (Corrections officers' actions for breach of good behaviour obligations—COVID-19 emergency);

(c) section 143A (Corrections officers' actions for breach of parole obligations—COVID-19 emergency).

(2) A guideline must include a statement that human rights have been considered in making the guideline.

(3) A guideline—

(a) must be available for inspection by anyone at each correctional centre; and

(b) may be made available for inspection at any other place decided by the director-general.

(4) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

[1.52] New section 322A (ba) and (bb)

insert

(ba) section 59A;

(bb) section 62 (2) (d);

[1.53] New section 322A (da)

insert

(da) section 102A;

[1.54] New section 322A (fa)

insert

(fa) section 143A;

[1.55] New section 322A (ha)

insert

(ha) section 322AA;

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.15] Section 322A

substitute

322A Expiry—COVID-19 emergency amendments

The following provisions expire on the day the *COVID-19 Emergency Response Act 2020* expires:

(a) this section;

(b) section 47A;

(c) section 59A;

(d) section 62 (2) (d);

(e) section 64 (3A);

(f) section 92A;

(g)section 102A;

(h) section 126 (2A) and (2B);

(i) section 127 (2A);

(j) section 143A;

(k) section 322AA;

(l) dictionary, definition of ***COVID-19 emergency***.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolios: Corrections

Legislation: *Crimes (Sentence Administration) Act 2005*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Intensive Corrections Orders - amend s64 to allow Sentence Administration Board (SAB) to give more than 3 warnings in a 12-month period during the public health emergency.

Purpose of measure:

- To avoid placing persons who breach an Intensive Corrections Order into prison for short periods of time such as three or seven days where other preferable options are available in the community.

Alignment of measure

- ACT only initiative.

Promotional and public awareness campaigns undertaken

- Nil.

Stakeholder engagement undertaken

- ACT Corrective Services is aware of this emergency option.
- The measure is a publicly available legislative amendment and can be found on the relevant government websites. It is accessible there by legal practitioners, advocates and persons subject to Orders.

Cost of the measure

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- Since its commencement the amendment has been used on a total of 12 occasions as per the table below.

Reporting period	No of times the provision was used
1 April – 30 June 2022	0
1 January – 31 March 2022	0
1 October – 31 December 2021	0
1 July – 30 September 2021	2
1 April – 30 June 2021	2
1 January – 31 March 2021	0
1 – 31 December 2020	1
1 – 30 November 2020	0
1 – 31 October 2020	2
1 – 30 September 2020	1
1 – 31 August 2020	1
1 – 31 July 2020	0
1 – 30 June 2020	0
1 – 31 May 2020	1
8 – 30 April 2020	2

- It has reduced short-term prison sanctions for example three or seven days for persons subject to community corrections during the emergency.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 21 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.21] New section 64 (3A)

insert

(3A) Subsection (3) does not apply to a warning given during a COVID-19 emergency.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.15] Section 322A

substitute

322A Expiry—COVID-19 emergency amendments

The following provisions expire on the day the *COVID-19 Emergency Response Act 2020* expires:

(a) this section;

(b) section 47A;

(c) section 59A;

(d) section 62 (2) (d);

(e) section 64 (3A);

(f) section 92A;

(g)section 102A;

(h) section 126 (2A) and (2B);

(i) section 127 (2A);

(j) section 143A;

(k) section 322AA;

(l) dictionary, definition of ***COVID-19 emergency***.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Corrections

Legislation: *Crimes (Sentence Administration) Act 2005*

This Act was amended by the *COVID-19 Emergency Response Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Parole - amendments to allow the Sentence Administration Board to refuse a parole order without a full hearing (s126) and to permit a shorter notice period during the public health emergency (s127).

Purpose of measure:

- Business continuity and workload management by the Sentence Administration Board during the emergency by allowing parole applications without merit to be rejected on the papers at the first step, ie the Inquiry step.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- Nil.

Stakeholder engagement undertaken

- ACT Corrective Services is aware of this emergency option.
- The measure is a publicly available legislative amendment and can be found on the relevant government websites. It is accessible there by legal practitioners, advocates and persons subject to Orders.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The measure has not been used by the Sentence Administration Board to date.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Corrections

Date: 21 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.23] New section 126 (2A) and (2B)

insert

(2A) Despite subsection (2) (b), for an inquiry conducted during a COVID-19 emergency, the board may refuse to make a parole order for an offender if the board is satisfied that the application has no reasonable prospects of success.

(2B) If the board refuses to make a parole order under subsection (2A), the board must—

(a) give the offender written notice of the decision, including reasons for the decision; and

(b) if requested by the offender at least 14 days after the offender is given notice under paragraph (a)—

(i) set a time for a hearing by the board about the offender's parole; and

(ii) give notice under section 127 of the hearing.

[1.24] New section 127 (2A)

insert

(2A) Despite subsection (2) (c), for a hearing held in whole or in part during a COVID-19 emergency, the board may give an offender less than 7 days to tell the board a thing mentioned in that subsection if the board—

(a) considers it is in the public interest to do so; and

(b) is satisfied the offender understands the effect of shortening the notice period under this section.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.15] Section 322A

substitute

322A Expiry—COVID-19 emergency amendments

The following provisions expire on the day the *COVID-19 Emergency Response Act 2020* expires:

(a) this section;

(b) section 47A;

(c) section 59A;

(d) section 62 (2) (d);

(e) section 64 (3A);

(f) section 92A;

(g) section 102A;

(h) section 126 (2A) and (2B);

(i) section 127 (2A);

(j) section 143A;

(k) section 322AA;

(l) dictionary, definition of ***COVID-19 emergency***.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Crimes (Sentencing) Act 2005*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Amend s13 to require the offender to 'give an undertaking before the court' or sign an undertaking to comply with the offender's good behaviour obligations.

Purpose of measure:

- To allow an offender appearing before the court by audio visual link or telephone during the COVID-19 emergency to give an oral undertaking to the court. An undertaking given this way is noted on the court records including through the transcript for the proceeding.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- The ACT Director of Public Prosecutions, ACT Legal Aid and the private legal profession were made aware of this measure.

Cost of the measure:

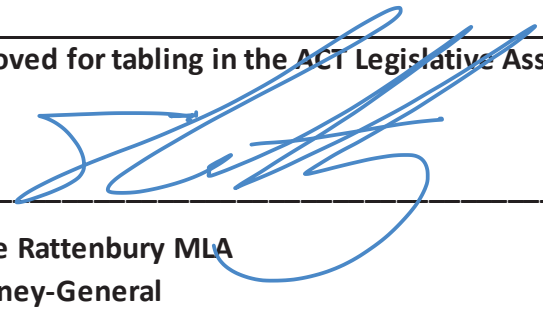
- Nil.

	2020-	2021-	2022-	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The Court's case management system does not currently collect data on this measure.
- As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Attorney-General

Date: 21/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.29] New section 13 (2A)

insert

(2A) During a COVID-19 emergency, an undertaking—

(a) may be signed or given before the court; and

(b) if given before the court, must be recorded by the court.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.16] Section 13 (10)

substitute

(10) This subsection and subsections (2A) and (9) expire on the day the *COVID-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Crimes (Sentencing) Act 2005*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Streamline Intensive Correction Orders (ICO) assessment reports as part of a Pre-Sentence Report (PSR).

Purpose of measure:

- The measure streamlines the pre-sentence process into a single stage to allow the court to consider the appropriate sentence for an offender.
- This will streamline the process for an ICO which will support fewer court/corrections contacts for offenders and reduce delays in the court's consideration of an alternative to full-time detention.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- Relevant stakeholders are aware of the changes in procedure.

Cost of the measure:

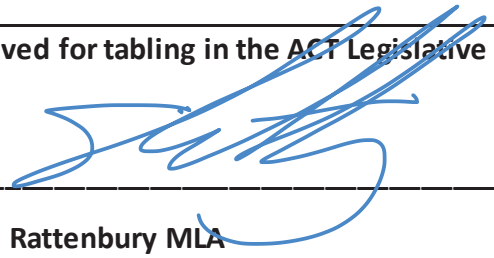
- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and culmulative impact:

- The Court's case management system does not currently collect data on this measure.
- As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Attorney-General

Date: 21 / 7 /22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.56] New section 46C (7) to (9)

insert

(7) During a COVID-19 emergency, the court may order that the intensive correction assessment form part of a pre-sentence report.

(8) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004* section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(9) The following provisions expire 12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced:

(a) this subsection;

(b) subsections (7) and (8);

(c) section 78 (1), note 2.

[1.57] Section 78 (1), new note

insert

Note 2 An intensive correction assessment ordered during a COVID-19 emergency may form part of a pre-sentence report (see s 46C (7)).

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.17] Section 46C (9)

omit

12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced

substitute

on the day the *COVID-19 Emergency Response Act 2020* expires

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Drugs of Dependence Act 1989*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Sworn warrants applied for and transmitted electronically.

Purpose of measure:

- These amendments were necessary to ensure the ongoing operation of the courts and ACT Policing, by ensuring that the physical presence of police officers at the court is not required for the purpose of obtaining a warrant.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil.

Stakeholder engagement undertaken:

- Relevant stakeholders are aware of the changes in procedure.

Cost of the measure:

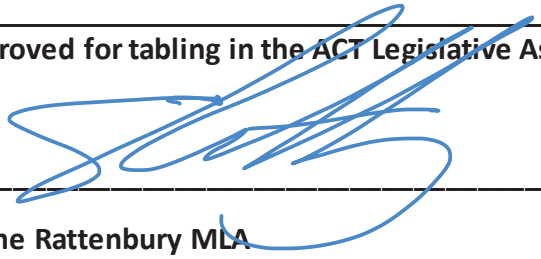
- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- For the period 1–31 May 2020, four (4) warrants were applied for.
- For the period 1 June 2020 – 31 December 2020 no warrants were applied for.
- For the period 1 January 2021 – 31 March 2021 no warrants were applied for.
- For the period 1 April 2021 – 30 June 2021 no warrants were applied for.
- For the period 1 July 2021 – 30 September 2021 no warrants were applied for.
- For the period 1 October 2021 – 31 December 2021 no warrants were applied for.
- For the period 1 January 2022 – 31 March 2022 no warrants were applied for.
- For the period 1 April 2022 – 30 June 2022 no warrants were applied for.

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Attorney-General

Date: 21 / 7 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.58] New section 187A

insert

187A Search warrants—additional provisions during COVID-19 emergency

(1) This section applies if a COVID-19 emergency is in force.

(2) For section 187 (2) and (3), an information on oath may be given by—

(a) giving the issuing officer an electronic version of an affidavit that includes the signature of the person making the affidavit and the signature of the person taking the affidavit; or

(b) giving the issuing officer—

(i) an electronic version of an affidavit that includes in any place where a signature appears in the original affidavit, the name of the person whose signature it is; and

(ii) an undertaking that the person making the affidavit has possession of the original affidavit, signed in accordance with law; or

(c) giving the issuing officer—

(i) an electronic version of an affidavit that includes the signature of the person making the affidavit; and

(ii) a statement, under oath by telephone or other electronic audiovisual means, by the person making the affidavit that every statement in the affidavit is true.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(3) For section 187 (2) and (3), a warrant may be issued by giving the applicant for the warrant an electronic version of the warrant.

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(5) This section expires on the first day no COVID-19 emergency is in force.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.18] Section 187A (5)

substitute

(5) This section expires on the day the *COVID-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: 1 April – 30 June 2022

Portfolio: Education & Youth Affairs

Legislation: *Education Act 2004*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Extend in-principle approval for provisional registration, provisional registration of a school at an additional campus and provisional registration of a school at an additional educational level

Purpose of measure:

The purpose of this measure is to extend the in-principle approval of a non-government school if the in-principle approval will, or is likely to, lapse while COVID-19 emergency is in force and the school is unable to meet the requirements for registration.

The Minister may, in writing, extend the period of the in-principle approval for not longer than 12 months.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

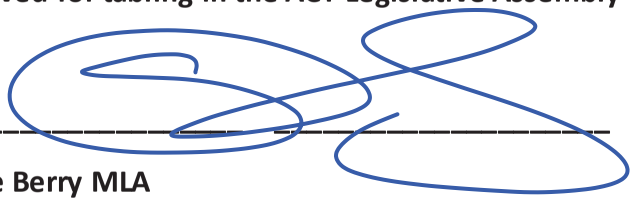
- N/A

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly



Yvette Berry MLA
Minister for Education and Youth Affairs

Date 08/07/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.59] New section 84A

insert

84A Extending in-principle approval—COVID-19 emergency

(1) This section applies if—

(a) a declaration under section 153B (2) is in force; and

(b) an in-principle approval will, or is likely to, lapse while the declaration is in force.

(2) The Minister may, in writing, extend the period of the in-principle approval for not longer than 12 months.

(3) This section expires 12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: 1 April – 30 June 2022

Portfolio: Education & Youth Affairs

Legislation: *Education Act 2004*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Extend registration of a non-government school.

Purpose of measure:

The purpose of this measure is to extend the registration of a non-government school if the registration of a school will, or is likely to, end while COVID-19 emergency is in force and the school is unable to meet the requirements for registration renewal.

The Minister may, in writing, extend the period of the school's registration for not longer than 12 months.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

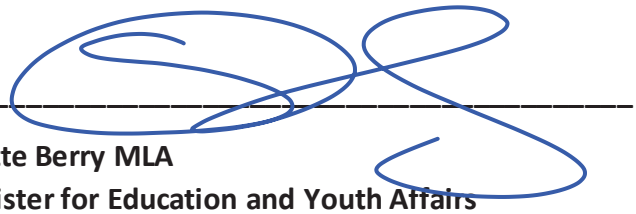
- N/A

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly



Yvette Berry MLA
Minister for Education and Youth Affairs

Date: 08 / 07 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.60] New section 88AA

after section 88, insert

88AA Extending registration—COVID-19 emergency

(1) This section applies if—

(a) a declaration under section 153B (2) is in force; and

(b) the registration of a school will, or is likely to, end while the declaration is in force.

(2) The Minister may, in writing, extend the period of the school's registration for not longer than 12 months.

(3) This section expires 12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: 1 April – 30 June 2022

Portfolio: Education & Youth Affairs

Legislation: *Education Act 2004*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Declaration: Compulsory education requirements relating to attendance and participation. Keeping a register of or and enrolment and attendances, and procedures to encourage attendance at Government and Non-Government schools.

Purpose of measure:

These measures:

- disapply the sections relating to the requirement for school attendance and participation at government and non-government schools;
- disapply the requirement to keep a register and records of enrolments and attendances, and to have procedures to encourage school attendance at government schools; and
- disapply the requirement to keep records of enrolment and attendances, and to have procedures to encourage school attendance at non-government schools.

These measures change the circumstances that would require students to participate in learning. The requirements for physically attending and participating in school do not apply and the requirement for the school to keep a register and record of attendances and enrolments also do not apply.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- N/A

Stakeholder engagement undertaken

- N/A

Cost of the measure

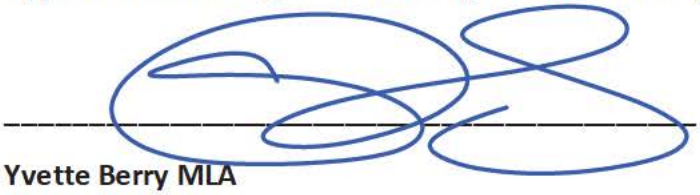
- N/A

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- This provision has not been enacted in the reporting period.

Approved for tabling in the ACT Legislative Assembly



Yvette Berry MLA
Minister for Education and Youth Affairs

Date: 08/07/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.61] New section 153B

insert

153B Declaration—COVID-19 emergency

(1) This section applies if a COVID-19 emergency is in force.

(2) The Minister may declare that 1 or more of the following provisions do not apply:

(a) section 10A (Child of compulsory education age—school attendance requirement);

(b) section 10D (Child of compulsory education age—participation requirement);

(c) section 32 (Keeping register of enrolments and attendances for government schools);

(d) section 33 (Keeping records of enrolment and attendances for government schools);

(e) section 35 (Procedures to encourage school attendance at government schools);

(f) section 100 (1) (b) (Keeping records of enrolment and attendances for non-government schools);

(g) section 102 (Procedures to encourage attendance at non-government schools);

(h) a provision prescribed by regulation.

Note Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

(3) However, the Minister may only make a declaration if satisfied on reasonable grounds that it is necessary to do so because of a COVID-19 emergency.

Example

a COVID-19 emergency prevents students from physically attending school

(4) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) A declaration has effect for the period, not longer than 6 months, stated in the declaration.

(6) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(7) This section expires 12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Evidence (Miscellaneous Provisions) Act 1991*

This Act was amended by the *COVID-19 Emergency Response Act 2020,* the *COVID-19 Emergency Response Legislation Amendment Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*.

The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: A new regulation-making power was created to allow the Executive to permit the use of pre-recorded evidence for all complainants and witnesses for the duration of the COVID-19 pandemic.

Purpose of measure:

- To allow a regulation to be made to enable the ACT's courts to collect witness evidence through audio-visual recording during the COVID-19 public health emergency.
- This measure was intended to allow flexibility in court procedures, in the event normal court functioning was disrupted for an extended period of time.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- N/A.

Stakeholder engagement undertaken:

- The Justice and Community Safety Directorate consulted with key justice sector stakeholders before the passage of Part 12. If a regulation is required, the Justice and Community Safety Directorate will consult with justice stakeholders.

Cost of the measure:

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- The measure has not been used to date.

Approved for tabling in the ACT Legislative Assembly

_____

Shane Rattenbury MLA
Attorney-General

Date: 21/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.31] New part 12

insert

Part 12 COVID-19 emergency response

164 Regulation-making power—COVID-19 emergency response

(1) A regulation may make provision in relation to the following matters for the purpose of responding to the public health emergency caused by the COVID-19 pandemic:

(a) permitting the recording by the court of evidence given by a witness in a proceeding;

(b) how the evidence must or may be given and recorded for the proceeding;

(c) how the evidence may be used in the proceeding;

(d) any procedural or other matter relating to paragraphs (a) to (c).

(2) This part and any regulation made under it expires on the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.62] New section 164 (1A)

insert

(1A) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.63] Section 164 (2) and note

substitute

(2) This chapter and any regulation made under it expires on the first day no COVID-19 emergency is in force.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.20] Section 164 (2)

substitute

(2) This chapter and any regulation made under it expires on the day the *COVID-19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Family Violence Act 2016*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Inserts a new Part 22 to (a) extend general interim orders that are due to expire during the COVID-19 emergency, (b) allow appearances at a proceeding to be undertaken by audio visual means during the COVID-19 emergency, (c) allow consent to be given by audio visual means during the COVID-19 emergency, and (d) allow an acknowledgement to be given 'in writing or before the court' and to be 'recorded by the court' during the COVID-19 emergency.

Purpose of measure:

- This measure allows the court to extend an interim order during a COVID-19 emergency which ensures that protections remain in place for applicants until both parties are able to attend a hearing.
- This measure also allows for a person to be considered 'present' or give consent at court if they appear by telephone or an audio visual link.
- The measure provides that an acknowledgement may be given in writing or before the court. It also requires that an acknowledgement must be recorded by the court.
- These measures support the continued operations of the court.

Alignment of measure:

- ACT only initiative

Promotional and public awareness campaigns undertaken:

- N/A

Stakeholder engagement undertaken:

- Relevant stakeholders were made aware of the changes in procedure.

Cost of the measure:

- Nil.

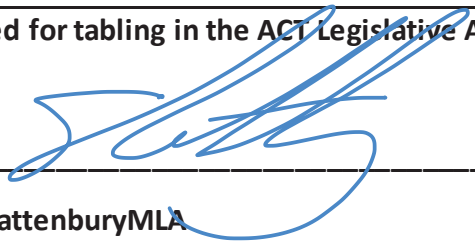
	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The Court's case management system does not currently collect data on this measure.
- As previously indicated in respect of the measures under s 207, 208 and 209, the manual collection and reporting of data on these measures would inappropriately divert resources away from court operations and will not be reported.
- Data in respect of the measure under s206 (extending general interim orders) is being manually collected.
- Between 1 June 2020 and 31 December 2020, a cumulative total of four (4) family violence general interim orders were extended.
- Between 1 January 2021 and 31 March 2021, zero (0) family violence general interim orders were extended.
- Between 1 April 2021 and 30 June 2021 zero (0) family violence general interim orders were extended.
- Between 1 July 2021 and 30 September 2021 zero (0) family violence general interim orders were extended.
- Between 1 October 2021 and 31 December 2021 zero (0) family violence general interim orders were extended.
- Between 1 January 2022 and 31 March 2022 zero (0) family violence general interim orders were extended.
- Between 1 April 2022 and 30 June 2022 zero (0) family violence general interim orders were extended.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Approved for tabling in the ACT Legislative Assembly



Shane RattenburyMLA
Attorney-General

Date: 21 / 7 / 22

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.32] New part 22

insert

Part 22 COVID-19 emergency response

205 Meaning of *COVID-19 emergency*—pt 22

In this part:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

206 Extending general interim orders

(1) This section applies if a general interim order ends, will end or is likely to end during a COVID-19 emergency.

(2) The court may extend the general interim order for a stated period of not more than 6 months.

207 Requirement for party to be present

(1) This section applies if a provision in this Act (other than section 43 (1) (a))—

(a) requires a party to a proceeding, or the party's legal representative, to be present in court; or

(b) is conditional on the party, or the party's legal representative, being present in court.

(2) Unless the court otherwise orders, during a COVID-19 emergency the party, or the party's legal representative, may be present by telephone or other electronic audio-visual means.

(3) For section 43 (1) (a), unless the court otherwise orders, during a COVID-19 emergency it is sufficient for the person's legal representative to be present when the family violence order was made.

208 Requirement for party to give consent

(1) This section applies if a party's consent is required under a provision in this Act.

(2) Unless the court otherwise orders, during a COVID-19 emergency the party, or the party's legal representative, may give consent by telephone or other electronic audio-visual means.

209 Acknowledgment of undertaking by respondent

For section 64, during a COVID-19 emergency an acknowledgment—

(a) may be given in writing or before the court; and

(b) if given before the court, must be recorded by the court.

210 Expiry—pt 22

This part expires 12 months after the day it commences.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.21] Section 210

substitute

210 Expiry — pt 22

This part expires on the day the *COVID -19 Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Treasurer

Legislation: *Financial Management Act 1996*

This Act was amended by the *COVID-19 Emergency Response Act 2020.* The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Changes to the amount (from 1% to 5% of total appropriation) of available Treasurer's Advance) – section 18.

Purpose of measure: To facilitate greater flexibility in addressing COVID-19 related funding needs and operational impacts.

Alignment of measure: ACT only initiative, but similar changes have previously been made by other States and the Commonwealth.

Promotional and public awareness campaigns undertaken: N/A

Stakeholder engagement undertaken: N/A

Cost of the measure: The amendment facilitated additional appropriation being provided through the *Appropriation Bill 2021-22* for the purpose of Treasurer's Advance, but does not itself increase costs. The Treasurer's Advance provided under section 18 of the *Financial Management Act 1996* for 2021-22 is outlined below:

	2021-22	2022-23	2023-24	2024-25
	$'000	$'000	$'000	$'000
Treasurer's Advance drawn	**155,131,000**	**-**	**-**	**-**

Where measurable, provide details on the monthly and cumulative impact

DEPARTMENT	APPROPRIATION TYPE	PURPOSE DETAILED	AMOUNT
ACT Health Directorate	Controlled recurrent payments	Additional appropriation for cash requirements to 30 June 2022, consistent with additional funding approved through the 2021-22 Budget Review for COVID-19 Response - Stage 2.	$20,917,000

ACT Local Hospital Network	Controlled recurrent payments	Additional appropriation to meet cash requirements for 2021-22 Budget Review initiatives, the payment to Calvary Private Hospital Bruce and other cost pressures related to a shortfall in Commonwealth funding and increased costs at Canberra Health Services.	$64,342,000
Chief Minister, Treasury and Economic Development Directorate	Controlled recurrent payments	Additional appropriation for cost pressures related to 2021-22 Budget Review initiatives, the payment of interstate quarantine costs for ACT residents and the acceleration of administration costs for the Sustainable Household Scheme.	$36,744,000
Chief Minister, Treasury and Economic Development Directorate	Capital Injection	Additional appropriation for the acceleration of payments under the Sustainable Household Scheme.	$13,004,000
Education Directorate	Controlled recurrent payments	Additional appropriation for costs relating to enrolment pressures and an increase in workerscompensation premiums.	$9,937,000
Justice and Community Safety Directorate	Payments on behalf of Territory	Additional appropriation for cost pressures related to 2021-22 Budget Review initiatives and to meet increased demand for Victims of Crime Financial Assistance Scheme payments.	$6,187,000
Justice and Community Safety Directorate	Controlled recurrent payments	Additional appropriation for cash requirements to 30 June 2022, relating to additional COVID-19 cost pressures.	$2,600,000
Major Projects Canberra	Controlled recurrent payments	Additional appropriation for cash requirements to 30 June 2022 related to the ACT GovernmentCladding Program.	$1,400,000
TOTAL			**$155,131,000**

Approved for tabling in the ACT Legislative Assembly

_____

Andrew Barr MLA
Treasurer
Date: 14 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.33] Section 18 (2)

substitute

(2) The amount appropriated for Treasurer's advances must not exceed—

(a) for the 2019-20 or 2020-21 financial years—5% of the total amount appropriated by all Appropriation Acts for the year; or

(b) for any other financial year—1% of the total amount appropriated by all Appropriation Acts for the year.

Financial Management Act 1996

Date notified: 22 September 2021

Section 18 (2)

substitute

(2) The amount appropriated for Treasurer's advances must not exceed—

(a) for the 2021-22 financial year—5% of the total amount appropriated by all Appropriation Acts for the year; or

(b) for any other financial year—1% of the total amount appropriated by all Appropriation Acts for the year.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Police & Emergency Services

Legislation: *Firearms Act 1996*

The *Firearms Act 1996* (the Act) was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to the Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: Amend the Act to allow the Minister to make a declaration to prohibit or limit the sale of firearms, parts and ammunition, and to cease the issue of new firearms licences and permits to acquire a firearm with certain exceptions for essential activities.

Purpose of measure:

- The purpose of the amendments to the Firearms Act is to allow the Minister to place certain controls on the operation of the Act to ensure essential firearms related activities can continue during the COVID-19 public health emergency; and
- Amendments made through the *COVID-19 Emergency Response Legislation Amendment Act 2020*, which commenced on 13 May 2020, are technical amendments to align the definition of COVID-19 emergency to ensure consistency across COVID-19 legislation.

Alignment of measure

- ACT initiative only.

Promotional and public awareness campaigns undertaken

- Nil.

Stakeholder engagement undertaken

- ACT Firearms Advisory Committee.
- ACT Firearms Registry.

Cost of the measure

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The measure has not been used to date.

Approved for tabling in the ACT Legislative Assembly

_____

Mick Gentleman MLA
Minister for Police and Emergency Services

Date: 11 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.34] New part 26

insert

Part 26 COVID-19 emergency response

417 Declaration—COVID-19 emergency response

(1) The Minister may make a declaration in relation to the following matters for the purpose of responding to the public health emergency caused by the COVID-19 pandemic:

(a) preventing the registrar from issuing a licence under this Act;

(b) preventing the registrar from issuing a permit to acquire a firearm under this Act;

(c) prohibiting or limiting the sale of firearms, firearms parts or ammunition.

Note Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

(2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) A declaration expires on—

(a) the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends (the ***declaration end date***); or

(b) if the Minister considers that the effect of the COVID-19 pandemic justifies a later day, being a day not later than 3 months after the declaration end date—a later day notified by the Minister before the declaration end date.

(4) A notification under subsection (3) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

418 Expiry—pt 26

This part expires on the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.68] Section 417 (3) (a)

omit

the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends

substitute

the first day no COVID-19 emergency is in force

[1.69] New section 417 (5) and (6)

after the note, insert

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This part expires at the end of a 3-month period during which no COVID-19 emergency has been in force.

[1.70] Section 418

omit

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Minister for Gaming

Legislation: *Gaming Machine Act 2004*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: To include a requirement for clubs to report on emergency community purpose contributions in their annual reports.

Purpose of measure:

- This measure is consequential to amendments made in the *COVID-19 Emergency Response Act 2020.* Those amendments allow clubs to make community purpose contributions for the purpose of 'providing relief or assistance to the community in relation to a COVID-19 emergency', including contributions made in accordance with an emergency community purpose contribution declaration.
- The *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020* [DI2020-139], made by the former Attorney-General under new section 166A of the *Gaming Machine Act 2004*, allows clubs to claim as emergency community purpose contributions wages or salary paid to club employees and payments made to emergency-affected club employees between 24 March 2020 and 23 March 2021 (inclusive). These payments must be equal to, or more than, the relevant minimum wage (including allowances) under the *Registered and Licensed Clubs Award 2010*. This declaration expired on 23 March 2021, however, in accordance with section 84 of the *Legislation Act 2001*, the benefit of the declaration remains and clubs can continue to count contributions made during the relevant 12-month period towards meeting their community purpose contribution obligations.
- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2020* [DI2020-252] (the 2020 Declaration), also made by the former Attorney-General under new section 166A of the Gaming Machine Act, allows clubs to claim a contribution of money or in kind contribution made to, or for the benefit of, a member of the local live performance industry for the purpose of providing music or other live entertainment (other than sport) for club members and patrons as an emergency community purpose contribution. The declaration applies to contributions made between 27 August 2020 and 31 August 2021 (inclusive).
- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2021* [DI2021-214] (the 2021 Declaration) extended the measures in the 2020 declaration to 30 November 2021.

- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2021 (No 2)* [DI2021-273] (the Declaration) extended the measures until 30 June 2022 to assist economic recovery for clubs and the local live performance industry.
- The measure requires clubs to set out in their annual report the percentage of their net gaming machine revenue that has been contributed for 'providing relief or assistance to the community in relation to a COVID-19 emergency', in line with the reporting requirements for the other community purposes set out in section 166 (1) of the Gaming Machine Act.
- Since not all clubs report on a standard financial year (July-June) basis, this provision applies to club reporting years that end after 23 March 2020 (after which clubs ceased normal operations due to COVID-19).

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- No promotional and public awareness campaigns were undertaken as the measure is specific to clubs' community contribution reporting requirements.

Stakeholder engagement undertaken:

- Direct engagement has been undertaken with clubs and club representatives through existing communication channels.
- Revised *Community Contribution Scheme Guidelines*, incorporating this measure and a range of other measures introduced by Government, are available on the Gambling and Racing Commission website.

Cost of the measure:

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Where measurable, provide details on the monthly and cumulative impact:

- Under changes to the community contributions scheme that commenced on 1 July 2019, clubs are required to report on their community purpose contributions as part of annual reporting requirements, and this information must be made publicly available.
- For clubs with gross gaming machine revenue of $200,000 or more per annum, an audited community purpose contribution statement must be prepared. Otherwise, the information must be set out in a written statement attached to the club's certified income and expenditure statement.
- As noted above, this measure provides for reporting on community purpose contributions made in connection with a COVID-19 emergency.
- The impact of this measure is becoming apparent as clubs report on community purpose contributions in their annual reports. (See material at Licensee Annual Reports and Community Purpose Contributions - ACT Gambling and Racing Commission).

Approved for tabling in the ACT Legislative Assembly

_____

Shane Rattenbury MLA
Minister for Gaming
Date: 16/7/22

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.78] New section 172 (2A)

insert

(2A) For subsection (1) (d), the annual report for a reporting year that ends after 23 March 2020 must set out the percentage of the licensee's net revenue for all authorised premises for the reporting year that was made for providing relief or assistance to the community in relation to a COVID-19 emergency.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Minister for Gaming

Legislation: *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004*

This Act and Regulation were amended by the *COVID-19 Emergency Response Act 2020*,the *COVID-19 Emergency Response Legislation Amendment Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*.

The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- The amendments made in the *COVID-19 Emergency Response Act 2020*:
  - suspend the obligation of clubs to make payments to the Diversification and Sustainability Support Fund (DSSF) for a 12-month period;
  - enable the responsible Minister to declare that a contribution by a club is a community purpose contribution, despite anything else in the *Gaming Machine Act 2004* or *Gaming Machine Regulation 2004*, where an emergency declaration (for a state of emergency or public health emergency) has been made – the Minister for Gaming's declaration will be a disallowable instrument;
  - provide that clubs can claim $2 per $1 of contribution where the club is providing charitable support by preparing or providing food for emergency-affected people.
- The amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020* are technical and consequential amendments to changes made by the *COVID-19 Emergency Response Act 2020*, to align the definition of COVID-19 emergency, to correct a cross reference, and to align with expiry provisions.

Purpose of measure:

- Part of emergency financial relief measures to support clubs in retaining staff and in providing assistance to the community.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- No promotional and public awareness campaigns were undertaken as the measures are specific to clubs' DSSF payment obligations and community contribution reporting requirements.

Stakeholder engagement undertaken:

- Direct engagement with clubs and club representatives through existing communication channels.
- Revised *Community Contribution Scheme Guidelines*, incorporating this measure and a range of other measures introduced by Government, are available on the ACT Gambling and Racing Commission website.

Cost of the measure:

- Nil

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

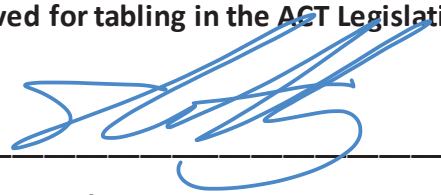
- Applying the formula at section 163H of the *Gaming Machine Act 2004*, 12 months of contributions to the DSSF was estimated at approximately $1.1 million.
- Based on the available data, $1.06 million in DSSF contributions were actually foregone as part of the COVID-19 relief package for community clubs.
- In relation to the community contributions measures:
    - The *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020* [DI2020-139], made by the former Attorney-General under new section 166A of the *Gaming Machine Act*, allows clubs to claim as emergency community purpose contributions wages or salary paid to club employees and payments made to emergency-affected club employees between 24 March 2020 and 23 March 2021 (inclusive). These payments must be equal to, or more than, the relevant minimum wage (including allowances) under the *Registered and Licensed Clubs Award 2010*. This declaration expired on 23 March 2021, however, in accordance with section 84 of the *Legislation Act 2001*, the benefit of the declaration remains

and clubs can continue to count contributions made during the relevant 12-month period towards meeting their community purpose contribution obligations.

- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2020* [DI2020-252] (the 2020 Declaration), also made by the former Attorney-General under new section 166A of the Gaming Machine Act, allows clubs to claim a contribution of money or in kind contribution made to, or for the benefit of, a member of the local live performance industry for the purpose of providing music or other live entertainment (other than sport) for club members and patrons as an emergency community purpose contribution. The first declaration applies to contributions made between 27 August 2020 and 31 August 2021 (inclusive).
- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2021* [DI2021-214] (the 2021 Declaration) extended the measures in the 2020 declaration to 30 November 2021.
- The *Gaming Machine (Emergency Community Purpose Contribution—Local Live Performance Industry) Declaration 2021 (No 2)* [DI2021-273] (the Declaration) extended the measures in the 2021 Declaration until 30 June 2022 to assist economic recovery for clubs and the local live performance industry, which continues to be affected by COVID-19.
- Under changes to the community contributions scheme that commenced on 1 July 2019, clubs are required to report on their community purpose contributions as part of annual reporting requirements, and this information must be made publicly available.
- For clubs with gross gaming machine revenue of $200,000 or more per annum, an audited community purpose contribution statement must be prepared. Otherwise, the information must be set out in a written statement attached to the club's certified income and expenditure statement.
- Through amendments made by the *COVID-19 Emergency Response Legislation Amendment Act 2020,* this reporting must include the percentage of net gaming machine revenue contributed for the purpose of 'providing relief or assistance to the community in relation to a COVID-19 emergency'.

- The impact of these measures is becoming apparent as clubs report on community purpose contributions in their annual reports. (See material at Licensee Annual Reports and Community Purpose Contributions - ACT Gambling and Racing Commission).

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Minister for Gaming
Date: 16 / 7 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.35] Section 161A (4)

substitute

(4) In this section:

required amount means the amount payable by the licensee under section 163H.

[1.36] New section 163H (4A) and (4B)

insert

(4A) Despite subsection (3), the required amount for a tax period that begins after 23 March 2020 and ends before 8 April 2021 is $0.

(4B) This subsection and subsection (4A) expire 2 years after the day this subsection commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

[1.37] Section 164, new definition of *emergency declaration*

insert

emergency declaration means a declaration under—

(a) the *Emergencies Act 2004*, section 156 (Declaration of state of emergency); or

(b) the *Public Health Act 1997*, section 119 (Emergency declarations).

[1.38] Section 166 (1), definition of *community purpose*, new paragraph (ca)

insert

(ca) providing relief or assistance to the community in relation to an emergency to which an emergency declaration applies; or

[1.39] Section 166 (1), definition of *community purpose contribution*, paragraph (b)

substitute

(b) includes—

(i) a contribution prescribed by regulation to be a community purpose contribution; and

(ii) an emergency community purpose contribution.

[1.40] Section 166 (2)

after

community purpose contribution

insert

(other than an emergency community purpose contribution)

[1.41] New section 166 (4)

insert

(4) In this section:

emergency community purpose contribution means a contribution declared under section 166A to be a community purpose contribution.

Example

a contribution to people employed by a club for remuneration, allowances or other entitlements mentioned in an emergency community purpose contribution declaration under s 166A

[1.42] New section 166A

insert

166A Emergency community purpose contribution declaration

(1) Despite anything else in this Act, if an emergency declaration is in force or was in force at any time in the previous 12 months, the Minister may declare (an ***emergency community purpose contribution declaration***) that a contribution by a licensee that is a club is a community purpose contribution.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) An emergency community purpose contribution declaration may apply to anything that happens at any time during the reporting year for the licensee in which that declaration is made.

(3) An emergency community purpose contribution declaration—

(a) has effect for the period stated in the declaration; and

(b) may be subject to any conditions declared by the Minister.

(4) An emergency community purpose contribution declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.43] Dictionary, new definition of emergency declaration

insert

emergency declaration, for part 12 (Community contributions)—see section 164.

[1.44] Section 69 (1) (c), new note

insert

Note Under an emergency community purpose contribution declaration, a contribution to people employed by a club for remuneration, allowances or other entitlements may be declared to be a community purpose contribution (see Act, s 166 (2), def ***community purpose contribution*** and s 166A).

[1.45] New section 69DA

insert

69DA Providing food to emergency-affected people

(1) This section applies to a community purpose contribution to support a charitable cause.

Note See the Act, s 166 (1), def ***community purpose***, par (a) (i).

(2) This section only applies to a reporting year of a licensee that is a club if an emergency declaration applies for all or part of the reporting year.

Note ***Emergency declaration***—see the Act, s 164.

(3) For every $1 that a licensee that is a club contributes under a written arrangement or agreement to provide food to an emergency-affected person as part of a defined program, the licensee's minimum community purpose contribution must be worked out as if the licensee had contributed $2.

(4) In this section:

emergency-affected person means a person adversely affected by an emergency to which an emergency declaration applies.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.71] Section 164, new definition of *COVID-19 emergency*

insert

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.72] Section 164, definition of *emergency declaration*

omit

[1.73] Section 166 (1), definition of *community purpose*, paragraph (d)

omit

an emergency to which an emergency declaration applies

substitute

a COVID-19 emergency

[1.74] Section 166 (2)

omit

(other than an emergency community purpose contribution)

[1.75] New section 166 (2A)

insert

(2A) Subsection (2) does not apply to an emergency community purpose contribution.

[1.76] Section 166A (1)

omit

an emergency declaration

substitute

a COVID-19 emergency

[1.77] Section 172 (2) (i)

omit

paragraph (d)

substitute

paragraph (e)

[1.80] Dictionary, new definition of *COVID-19 emergency*

insert

COVID-19 emergency, for part 12 (Community contributions)—see section 164.

[1.81] Dictionary, definition of *emergency declaration*

omit

[1.82] Section 69DA (2)

omit

an emergency declaration applies

substitute

a COVID-19 emergency is in force

[1.83] Section 69DA (2), note

substitute

Note ***COVID-19 emergency***—see the Act, s 164.

[1.84] Section 69DA (4)

omit

an emergency to which an emergency declaration applies

substitute

a COVID-19 emergency

[1.85] New section 69L

in division 9.5, insert

69L Expiry—COVID-19 emergency amendments

The following provisions expire at the end of a 12-month period during which no COVID-19 emergency has been in force:

(a) this section;

(b) section 69 (1) (c), note;

(c) section 69DA.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.22] New section 69 (3)

insert

(3) This subsection and subsection (1)(c), note expire when the Act, section 166A expires.

[1.23] Section 69L

substitute

69L Expiry—COVID - 19 emergency amendments

This section and section 69DA expire at the end of a 12-month period during which no COVID-19 emergency has been in force.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Reporting period: **1 April - 30 June 2022**

Portfolio: Human Rights

Legislation: *Human Rights Commission Act 2005*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Vulnerable person complaint.

Purpose of measure:

- To provide an accessible complaint mechanism for vulnerable people to deal with claims about abuse, neglect or exploitation of older people and adults with a disability in the ACT.

- Providing an alternative resolution focused mechanism for people to resolve family disputes that may give rise to claims of abuse, neglect or exploitation.

Alignment of measure

- ACT only initiative.

Promotional and public awareness campaigns undertaken

- Direct contact with relevant stakeholders working with older people, people with a disability and in elder abuse to advise of new complaint provisions as an option for addressing abuse of vulnerable people in the ACT.

- Contact with community through social media, media, the Human Rights Commission (HRC) E-newsletter, and website updates.

- Media release and doorstop by Minister Rattenbury and Minister Ramsay. Additional media by Discrimination, Health Services, Disability and Community Services Commissioner.

Stakeholder engagement undertaken

- As above, direct contact with relevant stakeholders working with older vulnerable people and people with a disability including ACTCOSS, ADACAS, COTA, Office for Disability, ACT Policing, ACT Health, Public Guardian, Legal Aid & OPALS, Canberra Community Law, Disability Legal Service, ACT Housing, WWDACT, Official Visitors etc.

Cost of the measure

- No additional funds have been provided to promote this measure at this time.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- For the period 1 April to 30 June 2022, the Human Rights Commission received 13 vulnerable person complaints and 14 enquiries regarding a vulnerable person complaint.
- For the period 1 January to 31 March 2022, the Human Rights Commission received 10 vulnerable person complaints and 5 enquiries regarding a vulnerable person complaint.
- For the period 1 October to 31 December 2021, the Human Rights Commission received 10 vulnerable person complaints and 12 enquiries regarding a vulnerable person complaint.
- For the period 1 July to 30 September 2021, the Human Rights Commission received 8 vulnerable person complaints and 16 enquiries regarding a vulnerable person complaint.
- For the period 1 April to 30 June 2021, the Human Rights Commission received 6 vulnerable person complaints and 7 enquiries regarding a vulnerable person complaint.
- For the period 1 January to 31 March 2021, the Human Rights Commission received 5 vulnerable person complaints and 13 enquiries regarding a vulnerable person complaint.
- For the period 1-31 December 2020, the Human Rights Commission received 1 vulnerable person complaint and 3 enquiries regarding a vulnerable person complaint.
- For the period 1-30 November 2020, the Human Rights Commission received 3 vulnerable person complaints and 4 enquiries regarding a vulnerable person complaint
- For the period 1-31 October 2020, the Human Rights Commission received 1 vulnerable person complaints and 4 enquiries regarding a vulnerable person complaint.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

- For the period 1-30 September 2020, the Human Rights Commission received 3 vulnerable person complaints and 5 enquiries regarding a vulnerable person complaint.

- For the period 1-31 August 2020, the Human Rights Commission received 2 vulnerable person complaints and 3 enquiries regarding a vulnerable person complaint.

- For the period of 1-31 July 2020, the Human Rights Commission received 3 vulnerable person complaints and 4 enquiries regarding a vulnerable person complaint.

- For the period 1 – 30 June 2020, the Human Rights Commission received 2 vulnerable person complaints and 5 enquiries regarding a vulnerable person complaint.

- For the period 1 – 31 May 2020 there were no complaints received noting the jurisdiction commenced on 14 May and was not retrospective.

- Since the commencement of these provisions on 14 May 2020, the Human Rights Commission has received a total of 67 vulnerable person complaints and 95 enquiries regarding a vulnerable person complaint and of those complaints 37 are Commission Initiated Considerations regarding claims of abuse, neglect or exploitation of a person with a disability or older person.

Approved for tabling in the ACT Legislative Assembly

_____

Andrew Barr MLA
A/g Minister for Human Rights

Date: 12 / 7 / 22

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.86] New section 21 (1) (c) (iv)

insert

(iv) a vulnerable person complaint;

[1.87] New section 41B

insert

41B When may someone complain about treatment of vulnerable people?

(1) A person may complain to the commission about the treatment of a vulnerable person if the person believes on reasonable grounds that the vulnerable person is subject to or at risk of abuse, neglect or exploitation.

(2) In this section:

vulnerable person means an adult who—

(a) has a disability within the meaning of the *Disability Services Act 1991*; or

(b) is at least 60 years old and—

(i) has a disorder, illness or disease that affects the person's thought processes, perception of reality, emotions or judgement or otherwise results in disturbed behaviour; or

(ii) has an impairment that—

(A) is intellectual, psychiatric, sensory or physical in nature; and

(B) results in a substantially reduced capacity of the person for communication, learning or mobility; or

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

[1.88] New section 42 (1) (ea)

insert

(ea) a vulnerable person complaint;

[1.89] New section 52B

in division 4.2, insert

52B Dealing with vulnerable person complaints

(1) Before taking either of the following actions in relation to a vulnerable person complaint, the commission must obtain the consent of the vulnerable person the subject of the complaint:

(a) telling the person complained about, in writing, that the complaint is to be considered under section 45 (2) (c);

(b) referring a complaint to a statutory office holder under section 52A.

(2) However, consent is not required—

(a) if the person is not capable of giving consent, even with appropriate support; or

(b) if it is not appropriate to obtain consent because of the seriousness of the complaint or the risk to the personal safety of the vulnerable person.

[1.91] New section 105B

insert

105B Expiry—vulnerable person complaint provisions

(1) The following provisions expire at the end of a 12-month period during which no COVID-19 emergency has been in force:

(a) this section;

(b) section 21 (1) (c) (iv);

(c) section 41B;

(d) section 42 (1) (ea);

(e) section 52B;

(f) section 99A;

(g) dictionary, definition of ***vulnerable person complaint***.

(2) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.92] Dictionary, new definition of *vulnerable person complaint*

insert

vulnerable person complaint means a complaint about the treatment of a vulnerable person that may be made, or is made, under section 41B.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April - 30 June 2022**

Portfolio: Attorney-General

Legislation: *Leases (Commercial and Retail) Act 2001*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure:

- The amendment under the COVID-19 Emergency Response Act 2020 created a head of power in the Leases (Commercial and Retail) Act 2001 (the Leases Act) that allows the Minister to respond quickly and flexibly to the impacts of COVID-19 on commercial tenancies by making a Declaration. A Declaration is a disallowable instrument.

- The Minister has made three Declarations under this head of power. The Declarations require landlords and tenants to negotiate in good faith before seeking to evict a tenant or exercise a right of enforcement under a commercial lease, to which the Leases Act applies. Negotiations must have regard to the leasing principles in the National Code of Conduct (the National Code) as agreed by National Cabinet.

- The first and second Declarations applied to SME commercial tenants that were suffering financial stress or hardship as a result of the COVID-19 pandemic, as defined by the qualification requirements of the Commonwealth Government's JobKeeper program (JobKeeper), and which had an annual turnover of up to $50 million for 2018-2019.

    - The Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (DI2020-92) (the first Declaration) was notified on 11 May 2020.

    - The Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No. 2)(DI2020-283) (the second Declaration) was notified on 10 September 2020. The second Declaration revoked the first Declaration and took effect from 28 September 2020. The second Declaration expired as planned on 31 January 2021.

- The Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021 (DI2021–218) (the third Declaration) was notified on 1 September 2021. It

introduced a new test for financial stress or hardship for an 'impacted tenant'. This change was given effect through a new definition of an impacted tenant who:

  - is an SME entity; and
  - satisfies the decline in turnover test set out in section 5 of the third Declaration.

- The third Declaration was revoked under the Leases (Commercial and Retail) COVID-19 Emergency Response Declaration Revocation 2021 (DI2021-283) on 1 January 2022.

- The third Declaration has been revoked as most of the measures that were put in place for the August 2021 lockdown which restricted business activity and trading capacity have now been eased under the ACT Government's Pathway Forward.

- While no Declaration is currently in force, each Declaration continues to have effect where a prescribed breach occurred during a prescribed period under each of the Declarations. Where a prescribed breach occurred during the relevant prescribed periods, landlords must still negotiate in good faith before taking action against an impacted tenant.

- The COVID-19 Emergency Response Legislation Amendment Act 2020 made consequential technical amendments to the Leases Act to clarify that a COVID-19 emergency may be declared under the Emergencies Act 2004 as well as the Public Health Act 1997. This aligns the language of the declaration-making power in relation to what is a COVID-19 emergency across several related measures, as well as when a declaration would expire after a COVID-19 emergency ends.

- These amendments made by the COVID-19 Emergency Response Legislation Amendment Act 2020 are technical amendments rather than substantive measures. As such, these provisions will not be reported on in reporting to the ACT Legislative Assembly.

Purpose of measure:

- The amendment under the COVID-19 Emergency Response Act 2020 was necessary so that the Minister could respond quickly to the impacts of the COVID-19 pandemic on leasing issues, including in relation to commercial tenancies. If the measure had not been implemented, the Minister would not have had the ability to support COVID-19 pandemic affected commercial tenants in a timely fashion.

Alignment of measure

- The amendment under the COVID-19 Emergency Response Act 2020 and the Declarations align with National Cabinet's decision to implement the National Code in respect of those tenants unable to meet their financial obligations under a

commercial tenancy agreement during, and for the recovery period following, the COVID-19 pandemic.

- The second Declaration reflected the changes to and extension of the Commonwealth Jobkeeper payment from 28 September 2020 to 28 March 2021.

- The third Declaration reflected that the Commonwealth's JobKeeper scheme had expired and could no longer be used to determine an impacted tenant's financial hardship.

Promotional and public awareness campaigns undertaken

- Mr Brendan Smyth was first appointed on 14 April 2020 as the COVID-19 Local Business Commissioner. He engaged with commercial landlords and tenants in the ACT on the application of the first and second Declarations to encourage in good faith negotiations.
    - Mr Smyth continued to provide support for tenants and landlords seeking to come to an agreement up until the expiry of his term on 31 July 2021.

- On 6 September 2021, Mr Smyth was re-appointed as the COVID-19 Local Business Commissioner until 31 July 2022, to continue working with commercial landlords and tenants under the third Declaration to resolve issues and refer parties for mediation.

- The ACT Government procured professional mediation services, to provide free mediation support services for commercial tenants and landlords to support in-good-faith negotiations, from Conflict Resolution Services Inc., a Canberra-based service.

- Commercial tenants and landlords accessed mediation by contacting the COVID-19 Local Business Commissioner referred the parties to Conflict Resolution Service.

- The contract between the ACT Government and Conflict Resolution Service Inc ended on 27 March 2022. The COVID-19 Local Business Commissioner continues in his role to 31 July 2022 providing support to commercial landlords and tenants. The need for ongoing mediation services beyond the support offered by Mr Smyth will be monitored by Government.

- The ACT Government established a Commercial Tenancies Administration Committee (the first Committee) in May 2020 comprised of industry representatives and an independent chair to provide guidance on the implementation of the first Declaration. The first Committee also provided guidance on implementation of the second Declaration and raised awareness of the second Declaration from 28 September 2020 until its revocation on 31 January 2021.
    - The first Committee last met in mid-January 2021 and agreed for meetings to be convened if any future issues arise out of the 31 January 2021 ending of the second Declaration.

- The ACT Government created a new Commercial Tenancies Administration Committee (the second Committee) in August 2021, comprised of new industry representatives and an independent facilitator to provide guidance on the implementation of the third Declaration.

- The second Committee held its last meeting in mid-November 2021. Members of the second Committee were consulted regarding the future of the third Declaration. The second Committee supported the revocation of the third Commercial Leases Declaration on 1 January 2022.

- A public awareness campaign on the ending of the third Declaration included the following components:
    - The development of FAQ's detailing further information on the ending of the third Declaration made available on the ACT Government COVID-19 Commercial Tenancy Support Measures FAQs webpage; and
    - Letters sent to members of the second Committee advising them of the ending of the third Declaration and thanking them for their participation.

Stakeholder engagement undertaken

- Consultations with the second Committee occurred with:
    - Sam Engele CMTEDD - Facilitator
    - Adina Cirson – Member
    - Alfonso de Rio – Member
    - Angus Nardi – Member
    - Anthony Brierley – Member
    - Dominique Lamb – Member
    - Graham Catt – Member
    - Sheena Ireland – Member

- Consultation with the Local Business Commissioner.

Cost of the measure

- The ACT Government has allocated $250,000 for free professional mediation for commercial tenants and landlords to support in-good-faith negotiations.

- Minor costs were incurred in relation to the creation and administration of the arrangements under the third Declaration. These costs have been met from the Chief Minister, Treasury and Economic Development Directorate's existing budget allocation.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

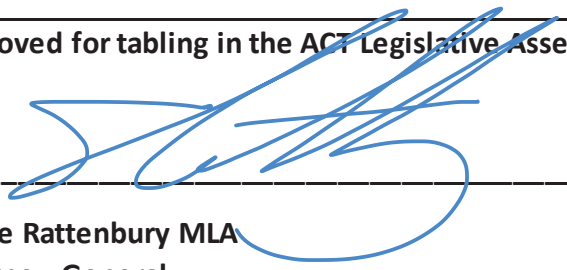
Where measurable, provide details on the monthly and cumulative impact

- The third Declaration was linked to the commercial tenancy rates relief assistance. This measure is provided by the Government as an incentive for commercial landlords and tenants to continue to negotiate revised leasing arrangements in good faith.

- The commercial rates credit operated in the same way as the rates assistance measure that was offered by the Government in 2020. Applications for commercial rates rebates have now closed.

- As at 30 June 2022, under the third Declaration the Local Business Commissioner has had 214 requests for assistance, with 210 having been resolved and 4 remaining active.

Approved for tabling in the ACT Legislative Assembly



Shane Rattenbury MLA
Attorney-General

Date: 16/7/22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.46] New part 17

insert

Part 17 COVID-19 emergency response

177 Declaration—COVID-19 emergency response

(1) The Minister may make a declaration in relation to the following matters for the purpose of responding to the public health emergency caused by the COVID-19 pandemic:

(a) prohibiting the termination of a lease to which this Act applies by a lessor in stated circumstances;

(b) prohibiting the recovery of possession of premises under the lease by the lessor in stated circumstances;

(c) changing any period under the lease or this Act in which someone must or may do something;

(d) changing, limiting or preventing the exercise or enforcement of any other right of the lessor under the lease or this Act in stated circumstances;

(e) exempting a tenant or lessor, or class of tenant or lessor, from the operation of a provision of this Act, a lease to which this Act applies or any other agreement relating to the lease of the premises.

(2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) A declaration expires on—

(a) the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends (the ***declaration end date***); or

(b) if the Minister considers that the effect of the COVID-19 pandemic justifies a later day, being a day not later than 3 months after the declaration end date—a later day notified by the Minister before the declaration end date.

(4) A notification under subsection (3) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(5) In this section:

lease to which this Act applies includes a lease prescribed under section 12 (2) (a) and (b).

178 Expiry—pt 17

This part expires on the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.93] Section 177 (3) (a)

omit

the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends

substitute

the first day no COVID-19 emergency is in force

[1.94] Section 177 (5), new definition of *COVID-19 emergency*

insert

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

[1.95] New section 177 (6)

insert

(6) This part expires at the end of a 3-month period during which no COVID-19 emergency has been in force.

[1.96] Section 178

omit

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April - 30 June 2022**

Portfolio: Industrial Relations and Workplace Safety

Legislation: *Long Service Leave (Portable Schemes) Act 2009*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to this Act that give effect to the measures being reported in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: The current provisions for access to portable long service leave require a recognised period of service (eligibility period) before these entitlements can be accessed. It does not allow workers to access entitlements early in cases of hardship such as from the impacts of COVID-19. Temporary amendments allow eligible registered workers early access to long service leave entitlements during the COVID-19 pandemic. Eligibility for early access and the amount of long service leave that may be accessed are to be determined by the Minister for Employment and Workplace Safety by disallowable instrument.

These amendments supersede amendments in the *COVID-19 Emergency Response Act 2020* by omitting and replacing those amendments with the same amendments with consequential changes to align with a consistent definition of the COVID-19 emergency and expiry of COVID-19 measures.

Purpose of measure:

- The purpose of this measure is to enable eligible workers whose employment has been negatively impacted because of the COVID-19 emergency to access long service leave.
- The amendments will support workers who have suffered hardship because of the COVID-19 emergency and cannot work and earn as a result.
- The amendments will temporarily allow:
    - eligible workers to access leave earlier than is currently allowed under the portable schemes legislation; and
    - eligible workers who have exited the industry during the COVID-19 emergency before they become entitled to portable long service leave, to access a payment instead of leave for their recognised service.
- The amendments will also temporarily allow workers who have exited the industry permanently to be able to apply for a payment instead of leave without having to wait for 20 weeks to pass.
- Eligibility was determined under the *Long Service Leave (Portable Schemes) COVID-19 Emergency Leave Determination 2020 (No 1)* and commenced on 21 May

2020 to allow workers to be able to apply from this date to access the temporary entitlements. Eligible workers are workers who have:

- 18 months or more recognised service in a covered industry in the ACT; and
- recognised service in the last 12 months; and
- suffered hardship because they are unable to work and unable to earn because of COVID-19.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- As the measure was implemented in May 2020, noting the activities reported in the May 2020 report for this measure, no further promotional and public awareness campaigns have been undertaken during April – June 2022. Information on the measure continues to be available on the ACT Long Service Leave Authority website at: https://actleave.act.gov.au/early-access/.

Stakeholder engagement undertaken

- As this measure has now been implemented, no further stakeholder engagement was required in the period from April – June 2022.

Cost of the measure

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

- The financial impact of the measure is budget neutral for the ACT Budget.
- The financial impact of this measure will impact the funding of the schemes managed by the ACT Long Service Leave Authority and funded from levies paid by employers covered under the portable leave schemes.

- As a reliable estimate of the net financial impact of the measure on funding of the portable leave schemes will be impacted by the period for which the COVID-19 emergency remains in force, it is not appropriate to provide an estimate in this section, noting the level of reporting provided in the following section.

Where measurable, provide details on the monthly and cumulative impact

- From 21 May 2020, eligible workers were able to apply for access to the temporary early access COVID-19 leave.
- For the period 1 April – 30 June 2022:
  - 1 early access claim was made and paid by the ACT Long Service Leave Authority; and
  - the total amounts paid from 1 April – 30 June 2022 by the ACT Long Service Leave Authority for this early access claim was $2,702.
- Total impact of the measure to 30 June 2022 is:
  - a total of 167 early access claims[1] have been made (an increase of 1 from the previous quarter);
  - a total of 167 early access claims have been paid by the ACT Long Service Leave Authority (an increase of 1 from the previous quarter);
  - the accumulated total of $387, 417 has been paid up to 30 June 2022 by the ACT Long Service Leave Authority for early access claims.

Approved for tabling in the ACT Legislative Assembly

_____

Mick Gentleman MLA
Minister for Industrial Relations and Workplace Safety

Date: 15 / 7 / 2022

[1] The total number of early access claims does not include early access claims made and subsequently withdrawn.

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.48] Schedule 1, new section 1.6 (3) and (4)

insert

(3) A registered worker for the building and construction industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—

(a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.49] Schedule 1, new section 1.8 (1A) and (1B)

insert

(1A) However, subsection (1) (b) and (c) does not apply to a registered worker if—

(a) the worker has permanently left the building and construction industry; and

(b) the worker has not been credited with service in the workers register for any of the days after the worker permanently left the building and construction industry; and

(c) either—

(i) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(ii) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(1B) Also, this section applies to a registered worker for the building and construction industry if the worker—

(a) has left the industry during—

(i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or

(ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and

(b) satisfies the criteria determined by the Minister.

[1.50] Schedule 1, section 1.8 (3)

substitute

(3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—

(a) if subsection (1) or (2) applies to the worker—the amount of long service leave credited to the worker in the workers register; or

(b) if subsection (1B) applies to the worker—the amount of long service leave determined by the Minister.

(3A) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.51] Schedule 2, new section 2.6 (3) and (4)

insert

(3) A registered worker for the contract cleaning industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—

(a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.52] Schedule 2, new section 2.8 (1A) and (1B)

insert

(1A) However, subsection (1) (b) and (c) does not apply to a registered worker if—

(a) the worker has permanently left the contract cleaning industry; and

(b) the worker has not been credited with service in the workers register for any of the days after the worker permanently left the contract cleaning industry; and

(c) either—

(i) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(ii) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(1B) Also, this section applies to a registered worker for the contract cleaning industry if the worker—

(a) has left the industry during—

(i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or

(ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and

(b) satisfies the criteria determined by the Minister.

[1.53] Schedule 2, section 2.8 (3)

substitute

(3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—

(a) if subsection (1) or (2) applies to the worker—the number of weeks long service leave worked out in accordance with the long service leave formula; or

(b) if subsection (1B) applies to the worker—the amount of long service leave determined by the Minister.

(3A) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.54] Schedule 3, new section 3.7 (3) and (4)

insert

(3) A registered worker for the community sector industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—

(a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.55] Schedule 3, new section 3.9 (1A)

insert

(1A) Also, this section applies to a registered worker for the community sector industry if the worker—

(a) has left the industry during—

(i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or

(ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and

(b) satisfies the criteria determined by the Minister.

[1.56] Schedule 3, section 3.9 (2)

substitute

(2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—

(a) if subsection (1) applies to the worker—the number of weeks long service leave worked out in accordance with the long service leave formula; or

(b) if subsection (1A) applies to the worker—the amount of long service leave determined by the Minister.

(2A) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.57] Schedule 4, new section 4.7 (3) and (4)

insert

(3) A registered worker for the security industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister if—

(a) a state of emergency, declared under the *Emergencies Act 2004*, section 156, exists; or

(b) an emergency declaration made under the *Public Health Act 1997*, section 119 (including any extension or further extension) is in force.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.58] Schedule 4, new section 4.9 (1A)

insert

(1A) Also, this section applies to a registered worker for the security industry if the worker—

(a) has left the industry during—

(i) a state of emergency declared under the *Emergencies Act 2004*, section 156; or

(ii) a public health emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension); and

(b) satisfies the criteria determined by the Minister.

[1.59] Schedule 4, section 4.9 (2)

substitute

(2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for—

(a) if subsection (1) applies to the worker—the amount of long service leave worked out in accordance with the long service leave formula; or

(b) if subsection (1A) applies to the worker—the amount of long service leave determined by the Minister.

(2A) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.98] Schedule 1, section 1.6 (3) and (4)

substitute

(3) During a COVID-19 emergency, a registered worker for the building and construction industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This subsection and subsections (3) to (5) expire on the first day no COVID-19 emergency is in force.

[1.99] Schedule 1, section 1.8

substitute

1.8 Entitlement to payment instead of leave—building and construction industry

(1) This section applies to a registered worker for the building and construction industry who has at least 7 years recognised service if—

(a) the worker has permanently left the industry; and

(b) 20 weeks have passed since the day the worker permanently left the industry; and

(c) the worker has not been credited with service in the workers register for any of the days in the 20-week period.

(2) Also, this section applies to a registered worker for the building and construction industry if the worker has 5 years recognised service and any of the following apply to the worker:

(a) the worker has left the industry because of total incapacity;

(b) the worker has reached the prescribed retiring age;

(c) the worker has died.

(3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave credited to the worker in the workers register.

(4) In this section:

prescribed retiring age means—

(a) in relation to a registered worker who has been granted a service pension under the *Veterans Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or

(b) in any other case—55 years.

1.8A Entitlement to payment instead of leave—building and construction industry—COVID-19 emergency

(1) This section applies during a COVID-19 emergency to a registered worker for the building and construction industry who has at least 7 years recognised service if—

(a) the worker has permanently left the industry; and

(b) the worker has not been credited with service in the workers register for any of the days after the worker permanently left the building and construction industry.

(2) Also, this section applies during a COVID-19 emergency to a registered worker for the building and construction industry if the worker—

(a) has left the industry during the COVID-19 emergency; and

(b) satisfies the criteria determined by the Minister.

(3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave determined by the Minister.

(4) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This section and schedule 5, item 22A expire on the first day no COVID-19 emergency is in force.

[1.100] Schedule 2, section 2.6 (3) and (4)

substitute

(3) During a COVID-19 emergency, a registered worker for the contract cleaning industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This subsection and subsections (3) to (5) expire on the first day no COVID-19 emergency is in force.

[1.101] Schedule 2, section 2.8

substitute

2.8 Entitlement to payment instead of leave—contract cleaning industry

(1) This section applies to a registered worker for the contract cleaning industry who has 5 years recognised service if—

(a) the worker has permanently left the industry; and

(b) 20 weeks have passed since the day the worker permanently left the industry; and

(c) the worker has not been credited with service in the workers register for any of the days in the 20-week period.

(2) Also, this section applies to a registered worker for the contract cleaning industry if the worker has 5 years recognised service and any of the following apply to the worker:

(a) the worker has left the industry because of total incapacity;

(b) the worker has reached the prescribed retiring age;

(c) the worker has died.

(3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the number of weeks long service leave worked out in accordance with the long service leave formula.

(4) In this section:

prescribed retiring age means—

(a) for a registered worker who has been granted a service pension under the *Veterans Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or

(b) in any other case—55 years.

2.8A Entitlement to payment instead of leave—contract cleaning industry—COVID-19 emergency

(1) This section applies during a COVID-19 emergency to a registered worker for the contract cleaning industry who has at least 7 years recognised service if—

(a) the worker has permanently left the industry; and

(b) the worker has not been credited with service in the workers register for any of the days after the worker permanently left the contract cleaning industry.

(2) Also, this section applies during a COVID-19 emergency to a registered worker for the contract cleaning industry if the worker—

(a) has left the industry during the COVID-19 emergency; and

(b) satisfies the criteria determined by the Minister.

(3) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave determined by the Minister.

(4) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This section expires on the first day no COVID-19 emergency is in force.

[1.102] Schedule 3, section 3.7 (3) and (4)

substitute

(3) During a COVID-19 emergency, a registered worker for the community sector industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This subsection and subsections (3) to (5) expire on the first day no COVID-19 emergency is in force.

[1.103] Schedule 3, section 3.9

substitute

3.9 Entitlement to payment instead of leave—community sector industry

(1) This section applies to a registered worker for the community sector industry if the worker has 5 years recognised service and any of the following apply to the worker:

(a) the worker has left the industry because of total incapacity;

(b) the worker has reached the prescribed retiring age;

(c) the worker has died.

(2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the number of weeks long service leave worked out in accordance with the long service leave formula.

(3) In this section:

prescribed retiring age means—

(a) for a registered worker who has been granted a service pension under the *Veterans Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or

(b) in any other case—55 years.

3.9A Entitlement to payment instead of leave—community sector industry—COVID-19 emergency

(1) This section applies during a COVID-19 emergency to a registered worker for the community sector industry if the worker—

(a) has left the industry during the COVID-19 emergency; and

(b) satisfies the criteria determined by the Minister.

(2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave determined by the Minister.

(3) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(5) This section expires on the first day no COVID-19 emergency is in force.

[1.104] Schedule 4, section 4.7 (3) and (4)

substitute

(3) During a COVID-19 emergency, a registered worker for the security industry is entitled to the number of days of workers long service leave worked out in accordance with the criteria determined by the Minister.

(4) A determination under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This subsection and subsections (3) to (5) expire on the first day no COVID-19 emergency is in force.

[1.105] Schedule 4, section 4.9

substitute

4.9 Entitlement to payment instead of leave—security industry

(1) This section applies if a registered worker for the security industry has 5 years recognised service and any of the following apply to the worker:

(a) the worker has left the industry because of total incapacity;

(b) the worker has reached the prescribed retiring age;

(c) the worker has died.

(2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave worked out in accordance with the long service leave formula.

(3) In this section:

prescribed retiring age—

(a) for a registered worker who has been granted a service pension under the *Veterans Entitlements Act 1986* (Cwlth), section 38 (Eligibility for partner service pension)—the age at which the worker first receives payment of the service pension; or

(b) in any other case—55 years.

4.9A Entitlement to payment instead of leave—security industry—COVID-19 emergency

(1) This section applies during a COVID-19 emergency to a registered worker for the security industry if the worker—

(a) has left the industry during the COVID-19 emergency; and

(b) satisfies the criteria determined by the Minister.

(2) If the governing board is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the amount of long service leave determined by the Minister.

(3) A determination under this section is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(4) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(5) This section expires on the first day no COVID-19 emergency is in force.

[1.106] Schedule 5, item 22

substitute

22	sch 1, 1.8 (3), sch 2, 2.8 (3), sch 3, 3.9 (2), or sch 4, 4.9 (2)	not satisfied that section applies to applicant	applicant	governing board
22A	sch 1, 1.8A (3), sch 2, 2.8A (3), sch 3, 3.9A (2), or sch 4, 4.9A (2)	not satisfied that section applies to applicant	applicant	governing board

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Treasurer

Legislation: *Payroll Tax Act 2011*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: To exempt wages subsidised by JobKeeper program from application of payroll tax.

Purpose of measure:

- To complement the Commonwealth Government's JobKeeper program as part of its COVID-19 response to promote continued employment; and
- To facilitate the administration of tax relief measures in the ACT Government's COVID-19 economic survival package to support businesses to manage cash flow challenges and retain employees.

Alignment of measure

- With National Cabinet.

Promotional and public awareness campaigns undertaken

- ACT Revenue Office website, **Payroll Tax page** (New item on top directing users to COVID-19 Assistance page): https://www.revenue.act.gov.au/payroll-tax;
- ACT Revenue Office website, **COVID-19 Assistance page** (sets out details of various tax relief measures in the ACT): https://www.revenue.act.gov.au/covid-19-assistance;
- ACT Government's Business Hub website, **COVID-19 Economic Support for Business**:https://www.act.gov.au/business/business-support/covid-19-economic-support-for-business; and
- Media reported on the initiative on 7 May 2020 – see https://www.canberratimes.com.au/story/6747862/act-to-waive-payroll-tax-on-jobkeeper-payments/.

Stakeholder engagement undertaken

- Matter was subject to consultation with other Australian jurisdictions.

Cost of the measure

	2021-22	2022-23	2023-24
	$'000	$'000	$'000
Net Operating Impact	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- Amendments to the *Payroll Tax Act 2011* to exempt wages subsidised by the Commonwealth JobKeeper program resulted in an estimated payroll tax loss of $2 million in 2019-20 and $4.2 million in 2020-21, a total of $6.2 million for the period 30 March 2020 to 28 March 2021. This cost estimate was based on an estimate of $866 million JobKeeper payments in the ACT over the 12 month period, the assumption that 90 per cent of ACT businesses are already exempted from payroll tax normally and about 4 per cent of total payroll tax being exempted for the first 6 months under the economic survival packages.
- The Commonwealth JobKeeper program ended on 28 March 2021 and the exemption has not been operative since that time.

Approved for tabling in the ACT Legislative Assembly

_____

Andrew Barr MLA
Treasurer

Date: 14 / 7 / 2022

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.107] New section 66BA

insert

66BA Wages—jobkeeper payments

(1) Wages mentioned in schedule 2, part 2.7A are exempt wages.

(2) This section expires 12 months after the day the prescribed period ends.

(3) In this section:

prescribed period—see the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cwlth), section 6.

[1.108] Schedule 2, new part 2.7A

insert

Part 2.7A Jobkeeper payments

2.19A Jobkeeper payments

(1) Wages that do not exceed the jobkeeper payment amount are exempt wages if they are paid or payable to an eligible employee.

(2) The exemption does not apply to any part of wages paid or payable to the eligible employee that exceeds the jobkeeper payment amount.

(3) In this section:

eligible employee—see the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cwlth), section 4.

jobkeeper payment amount, in relation to wages paid or payable to an eligible employee—

(a) means an amount an employer is entitled to under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cwlth) for the employee; but

(b) does not include an overpayment mentioned in the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cwlth), section 9 for the employee.

2.19C Expiry—pt 2.7A

(1) This part expires 12 months after the day the prescribed period ends.

(2) In this section:

prescribed period—see the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cwlth), section 6.

[1.109] Schedule 2, new section 2.19B

insert

2.19B Notification offence—revocation of entitlement to jobkeeper payments

(1) An employer commits an offence if—

(a) the employer is the subject of a decision that the employer is entitled to a payment under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cwlth); and

(b) the decision is revoked under that Act, section 14 (6); and

(c) the employer does not notify the commissioner of the revocation within 14 days after the revocation.

Maximum penalty: 10 penalty units.

(2) An offence against this section is a strict liability offence.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Personal Violence Act 2016*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2021*. The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A.

Measure:

- Inserts a new Part 22 to (a) extend general interim orders that are due to expire during the COVID-19 emergency, (b) allow appearances at a proceeding to be undertaken by audio visual means during the COVID-19 emergency, (c) allow consent to be given by audio visual means during the COVID-19 emergency, and (d) allow an acknowledgement to be given 'in writing or before the court' and to be 'recorded by the court' during the COVID-19 emergency.

Purpose of measure:

- This measure allows the court to extend an interim order during a COVID-19 emergency ensuring that protections remain in place for applicants until both parties are able to attend a hearing.

- This measure also allows for a person to be considered 'present' or give consent at court if they appear by telephone or an audio visual link.

- The measure provides that an acknowledgement may be given in writing or before the court. It also requires that an acknowledgement must be recorded by the court.

- These measures support the continued operations of the court.

Alignment of measure:

- ACT only initiative.

Promotional and public awareness campaigns undertaken:

- Nil to date.

Stakeholder engagement undertaken:

- Relevant stakeholders were made aware of the changes in procedure.

Cost of the measure:

- Nil.

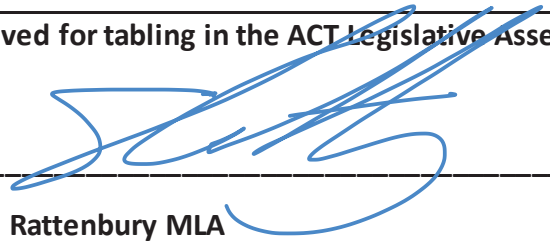
	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact:

- The Court's case management system does not currently collect data on these measures.
- As previously indicated in respect of the measures under s 206, 207 and 208, the manual collection and reporting of data on these measures would inappropriately divert resources away from court operations and will not be reported.
- Data in respect of the measure under s205 (extending interim orders) is being manually collected.
- Between 1 June 2020 and 31 December 2020, a cumulative total of twelve (12) personal violence general interim orders were extended.
- Between 1 January 2021 and 31 March 2021, zero (0) personal violence general interim orders were extended.
- Between 1 April 2021 and 30 June 2021, zero (0) personal violence general interim orders were extended.
- Between 1 July 2021 and 30 September 2021, zero (0) personal violence general interim orders were extended.
- Between 1 October 2021 and 31 December 2021, zero (0) personal violence general interim orders were extended.
- Between 1 January 2022 and 31 March 2022, zero (0) personal violence general interim orders were extended.
- Between 1 April 2022 and 30 June 2022, zero (0) personal violence general interim orders were extended.

COVID-19 EMERGENCY RESPONSE ACT 2020
QUARTERLY REPORT ON MEASURES

Approved for tabling in the ACT Legislative Assembly



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Shane Rattenbury MLA
Attorney-General

Date: 21 / 7 / 22

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.62] New part 22

insert

Part 22 COVID-19 emergency response

204 Meaning of *COVID-19 emergency*—pt 22

In this part:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of COVID-19.

205 Extending interim orders

(1) This section applies if an interim order ends, will end or is likely to end during a COVID-19 emergency.

(2) The court may extend the interim order for a stated period of not more than 6 months.

206 Requirement for party to be present

(1) This section applies if a provision in this Act (other than section 35 (1) (a))—

(a) requires a party to a proceeding, or the party's legal representative, to be present in court; or

(b) is conditional on the party, or the party's legal representative, being present in court.

(2) Unless the court otherwise orders, during a COVID-19 emergency the party, or the party's legal representative, may be present by telephone or other electronic audio-visual means.

(3) For section 35 (1) (a), unless the court otherwise orders, during a COVID-19 emergency it is sufficient for the person's legal representative to be present when the protection order was made.

207 Requirement for party to give consent

(1) This section applies if a party's consent is required under a provision in this Act.

(2) Unless the court otherwise orders, during a COVID-19 emergency the party, or the party's legal representative, may give consent by telephone or other electronic audio-visual means.

208 Acknowledgment of undertaking by respondent

For section 58, during a COVID-19 emergency an acknowledgment—

(a) may be given in writing or before the court; and

(b) if given before the court, must be recorded by the court.

209 Expiry—pt 22

This part expires 12 months after the day it commences.

COVID-19 Emergency Response Legislation Amendment Act 2021

Date notified: 19 February 2021

[1.24] Section 209

substitute

209 Expiry — pt 22

This part expires on the day the COVID-19 *Emergency Response Act 2020* expires.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Police & Emergency Services

Legislation: *Prohibited Weapons Act 1996*

The *Prohibited Weapons Act 1996* (the Act) was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments to the Act that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure: The Minister may, for the purpose of responding to the public health emergency caused by the COVID-19 pandemic, make a declaration prohibiting the registrar from issuing a permit under the Act.

Purpose of measure:

- To allow the Minister to place certain controls on the operation of the Act to ensure essential activities can continue during the COVID-19 public health emergency; and
- Amendments made through the *COVID-19 Emergency Response Legislation Amendment Act 2020*, which commenced on 13 May 2020, are technical amendments to align the definition of COVID-19 emergency to ensure consistency across COVID-19 legislation.

Alignment of measure

- ACT initiative.

Promotional and public awareness campaigns undertaken

- Nil to date.

Stakeholder engagement undertaken

- ACT Firearms Registry.

Cost of the measure

- Nil.

	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The measure has not been used to date.

Approved for tabling in the ACT Legislative Assembly

Mick Gentleman MLA
Minister for Police and Emergency Services

Date: 11 / 7 / 2020

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

[1.63] New part 6

insert

Part 6 COVID-19 emergency response

55 Declaration—COVID-19 emergency response

(1) The Minister may, for the purpose of responding to the public health emergency caused by the COVID-19 pandemic, make a declaration prohibiting the registrar from issuing a permit under this Act.

Note Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

(2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) A declaration expires on—

(a) the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends (the ***declaration end date***); or

(b) if the Minister considers that the effect of the COVID-19 pandemic justifies a later day, being a day not later than 3 months after the declaration end date—a later day notified by the Minister before the declaration end date.

(4) A notification under subsection (3) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

56 Expiry—pt 6

This part expires on the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.115] Section 55 (3) (a)

omit

the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends

substitute

the first day no COVID-19 emergency is in force

[1.116] New section 55 (5) and (6)

after the note, insert

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This part expires at the end of a 3-month period during which no COVID-19 emergency has been in force.

[1.117] Section 56

omit

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Treasurer

Legislation: *Rates Act 2004*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Allow the Minister to make determinations of rates instalments dates to help transition back to the ordinary payment schedule following the 4-week delay of 2019-20 quarter 4 rates notices.

Purpose of measure:

- To permit rates instalments to be transitioned back to a regular schedule over a period of 12 months to minimise the cash flow effect on all households.

Alignment of measure

- ACT only initiative

Promotional and public awareness campaigns undertaken

- ACT Revenue Office website, **COVID-19 Assistance page** (sets out details of various tax relief measures in the ACT): https://www.revenue.act.gov.au/covid-19-assistance; and
- ACT Government's COVID-19 website, **Family and Household Support**:
    - Information on **Residential rates:** https://www.covid19.act.gov.au/community/families-and-households.
- ACT Government's Business Hub website, **COVID-19 Economic Support for Business**:
    - Information on **Commercial rates**: https://www.act.gov.au/business/business-support/covid-19-economic-support-for-business.

Stakeholder engagement undertaken

- Nil.

Cost of the measure

- Nil – consequential measure.

	2021-22	2022-23	2023-24
	$'000	$'000	$'000
Net Operating Impact	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- The Government delayed issuing 2019-20 quarter 4 rates assessments by four weeks to provide cashflow support to households and businesses. Rates instalments were payable one month after the date of the delayed rates notice. Under the *Rates (Instalment Dates) Determination 2020*, the Minister had determined the due dates of rates instalments for each quarter of the 2020-21 financial year that were under 3 months apart but at least separated by 2 months and 3 weeks. This was required to gradually transition out of the delayed schedule, resulting from the temporary COVID-19 measure, and to bring the rates instalment payment dates back on schedule.
    - The disallowable instrument is available on the legislation register, see – https://www.legislation.act.gov.au/di/2020-233/.
    - Rates instalments for 2021-22 financial year have reverted to the normal schedule. Due dates for each quarter's assessment and information on assessment notices can be found on our website, see – https://www.revenue.act.gov.au/rates.

Approved for tabling in the ACT Legislative Assembly

Andrew Barr MLA
Treasurer

Date: 14 / 7 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.122] New section 19 (3) to (9)

insert

(3) Despite subsection (1) (b), during the COVID-19 emergency period the date when an instalment is due for payment is the date determined for the instalment under subsection (4).

(4) The Minister may determine a date when an instalment is due for payment that is earlier or later than when an instalment would ordinarily be due under subsection (1) (b).

(5) A determination under subsection (4) must state whether, in the Minister's opinion, the determination is consistent with human rights.

(6) The Minister must not make a determination under subsection (4) unless satisfied that the determination is reasonable and necessary to provide an economic response to a COVID-19 emergency.

(7) A determination under subsection (4) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(8) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 emergency period means the period—

(a) beginning on the day the *COVID-19 Emergency Response Legislation Amendment Act 2020*, schedule 1, part 1.26 commences; and

(b) ending at the end of a 12-month period when no COVID-19 emergency has been in force.

(9) This subsection and subsections (3) to (8) expire at the end of the COVID-19 emergency period.

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Attorney-General

Legislation: *Residential Tenancies Act 1997*

This Act was amended by the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The legislative amendments that give effect to the measures being reported on in this document are listed in Attachment A, beginning with the amendments made in the *COVID-19 Emergency Response Act 2020* followed by subsequent amendments made in the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Measure:

- The measure created a head of power that allows the Minister to respond quickly and flexibly to the impacts of the COVID-19 response on residential tenancies. The head of power allows the Minister to make declarations about things such as a moratorium on evictions or limits on property inspections to support social distancing. The Minister is also able to make a declaration permitting tenants and landlords to re-negotiate the amount of rent payable during the COVID-19 public health emergency.

Purpose of measure:

- The purpose of the measure is to allow the Minister to respond efficiently and effectively to the impacts of the COVID-19 pandemic on residential tenancies and occupancies.

- It enables the Minister to put in place appropriate measures to reinforce public health social distancing during the COVID-19 response period by, for example, restricting access to premises under residential tenancy agreements for the purpose of undertaking physical inspections and non-urgent repairs.

- The measure will also enable the Minister to support tenants and occupants who are economically impacted by the COVID-19 pandemic by, for example, prohibiting the termination of a lease in circumstances where a tenant or an occupant is unable to pay rent or occupancy fees and is issued with a notice to vacate for rent or fee arrears.

- If the measure had not been implemented, the Minister would not have the ability to support COVID-19 pandemic affected tenants and occupants to remain in their households in circumstances where they might otherwise face homelessness. This could arise if a tenant or occupant's lease is terminated and/or the lessor recovers possession of a tenant or occupant's premises.

- Pursuant to the measure, the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* (Disallowable instrument DI2020-46) (the **First Declaration**)

commenced on 22 April 2020. The First Declaration introduced a number of provisions to amend the operation of residential tenancies and occupancies during the period of the declaration as follows:

- Part 2 – Temporary reduction in rent or occupancy fees (ss 3,4): Modified section 8 (1) of the *Residential Tenancies Act 1997* (the Act) to allow a lessor and tenant to agree to include a COVID-19 temporary rent reduction clause in the residential tenancy agreement and provided that a reversion to a previous rental amount after a temporary reduction is not a rent increase for the purpose of the Act. It also enabled parties to an occupancy agreement to agree to a reduced occupancy fee for a stated period because of financial hardship arising from the COVID-19 pandemic.

- Part 3 – Moratorium on terminations, rent increases etc (ss 5-11): Part 3 introduced a moratorium period from 22 April 2020 to 22 July 2020 (and allowed the Minister to extend that period up to a further three (3) months). The moratorium period applied to households impacted by the COVID-19 pandemic (for example, if one or more rent-paying household members had stopped earning income or their income had reduced and the household's weekly gross income had reduced by at least 25% or if a member of the household became eligible for JobSeeker or JobKeeper). If tenants in an impacted household were unable to meet their financial commitments during this period, lessors were prohibited from issuing a termination notice, applying for certain orders (such as a termination and possession order), listing personal information about tenants in a residential tenancy database and from increasing the amount of rent payable under a residential tenancy agreement. In relation to impacted households that were subject to an existing ACT Civil and Administrative Tribunal (ACAT) application for termination for failure to pay rent, the ACAT was prohibited from making any order until after the moratorium period ended. If COVID-19 impacted households already had a termination order or warrant issued against them but had not vacated the property, this part allowed them to apply for suspension of those orders or a stay on the warrant for a period not longer than the moratorium.

- Part 4 – Access to premises (ss 12-13): Part 4 restricted a lessor from physically accessing premises under a residential tenancy agreement unless the lessor: had obtained the tenant's consent, had applied to the ACAT (in accordance with an order by the ACAT) or required access to do urgent repairs to the premises. Subject to limited exceptions, the lessor could only inspect a premises by audio-visual or other electronic means.

- The First Declaration was repealed on 21 July 2020 and the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2)* (Disallowable instrument DI2020–216) (the **Second Declaration**) commenced on 22 July 2020. The Second Declaration extended the provisions in the First Declaration by three (3) months (to 22 October 2020) and provided that the Minister could extend the moratorium period

up to a further three (3) months. The Second Declaration also introduced an additional measure in Part 3:

  - to allow a COVID-19 impacted household to terminate a fixed-term tenancy agreement early, without penalty, by providing their landlord with 3 weeks' notice. In these circumstances, a landlord is not be able to charge a tenant a 'break-lease' fee or seek compensation from a tenant. When providing a termination notice to their landlord, a tenant is required to provide evidence to their landlord that they have been impacted by COVID-19 (i.e. a statutory declaration attesting to status). If a tenant owes money to the landlord for outstanding rent or for property damage then this debt is still payable to the landlord at the end of the tenancy.

- The *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 3)* (Disallowable instrument DI2020-267) (the **Third Declaration**) was notified on 4 September 2020 and the Second Declaration was repealed on 22 October 2020. The measures in the Third Declaration were put in place to support tenants and landlords transition out of the moratorium period and commenced on 23 October 2020 (with the exception of one support measure (s 5) which commenced operation on 14 September 2020).

- The Third Declaration was initially in place until 31 January 2021. However, section 14 of the Third Declaration allowed the Minister to extend the duration of the transitional period for a period of up to three (3) months by way of notifiable instrument. On 18 December 2020, the Attorney-General extended the transitional period for a further three (3) month period until 30 April 2021 (the *Residential Tenancies (COVID-19 Emergency Response) Declaration Extension 2020* (Notifiable instrument NI2020-808) was notified on 21 December 2020).

- The support measures in the Third Declaration included:

  - Part 2 – Rent paid in advance (s 5): Modified section 8(1)(a)(i) of the *Residential Tenancies Act 1997* (the Act) to allow tenants on pre-6 April 2020 fixed term tenancies to pay just two weeks' rent in advance to assist with managing cost of living pressures. All other fixed term and periodic tenancies were already able to pay just 2 weeks' rent in advance.

  - Part 3 – Protection of households impacted by COVID-19 pandemic (ss 7-9, 14): Introduced a transitional period which provided COVID-19 impacted tenants with a longer timeframe to pay their rental debts before they could face eviction on the basis of arrears that accrued before or during the moratorium period. This provided tenants with more time to recover financially and allows them to enter into a payment plan with their landlords. This measure only applied if tenants who were COVID-19 impacted during the moration paid their rent after 23 October 2020 as and when it falls due. Accordingly, this ensured the tenancy remained sustainable.

- Part 3 – Protection of households impacted by COVID-19 pandemic (s 10): This measure allowed a tenant to apply to ACAT to vary or set aside an order made by ACAT before the moratorium period. This measure applied to an order made in relation to a tenant's failure to pay rent for a premises under a residential tenancy agreement where that order was suspended under a previous declaration.

- Part 3 – Protection of households impacted by COVID-19 pandemic (ss 7-8, 11): In circumstances where a tenant was unable to meet their rent payments as they fell due during the transitional period, ACAT was required to consider making a payment order for COVID-19 impacted tenants in rent arrears rather than ordering an eviction (the 'payment order provision').

- The Declaration also extended a range of measures implemented under the Second Declaration, including:

  - Part 2 – Temporary reduction in rent (s 6): a landlord and a tenant may agree to include a COVID-19 temporary rent reduction clause in their residential tenancy agreement.

  - Part 3 – Protection of households impacted by COVID-19 pandemic (s 12): a landlord, landlord's agent or database operator are prohibited from listing personal information about a tenant in a residential tenancy database in relation to a failure to pay rent during the moratorium period.

  - Part 3 – Protection of households impacted by COVID-19 pandemic (s 13): a tenant in a COVID-19 impacted household may terminate their fixed-term tenancy agreement without penalty by providing their landlord with 3 weeks' notice. A landlord will not be able to charge a tenant a 'break-lease' fee or seek compensation. However, if the tenant owes rent arrears or a property damage debt to their landlord, this will remain a debt payable at the end of the tenancy.

- The *Residential Tenancies* (*COVID-19 Emergency Response) Declaration 2021* (Disallowable instrument DI2021-55) (the **Fourth Declaration**) was notified on 23 April 2021. While the Fourth repealed the Third Declaration, it also extended all transitional measures contained in the Third Declaration (aside from section 10 of the Third Declaration) until 30 June 2021. As noted above, section 10 of the third declaration allowed tenants who had applied for a suspension of termination orders or a stay on a warrant for eviction during the moratorium to apply to ACAT for reconsideration of the order. To gain benefit from this section, an impacted household would have had to apply at the end of the moratorium period. As this measure was no longer of relevance after the end of the moratorium it was not extended in the Fourth Declaration.

- The *Residential Tenancies* (*COVID-19 Emergency Response) Declaration 2021 (No 2)* (Disallowable instrument DI2021-166) (the **Fifth Declaration**) was notified on 30 June 2021. The Fifth Declaration extended the 'payment order provision' until

30 September 2021. The payment order provision protected tenants in circumstances where the tenant was unable to meet their rent payments as they fell due during the transitional period, ACAT was required to consider making a payment order for COVID-19 impacted tenants in rent arrears rather than ordering an eviction. The Fifth Declaration was revoked by the *Residential Tenancies* (*COVID-19 Emergency Response) Declaration 2021 (No 3)* (see further below).

- The *Residential Tenancies* (*COVID-19 Emergency Response) Declaration 2021 (No 3)* (Disallowable instrument DI2021-216) (the **Sixth Declaration**) was notified on 1 September 2021. The Sixth Declaration was made in response to the ACT re-entering lockdown. The Sixth Declaration revoked the Fifth Declaration and re-introduced previous residential tenancy and occupancy response measures with amendments in response to stakeholder feedback and changed circumstances (such as the cessation of the Commonwealth JobKeeper payment) as well as introducing new measures to support those currently subject to a quarantine or self-isolation direction from needing to vacate during their quarantine period.

- The Sixth Declaration introduced the following support measures:

    - Part 2 –Protection of households impacted by COVID-19 pandemic – moratorium period (ss 8-12): (NB the measures in Part 2 ended on 24 November 2021) - Part 2 introduced a twelve (12) week moratorium period from 2 September – 24 November 2021 (and allowed the Minister to extend that period up to a further twelve (12) weeks, however this power was not utilised and the moratorium ended after 12 weeks). The moratorium period applied to households impacted by the COVID-19 pandemic (for example, if one or more rent-paying household members had stopped earning income due to losing 8 hours or more of work, or if their income, or their overall household income had reduced at least 20% or if a member of the household became eligible for the Commonwealth COVID-19 Disaster Payment or the ACT Government Business Support Grant). If tenants in an impacted household were in rent arrears, lessors were prohibited from issuing a termination notice, applying for certain orders (such as a termination and possession order). Lessors were also prohibited from increasing the amount of rent payable under a residential tenancy agreement during the moratorium period.

    - In relation to impacted households that were subject to an existing ACAT application for termination for failure to pay rent which was yet to be determined, the ACAT was prohibited from making any order until after the moratorium period ended. If COVID-19 impacted households already had a termination order or warrant issued against them prior to the commencement of the moratorium but had not vacated the property, this part allowed them to apply for suspension of those orders or a stay on the warrant for a period not longer than the moratorium.

    - Part 2 also contained measures to limit access to premises to support social distancing (ss 11-12): (NB the measures in Part 2 ended on 24 November 2021)

these measures restricted a lessor from physically accessing premises under a residential tenancy agreement unless the lessor: had obtained the tenant's consent, had applied to the ACAT (in accordance with an order by the ACAT) or required access to do urgent repairs to the premises. Subject to limited exceptions, a lessor was only able to inspect a premises by audio-visual or other electronic means.

- Part 3 –Protection of households impacted by COVID-19 pandemic – transitional period (ss 13 – 14) (the measures in Part 3 ended on 11 May 2022). Part 3 introduced measures that applied during the post moratorium transitional period. This part implemented a transitional period protection (s 13) which provided COVID-19 impacted tenants with a longer timeframe to pay their rental debts before facing eviction on the basis of arrears accrued before or during the moratorium period. This provided tenants with more time to recover financially and allowed them to enter into a payment plan with their landlords. This measure only applied to tenants who were COVID-19 impacted during the moratorium who paid their rent as and when it fell due during the transitional period.

- Part 3 –Protection of households impacted by COVID-19 pandemic (s 14): (ended 11 May 2022). This measure allowed a tenant to apply to ACAT to vary or set aside an order made in relation to a tenant's failure to pay rent for a premises under a residential tenancy agreement where that order was suspended during the moratorium period.

- Part 4 –Protection of households impacted by the COVID-19 pandemic – moratorium and transitional periods (ss 15 – 20): (ended 11 May 2022). This section contained additional protections that applied during both the moratorium and transitional periods:

    - Section 15 modified section 8 (1) of the Act to allow a lessor and tenant to agree to include a COVID-19 temporary rent reduction clause in the residential tenancy agreement and provided that a reversion to a previous rental amount after a temporary reduction is not a rent increase for the purpose of the Act. It also provided that if a rent reduction clause is agreed in a form other than that set out in the Sixth Declaration, it is taken to be a rent reduction clause as set in the Declaration.

    - Section 16 modified section 8 (1) of the Act to allow a lessor and tenant to agree to include a COVID-19 temporary rent deferral clause in the residential tenancy agreement and provided that a reversion to a previous rental amount after a temporary reduction is not a rent increase for the purpose of the Act. It also provided that unless otherwise agreed by the lessor in writing, the amount of deferred rent is arrears and is a debt due to the lessor. The Sixth Declaration set out a rent deferral clause and provided that if an agreement included a rent deferral clause in any other form, it is taken to be a COVID-19 temporary rent reduction clause.

- Section 17 enabled parties to an occupancy agreement to agree to a reduced occupancy fee for a stated period because of financial hardship arising from the COVID-19 pandemic.

- Section 18 prevented a lessor or their agent or a database operator from listing personal information about a person in a residential tenancy database if the tenant breached the agreement by failing to pay rent and at the time of the breach the person was a member of an impacted household.

- Section 19 allowed impacted households in a fixed term tenancy to terminate the tenancy early and without penalty by providing the lessor with 3 weeks' notice and evidence as to their impacted household status.

- Section 20 continued the payment order provision from previous declarations. The payment order provision protected tenants in circumstances where the tenant was unable to meet their rent payments as they fell due during the transitional period, and required ACAT to consider making a payment order for COVID-19 impacted tenants in rent arrears rather than ordering an eviction. This measures applied to tenants who were in impacted households during the moratorium under the First and Second Declarations as well as those covered by the moratorium under the Sixth Declaration.

o Part 5 Protection of people subject to quarantine direction (ss 21 – 23): (ended 11 May 2022). Part 5 introduced measures to protect individuals subject to a quarantine or self-isolation direction from being required to vacate a rental premises during their quarantine or self-isolation period (section 21 provides the relevant definitions for this section).

- Section 22 provided that where a lessor had issued a notice to vacate that was due to take effect on a day in the quarantine period, the tenant was not required to vacate on the date specified in the notice and instead may nominate a date not later than 2 weeks after the end of their quarantine period on which they will vacate. If they did not nominate a date, they would be required to vacate 2 weeks after the end of their quarantine period. The section also provided that if the tenant was issued a notice of intention to vacate that falls due during the quarantine period, the tenant may withdraw their notice.

- Section 23 gave ACAT the power to suspend a termination and possession order or stay a warrant if the order effected the tenant or a household member's ability to comply with a quarantine direction. The suspension or stay may be in place for up to two weeks after the end of the quarantine period.

- The eviction moratorium and other measures in Part 2 of the sixth declaration (outlined above) ended on **24 November 2021**. All other measures in the Declaration ended on **11 May 2022** after the initial 12 week transition period was extended by notifiable instrument for an additional 12 week period.

Alignment of measure:

- The First and Second Declarations aligned with National Cabinet's decision (on 29 March 2020) to implement a six-month moratorium on evictions for those unable to meet their financial obligations under a residential tenancy agreement due to the impact of the COVID-19 pandemic.

- While the National Cabinet decision was limited to an eviction moratorium and encouragement for landlords and tenants to agree to rent reductions, all jurisdictions across Australia introduced additional measures for residential tenancies in response to COVID-19. The additional measures introduced in the ACT (limits on tenancy database listings and limits on rental increases), as well as those outlined above, are similar to provisions introduced in other jurisdictions.

Promotional and public awareness campaigns undertaken:

- In May 2020, the ACT Government announced that it had engaged the Conflict Resolution Service (CRS) to provide a restorative free residential tenancy mediation service (the Service). The Service aimed to resolve rental disputes between tenants and landlords in the ACT who were impacted by COVID-19, including in relation to reaching agreements to reduce rent. The Service operated between 11 May 2020 and 31 January 2021.

- The ACT COVID-19 website alerted readers to the existence of residential tenancy and occupancy response measures and linked readers to more detailed information on the JACS website.

- JACS also provided information to the public on the measures contained in the six Declarations on its website.

    - Information for Tenants and Occupants: https://www.justice.act.gov.au/renting-and-occupancy-laws/residential-tenancies-and-covid-19/information-tenants-and-occupants

    - Information for Landlords and Agents: https://www.justice.act.gov.au/renting-and-occupancy-laws/information-landlords-and-agents-impacted-covid-19

- The Chief Minister, Attorney-General and Special Minister of State issued a joint press release announcing the commencement of the residential tenancies eviction moratorium and related support measures. The media release is available here: https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2021/supporting-tenants-and-landlords-affected-by-act-lockdown

- In November 2021, the ACT Government announced a Rent Relief Fund to support renters who are experiencing rental stress or severe financial hardship which is impacting on their ability to sustain their tenancy. The fund provided grants of up to $1000 to eligible households. The grants available under the Rent Relief Fund have now been expended.
    - A media release announcing the grant and informing the ACT community about the end of the eviction moratorium is available here: https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2021/new-rental-relief-fund-to-support-tenants-as-eviction-moratorium-ends
    - Information about the Rent Relief Fund is available here: https://justice.act.gov.au/renting-and-occupancy-laws/rent-relief-fund

Stakeholder engagement undertaken:

- Real Estate Institute of the ACT
- Legal Aid ACT (Tenancy Advice Service)
- ACAT
- Housing ACT
- Canberra Community Law
- Tenant's Union ACT
- Care Financial Counselling Service
- Consumer Law Centre
- Insurance Council of Australia
- Better Renting ACT
- ACT Law Society
- State and Territory counterparts.

Cost of the measure:

- Nil for the amendments and declarations

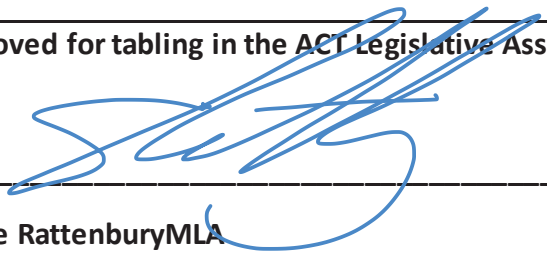
	2020-21	2021-22	2022-23	2023-24
	$'000	$'000	$'000	$'000
Net Operating Impact	-	-	-	-

- CRS was provided with up to $60,000.00 (excluding GST) to provide the Service.
    - In total $35,600 (excl GST) was expended under this contract.
- The Rent Relief Grant scheme was allocated a funding pool of $133,000.

Where measurable, provide details on the monthly and cumulative impact:

The ACT Government does not collect data on all of the residential tenancy agreements impacted by this measure.

Approved for tabling in the ACT Legislative Assembly



Shane RattenburyMLA
Attorney-General

Date: 21 / 7 / 22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Act 2020

Date notified: 7 April 2020

1.64] New part 16

insert

Part 16 COVID-19 emergency response

156 Declaration—COVID-19 emergency response

(1) The Minister may make a declaration in relation to the following matters for the purpose of responding to the public health emergency caused by the COVID-19 pandemic:

(a) prohibiting the termination of a residential tenancy agreement or an occupancy agreement by a lessor or grantor in stated circumstances;

(b) prohibiting the recovery of possession of premises under a residential tenancy agreement or an occupancy agreement in stated circumstances;

(c) changing any period under a residential tenancy agreement, an occupancy agreement or this Act in which someone must or may do something;

(d) changing, limiting or preventing the exercise or enforcement of any other right of a lessor or grantor under a residential tenancy agreement, an occupancy agreement or this Act;

(e) prohibiting or limiting the matters that may be included in a residential tenancy database;

(f) exempting a party, or class of party, to a residential tenancy agreement or an occupancy agreement from the operation of a provision of this Act, the agreement or any other agreement relating to the premises;

(g) modifying a provision of this Act (including a standard residential tenancy term) to allow parties to a residential tenancy agreement or an occupancy agreement to agree to temporary rent or fee reductions under the agreement.

(2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) A declaration expires on—

(a) the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends (the ***declaration end date***); or

(b) if the Minister considers that the effect of the COVID-19 pandemic justifies a later day, being a day not later than 3 months after the declaration end date—a later day notified by the Minister before the declaration end date.

(4) A notification under subsection (3) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

157 Expiry—pt 16

This part expires on the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends.

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.123] Section 156 (3) (a)

omit

the day the *Public Health (Emergency) Declaration 2020 (No 1)* (NI2020-153), as extended or further extended, ends

substitute

the first day no COVID-19 emergency is in force

[1.124] New section 156 (5) and (6)

after the note, insert

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This part expires at the end of a 3-month period during which no COVID-19 emergency has been in force.

[1.125] Section 157

omit

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Reporting period: **1 April – 30 June 2022**

Portfolio: Treasurer

Legislation: *Taxation Administration Act 1999*

This Act was amended by the *COVID-19 Emergency Response Legislation Amendment Act 2020*. The legislative amendments to this Act that give effect to the measures being reported on in this document are listed in Attachment A.

Measure: Include additional Ministerial powers to make determinations of rebate, exemption and deferral schemes.

Purpose of measure:

- To provide a set of consistent powers across tax types to provide relief for households and businesses through rebates, exemptions and deferrals. Existing measures have not allowed for rebates to be applied consistently across revenue lines.
- The general power for the Minister to determine a scheme, and the details within the scheme to provide relief will also be beneficial to allow for flexibility to respond to changes in the COVID-19 situation.

Alignment of measure

- ACT only initiative (any subsequent use of the additional Ministerial powers may relate to ACT only initiative, or align with National Cabinet or the NSW Government).

Promotional and public awareness campaigns undertaken

- Tax relief measures are published on the following sites:
    - ACT Revenue Office website, **COVID-19 Assistance page** (sets out details of various tax relief measures in the ACT): https://www.revenue.act.gov.au/covid-19-assistance;
    - ACT Government's COVID-19 website, **Family and Household Support**: https://www.covid19.act.gov.au/community/families-and-households; and
    - ACT Government's Business Hub website, **COVID-19 Economic Support for Business**: https://www.act.gov.au/business/business-support/covid-19-economic-support-for-business.

Stakeholder engagement undertaken

- Nil.

Cost of the measure

- Nil.

	2021-22	2022-23	2023-24
	$'000	$'000	$'000
Net Operating Impact	-	-	-

Where measurable, provide details on the monthly and cumulative impact

- A payroll tax exemption scheme for apprentices and trainees was implemented under section 137E of the Taxation Administration Act 1999. The *Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2021* (No 2) (DI2021-177) extends the operation of the payroll tax exemption for a further 12 months until 30 June 2022. It exempts wages paid or payable to eligible apprentices or trainees for the period 1 July 2021 to 30 June 2022. An eligible apprentice or trainee includes those who, on or after 1 August 2020, commence an approved training contract with an employer, or recommence a training contract that was suspended by an employer due to the COVID-19 emergency.
    - The estimated financial impact of continuing the initiative is negligible.
    - The disallowable instrument is available on the legislation register. See: https://www.legislation.act.gov.au/di/2021-177/.
- These Ministerial powers have been permanently adopted under Division 11.5A of the *Taxation Administration Act 1999*, following the *Operational Efficiencies (COVID-19) Legislation Amendment Act 2021* which commenced on 14 October 2021. The purpose of the amendment was to provide, on an ongoing basis and outside of the COVID-19 emergency period, a set of powers across tax types to provide relief for individuals, households and businesses through rebates, exemptions and deferrals.

Approved for tabling in the ACT Legislative Assembly

_____

Andrew Barr MLA
Treasurer

Date: 14/ 7 /22

COVID-19 EMERGENCY RESPONSE ACT 2020 QUARTERLY REPORT ON MEASURES

Attachment A

Amendments:

COVID-19 Emergency Response Legislation Amendment Act 2020

Date notified: 13 May 2020

[1.133] New section 6 (4) to (6)

insert

(4) This Act also includes general provisions in relation to revenue measures for the purpose of providing an economic response to a COVID-19 emergency.

(5) In this section:

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

(6) This subsection and subsections (4) and (5) expire at the end of a 2-year period during which no COVID-19 emergency has been in force.

[1.134] New division 11.5A

insert

Division 11.5A COVID-19 emergency response—revenue measures

137A Definitions—div 11.5A

In this division:

COVID-19 deferral scheme—see section 137D (1).

COVID-19 emergency means—

(a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or

(b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

COVID-19 exemption scheme—see section 137E (1).

COVID-19 rebate scheme—see section 137F (1).

COVID-19 scheme means the following:

(a) a COVID-19 deferral scheme;

(b) a COVID-19 exemption scheme;

(c) a COVID-19 rebate scheme.

137B Application—div 11.5A

If a COVID-19 scheme is determined under this division, the scheme applies in addition to any other provision in this Act and the other tax laws.

137C Ministerial considerations for determining a scheme—div 11.5A

The Minister must not determine a COVID-19 scheme under this division unless satisfied that the scheme is reasonable and necessary to provide an economic response to a COVID-19 emergency.

137D COVID-19 deferral scheme

(1) The Minister may determine a scheme (a ***COVID-19 deferral scheme***) for deferring the following:

(a) tax payable under a tax law;

(b) lodging a return required under a tax law.

(2) The COVID-19 deferral scheme must include the following matters:

(a) who is eligible to participate in the scheme;

(b) the tax amount, or requirement to lodge a return, that may be deferred under the scheme;

(c) a statement about whether, in the Minister's opinion, the scheme is consistent with human rights.

(3) The COVID-19 deferral scheme may include the following matters:

(a) how an application for deferral is to be made under the scheme;

(b) information that the commissioner may require to decide an application;

(c) conditions to which a deferral arrangement may be subject, including the rate of interest charged on the amount deferred.

(4) The COVID-19 deferral scheme may provide for any other relevant matter to be determined by the commissioner by notifiable instrument.

(5) The amount payable under a COVID-19 deferral scheme is a debt owing to the Territory.

(6) If the tax deferred under a COVID-19 deferral scheme relates to the holding of a property—the tax deferred is the first charge on the person's interest in the property to which the deferred tax relates.

(7) A COVID-19 deferral scheme determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

137E COVID-19 exemption scheme

(1) The Minister may determine a scheme to exempt a person who is required to pay tax under a tax law from the requirement to pay the tax (a ***COVID-19 exemption scheme***).

(2) The COVID-19 exemption scheme may include the following matters:

(a) an exemption from the requirement to pay some or all the tax payable under a tax law;

(b) applying the exemption for a stated period;

(c) applying the exemption to a particular transaction;

(d) applying the exemption in stated circumstances;

(e) making the exemption conditional on stated actions.

(3) The COVID-19 exemption scheme must include a statement about whether, in the Minister's opinion, the scheme is consistent with human rights.

(4) A COVID-19 exemption scheme determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

137F COVID-19 rebate scheme

(1) The Minister may determine a scheme to provide a rebate to a person who is required to pay tax under a tax law (a ***COVID-19 rebate scheme***).

(2) The COVID-19 rebate scheme must include the following matters:

(a) who is eligible to claim the rebate;

(b) the amount of the rebate, or the method of calculating the amount of the rebate, including any limits;

(c) a statement about whether, in the Minister's opinion, the scheme is consistent with human rights.

(3) The COVID-19 rebate scheme may include the following matters:

(a) if the rebate applies for a period—the period for which the rebate applies;

(b) if an application is required for the rebate—how the application is to be made;

(c) information that the commissioner may require to decide an application;

(d) conditions applying in relation to the rebate.

(4) The COVID-19 rebate scheme may provide for any other relevant matter to be determined by the commissioner by notifiable instrument.

(5) A COVID-19 rebate scheme determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

137G Expiry—div 11.5A

This division expires at the end of a 2-year period during which no COVID-19 emergency has been in force.

Mick Gentleman MLA
Manager of Government Business
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

Ms Joy Burch MLA
Speaker
ACT Legislative Assembly
By email: burch@parliament.act.gov.au

Dear Madam Speaker Joy

In accordance with subsection 3(3) of the *COVID-19 Emergency Response Act 2020*, I enclose Report 15 on COVID-19 Measures, for the reporting period 1 April – 30 June 2022.

As the report must be presented out of session by 31 July 2022, I would appreciate your assistance in providing a copy to each Member of the Legislative Assembly. I will also table a copy in the Legislative Assembly on 2 August 2022.

Thank you for your assistance.

Yours sincerely

Mick Gentleman MLA
Manager of Government Business
26/7/2022

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601
+61 2 6205 0051 gentleman@act.gov.au
@GENTLEMANMick MickGentleman mick.gentleman

Chief Minister, Treasury and Economic Development Directorate

To:	Chief Minister
Tracking No.:	CMTEDD2022/3497
Date:	31/08/2022
CC:	Minister for Health Head of Service Director General, Justice and Community Safety Directorate Director-General Community Services Directorate Director-General, ACT Health Directorate Director-General, EPSDD Deputy Director-General, Access Canberra
From:	Executive Group Manager, Policy and Cabinet
Subject:	Jervis Bay Territory service delivery arrangements and Memorandum of Understanding negotiation update
Critical Date:	09/09/2022
Critical Reason:	To receive your directions to support ongoing Memorandum of Understanding negotiations and future service delivery arrangements for the Jervis Bay Territory.

Noted 51/2/22

Recommendations

That you:

1. **Agree** that CMTEDD officials continue to seek a refreshed Memorandum of Understanding between the ACT Government and Commonwealth for the provision of services to the Jervis Bay Territory (JBT MoU);

Agreed / Not Agreed / Please Discuss

Thank you for copy and apologies for delay in noting. Commenting as Minister for Families and Community Services ... Sch 2.2(a)(x)

2. **Agree** (pending agreement to the above) that CMTEDD negotiations with the Commonwealth on the JBT MoU will seek to include the following parameters / principles:
    a. that the JBT MoU be a publicly available Ministerial-level agreement to be signed by yourself and the appropriate Commonwealth Minister

Agreed / Not Agreed / Please Discuss

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 1 1.6

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Agreed / Not Agreed / Please Discuss

5. **Sign** the letter to the Hon Kristy McBain MP, Minister for Regional Development, Local Government and Territories at **Attachment A** Sch 2.2(a)(x)

Signed / Not Signed / Please Discuss

Andrew Barr MLA 12/9/22

Minister's Office Feedback

Background

1. The Jervis Bay Territory (JBT) is a separate, non-self-governing Commonwealth Territory administered by the Minister responsible for Territories, primarily through the federal Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Infrastructure). It is not part of the ACT.
2. ACT law is in force in the JBT under the *Jervis Bay Territory Acceptance Act 1915 (Cth)*, to the extent it is applicable and subject to some exceptions.
3. The ACT Government is commissioned by the Commonwealth to provide a range of state-type services to the JBT.
    a. A JBT MoU was last signed in 2012 and, apart from Policy and Cabinet's service delivery agreement (SDA) associated with a central policy and coordination function, the last formal SDA for the JBT was signed in the 1990s.

Memorandum of Understanding Negotiations

4. On 30 July 2019, CMTEDD Policy & Cabinet (PCD) officials briefed you on the need for a refreshed JBT MoU to be developed, and the issues with the current service delivery arrangements (CMTEDD2019/3702). At that time, you agreed:
    a. PCD officials could take a starting negotiation position that the new JBT MoU be a high-level principles-based document with an associated SDA (or similar document); and

Sch 2.2(a)(xvi)

5. The development of a new JBT MoU commenced in 2019, with multiple draft iterations exchanged prior to a recent JBT MoU meeting between PCD and Infrastructure on 16 August 2022. At this meeting, PCD officials presented the ACT's negotiating positions, which were informed by your previous directions resulting from the 2019 JBT MoU brief and recent discussions held with your Office.

    a. At the meeting, PCD provided Infrastructure with the Statement of Intent which outlined ACT positions to inform future negotiations at **Attachment B**;

    b. During discussions, it was established that there remained several unresolved issues with the draft JBT MoU, including scope, inclusions and the nature of the document.

Jervis Bay Territory Service Provision

6. Background information on the JBT, existing commissioning arrangements between the ACT and Commonwealth, previous ACT service delivery decisions, and an outline of the ACT's approach to JBT service delivery is provided at **Attachment C**.

Issues

7. In addition to recommencing negotiations on a refreshed JBT MoU with the Commonwealth, there are several other current issues related to the ACT's ongoing provision of services to the JBT. In light of this, we have prepared this brief to:

    a. update you on the ongoing JBT MoU negotiations with the Commonwealth and to reconfirm and seek authorisation for the parameters of our positions for the negotiations;

Sch 2.2(a)(xvi)

Sch 2.2(a)(xvi)

    d. outline opportunities to advocate the ACT's positions to the Hon Kristy McBain MP, Minister for Regional Development, Local Government and Territories (Minister McBain).

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi), Sch 2.2(a)(xii)

Sch 2.2(a)(xvi), Sch 2.2(a)(xii), Sch 2.2(a)(x)

Memorandum of Understanding Negotiations – Application of Law in the Jervis Bay Territory:

15. With regard to the application of law in the JBT, the position that CMTEDD has consistently presented is that:

Sch 1 1.2

19. The future SDA (or similar document) will set out the legal and contractual framework for the ACT's delivery of services to the JBT on behalf of the Commonwealth.

20. Should this issue not be resolved, the ACT and Commonwealth will enter SDA (or similar document) negotiations without a shared understanding and governing framework for the commissioning relationship. Sch 2.2(a)(x)

Sch 2.2(a)(xv), Sch 2.2(a)(xii)

Memorandum of Understanding Negotiations – Ministerial agreement:

25. At the most recent meeting, PCD officials raised the need for the JBT MoU to be a publicly available Ministerially-signed document, with the subsequent SDA (or similar document) signed by the Head of Service.

Sch 2.2(a)(x), Sch 2.2(a)(xii), Sch 2.2(a)(xv)

29. PCD officials propose you seek agreement to raise and confirm this issue with Minister McBain in your letter (**Attachment A**).

Future of ACT Service Provision in the Jervis Bay Territory – ACT Government agreement to deliver new services:

Sch 2.2(a)(x), Sch 2.2(a)(xii), Sch 2.2(a)(xvi)

Future of ACT Service Provision in the Jervis Bay Territory – Framework for ACT Government to provide new services to the JBT on behalf of the Commonwealth:

35. Irrespective of the proposed approach towards providing new services, it is recognised there may be future situations which warrant the ACT Government's consideration of providing new services to the JBT on the Commonwealth's behalf.

Sch 2.2(a)(xvi)

Future of ACT Service Provision in the Jervis Bay Territory – ACT Aboriginal and Torres Strait Islander Children's Commissioner:

41. The ACT Government has agreed to establish the ACT Aboriginal and Torres Strait Islander Children's Commissioner.

42. The co-design report for establishment of the new Commissioner, prepared by Jumbunna, includes discussion of the Wreck Bay Aboriginal community in the JBT, including the view of participants that the Aboriginal and Torres Strait Islander Children's Commissioner must serve the Wreck Bay community. The report makes recommendations regarding outreach in the JBT.

    a. The Government Response, which was tabled in the Legislative Assembly on 4 August 2022, is clear that any new service delivered by the ACT in JBT is subject to the agreement of ACT and negotiation with the Commonwealth.

Sch 2.2(a)(x)

Sch 1 1.6

Sch 1 1.6

45. However, during the co-design process, participants communicated the view that the Aboriginal and Torres Strait Islander Children's Commissioner should provide oversight of services for children and young people provided by the ACT Government in the Wreck Bay community to ensure the cultural competence of these services and provide community members with culturally safe mechanisms for raising concerns about ACT provided services.

    a. This position has also been strongly advocated by the Our Booris, Our Way Implementation Oversight Committee (OBOW IOC).

Sch 2.2(a)(xvi)

Sch 1 1.6

48. **Attachment E and E.1** provide further details on the functions of the Commissioner and JBT implications for your consideration, Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Future of ACT Service Provision in the Jervis Bay Territory – Septic system and sewerage treatment plant authorisation and regulatory services

49. On 2 May 2022, the Commonwealth formally requested that the ACT Government deliver septic tank authorisation and regulation services in the JBT.

a. This request followed an enquiry in April 2022 from a member of the public which, as the ACT Government is not commissioned to deliver such services to the JBT, was referred by ACT Health to the Commonwealth for response.

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

52. Further information on the background and issues associated with this new request for ACT services in the JBT can be found at **Attachments F (various)**.

    a. Should the ACT consider accepting the Commonwealth's request, it is recommended legal advice be sought to understand the extent of any potential ACT legal liability in relation to the proposed services. Such advice would inform the ACT's negotiation of a detailed JBT services agreement.

Future Actions on JBT MoU and related service delivery documents:

53. Following your consideration of this brief, PCD will work to finalise a mutually acceptable JBT MoU with Infrastructure Sch 1 1.6

Sch 1 1.6

Engagement with Minister McBain on JBT service provision

55. Following the 2022 Federal election, and with the new Federal Minister responsible for the JBT, Minister McBain, being appointed – there is an opportunity for you to proactively advocate to the Minister the ACT's position and seek her agreement to resolve these issues.

56. You are expected to meet with Minister McBain on Monday 12 September 2022. While you will be briefed separately ahead of the meeting, this brief is expected to inform at least some of your discussions with Minister McBain on JBT-related matters.

57. A letter to Minister McBain on JBT matters is at Attachment A for your consideration.

Financial Implications

58. This brief does not have any direct financial impacts.

59. Funding for JBT services is provided by the Commonwealth, consistent with *s59 of the Australian Capital Territory (Self Government) Act 1988* (Cth) that the provision of services on behalf of the Commonwealth will be at no cost to the ACT Government.

Sch 2.2(a)(x)

Consultation

Internal:

60. PCD officials have consulted with:

    a. JACS officials in relation to the Aboriginal and Torres Strait Islander Children's Commissioner JBT service issue.

    b. ACT Environmental Protection Authority and ACT Health Protection service officials in relation to the potential provision of septic system and sewage treatment plant services to the JBT.

    c. ACTGSO for associated legal advice.

External:

61. PCD officials, supported by the ACTGSO, have been negotiating with officials from Infrastructure to develop a refreshed JBT MoU.

Work Health and Safety

62. N/A.

Benefits/Sensitivities

Sch 2.2(a)(x), Sch 2.2(a)(xii), Sch 2.2(a)(xvi)

Signatory Name:	Wilhelmina Blount	Phone:	X70835
Action Officers:	Graham Chadwick Kristie Cockfield	Phone:	X54614 X52838

Attachments

Attachment	Title
Attachment A	Att A – Chief Minister letter to the Hon Kristy McBain MP, Minister for Regional Development, Local Government and Territories - Jervis Bay Territory (JBT) matters
Attachment B	Att B – ACT Statement of Intent on JBT MoU – as provided to Infrastructure August 2022
Attachment C	Att C – ACT Government approach to JBT service requests – August 2022

Attachment D	Att D – GSO Advice 637280 – Status of the Jervis Bay Territory (JBT) – 20201222 – SENSITIVE LEGAL
Attachment E	Att E – The role of the ACT Aboriginal and Torres Strait Islander Children's Commissioner in relation to the JBT
Attachment E.1	Att E.1 – The role of the ACT Aboriginal and Torres Strait Islander Children's Commissioner in relation to the JBT
Attachment F	Att F – Authorisation and regulation of septic systems and sewage treatment plants in the ACT – July 2022
Attachment F.1	Att F.1 – Request for ACT Government septic system and sewage treatment plant authorisation and regulatory services in the JBT
Attachment F.2	Att F.2 – GSO Advice 634188 – Applicability of Environment Protection Act and Public Health Act legislation to the JBT (context: PFAS contamination) – 20180424 – SENSITIVE LEGAL

Andrew Barr MLA
Chief Minister
Treasurer
Minister for Climate Action
Minister for Economic Development
Minister for Tourism

Member for Kurrajong

The Hon Kristy McBain MP
Minister for Regional Development, Local Government and Territories
House of Representatives
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Minister McBain

Congratulations on your successful election campaign and your appointment as Minister for Regional Development, Local Government and Territories. I look forward to working collaboratively with you on a range of key issues to deliver positive outcomes for the Territory and the Canberra Region.

I would like to draw your attention to the ongoing collaborative work between ACT Government and Commonwealth officials towards developing a refreshed Memorandum of Understanding for delivery of ACT services to the Jervis Bay Territory (JBT MoU), which was last signed in 2012.

Sch 2.2(a)(x), Sch 2.2(a)(xvi), Sch 2.2(a)(xii)

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601
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Sch 2.2(a)(x), Sch 2.2(a)(xvi), Sch 2.2(a)(xii)

The ACT Government and the Commonwealth have long enjoyed an open, productive and collaborative relationship in relation to the delivery of ACT services to the JBT. I look forward to this positive engagement continuing, and to working with you to support beneficial outcomes for the JBT community. I look forward to discussing these, and other issues of interest to Canberra and the Canberra region, at the next opporutnity.

Yours sincerely

Andrew Barr MLA
Chief Minister

Attachment C: ACT Government approach to JBT service requests

Historical Approach

1. It is the long-held position of the ACT Government that it is not best-placed or obligated to provide services to the Jervis Bay Territory (JBT) on behalf of the Commonwealth.
2. Despite this, the ACT Government has maintained a public position that it is open to working with the Commonwealth to explore opportunities where improved service outcomes for the JBT community could be achieved.
3. Accordingly, the ACT's posture towards new or expanded JBT service requests has generally been to try to accommodate such requests (where reasonable, practical, and appropriate).

Sch 2.2(a)(x)

a. Sch 2.2(a)(x) The Commonwealth remained responsible for the pandemic response in the JBT and applied its own COVID-19 Public Health Directions to the JBT under its Commonwealth powers as administrator.

    i. The ACT agreed (subject to available capacity, and where a JBT notifiable disease notification or other similar request for CDC support was received by ACT Health) to deliver limited Communicable Disease Control support for the JBT. This consisted of remote contact tracing and case liaison support for JBT residents with a notifiable disease, such as COVID-19, as well as limited ACT COVID-19 Hotline support.

    ii. However, in practice, NSW led on JBT-related COVID-19 contact tracing by including JBT in its contact tracing processes for the Shoalhaven area, due to a range of cross-border impacts. As the primary provider of health services to the JBT, the NSW Health system is generally the first point of identification for any notifiable disease cases (including COVID-19) in the JBT.

b. Sch 2.2(a)(x) The Commonwealth commissioned independent PFAS water testing and advisory services.

Current Issues

Sch 2.2(a)(x)

6. As a part of MoU and service agreement negotiations, Policy & Cabinet has been working closely with ACT Directorates and the Commonwealth to clearly identify and delineate existing JBT services, and to explore potential new or expanded ACT JBT services which may support better outcomes for the JBT community.
    a. This includes, but is not limited to, potential new or expanded ACT JBT services in the areas of: restorative justice; youth justice; education; youth and family supports; environmental protection; and limited public health functions.
        i. However, the potentially expanded services under exploration have generally had a clear connection to the ACT's existing JBT services – for example, the ACT provides Courts and Corrections services for the JBT, and the availability of restorative justice services (by the ACT or another provider) would support improved justice options and outcomes more broadly for the JBT community.

Sch 2.2(a)(xvi)

    c. There are also JBT services which have historically been delivered by the ACT on an ad hoc basis following requests from the Commonwealth, such as: surveying services; assistance with road and place naming requests; domestic animal services support; and appointment of authorised officers.
    d. The Commonwealth has also, following a proposal from the ACT Education Directorate, agreed to and provided funding for JBT-based placements in the ACT Three Year Old Early Education Program. This new service is expected to commence in 2022 following finalisation of administrative arrangements.
    e. The ACT Government is also considering:

Sch 2.2(a)(xvi)

Sch 2.2(a)(x)

Future Positioning

Sch 2.2(a)(xvi), Sch 2.2(a)(x)

Sch 2.2(a)(x), Sch 2.2(a)(xii), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xii), Sch 2.2(a)(xvi)

Sch 1 1.6

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sensitivities

Sch 2.2(a)(x), Sch 2.2(a)(xii), Sch 2.2(a)(xvi)

Attachment E: ACT Aboriginal Torres Strait Islander Children's Commissioner and the Jervis Bay Territory

Background

1. The ACT Government has committed to establishing an Aboriginal and Torres Strait Islander Children's Commissioner. This commitment is in the Parliamentary and Governing Agreement for the 10th Legislative Assembly (as a commitment to implement recommendations from the *Our Booris, Our Way* Review) and the Government response to the Protection of Rights Services Review (2021).
    a. The *Our Booris, Our Way* Review included discussion of experiences with ACT Government provided child protection services from members of the Wreck Bay Aboriginal community in the Jervis Bay Territory (JBT).
2. The Justice and Community Safety Directorate (JACS) engaged the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney (Jumbunna) to lead a co-design process for the new Commissioner.
3. The Minister for Human Rights is proposing to introduce a Bill to the Legislative Assembly in September 2022 to establish the Aboriginal and Torres Strait Islander Children's Commissioner.
4. During the co-design process, participants communicated the view that the Aboriginal and Torres Strait Islander Children's Commissioner should provide oversight of services for children and young people provided by the ACT Government in the Wreck Bay community to ensure the cultural competence of these services and provide community members with culturally safe mechanisms for raising concerns about ACT provided services. This position has also been strongly advocated by the Our Booris, Our Way Implementation Oversight Committee (OBOW IOC).

Issues

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

    a. The ACT delivers a range of state-type services to the JBT on behalf of the Commonwealth, including but not limited to: courts, primary education, early childhood education regulation, child and youth protection services and (pending commencement in 2022-23) the ACT's Three Year Old Early Education Program.
    b. Wreck Bay Village, formerly Wreck Bay Aboriginal Reserve, is an Aboriginal community in the JBT, adjacent to the NSW coastal towns of Vincentia and Huskisson. The community is represented by the Wreck Bay Aboriginal

Community Council. At the 2016 census the population of Wreck Bay village was 152, although the Wreck Bay Aboriginal Community council estimated that the village population in 2018-19 fluctuated between 215 and 250.

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Aboriginal and Torres Strait Islander Children's Commissioner

7. Cabinet approved the policy for the *Aboriginal and Torres Strait Islander Children's Commissioner Bill* on 20 July 2022. The policy includes the establishment of an independent statutory authority, with a mix of individual and systemic advocacy functions relating to all systems affecting Aboriginal and Torres Strait Islander children and young people.

8. The co-design report (**Attachment E.1**) for establishment of the new Commissioner, prepared by Jumbunna, includes discussion of the Wreck Bay community, including the view of participants that the Aboriginal and Torres Strait Islander Children's Commissioner must serve the Wreck Bay community. The report makes recommendations regarding outreach in the JBT.

    a. A Government Response to the Report has been approved by Cabinet and was tabled in the Legislative Assembly on 4 August 2022. The Government agreed to all elements of the legislative model proposed by the co-design process.

    b. Given the specific focus in the Jumbunna report on the Wreck Bay community, this issue has been addressed in the Government Response. The Government Response is clear that any new service delivered by the ACT in JBT is subject to the agreement of ACT and negotiation with the Commonwealth.

Issues specific to the role of the Aboriginal and Torres Strait Islander Children's Commissioner in the Jervis Bay Territory

9. If the Aboriginal and Torres Strait Islander Children's Commissioner has a role providing oversight in the Jervis Bay Territory, they will need to navigate the differences between the two jurisdictions. Individual and systemic advocacy undertaken by the Commissioner in the ACT will be able to focus on a wide range of

systems that Aboriginal and Torres Strait Islander children and young people engage

Sch 2.2(a)(x)

Sch 1 1.2

Sch 1 1.2

12. If the Commissioner was to exercise their function in JBT, the ACT and Commonwealth would likely need to develop an agreement regarding the operation of these functions in the JBT to clarify the scope of application.

Options

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Next steps

[This section includes confidential legal advice that has been obtained from ACTGS and is subject to legal professional *privilege.]*

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 1 1.2

Financial Implications

27. As part of the 2022/23 Budget, the Government established the Aboriginal and Torres Strait Islander Children's Commissioner in the ACT. This commitment excluded providing outreach services to the JBT.

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Consultation

30. JACS has been engaging regularly with the OBOW IOC and Aboriginal and Torres Strait Islander Elected Body (ATSIEB) on the design of the new Commissioner. This has included discussions with the OBOW IOC about their wish for the Commissioner to operate within the JBT and for the Wreck Bay community to be engaged in the process to design the model for the Commissioner and advise on implementation.

Sch 2.2(a)(xvi)

Sch 2.2(a)(x), Sch 2.2(a)(xvi)

Benefits/Sensitivities

33. The OBOW IOC and co-design process participants have strongly advocated for the inclusion of the Wreck Bay community in the scope of the Aboriginal and Torres Strait Islander Children's Commissioner's role and functions. There will likely be criticism from the community if the new Commissioner is unable to have a role in the JBT in relation to ACT Government provided services affecting Aboriginal and Torres Strait Islander children and young people.

Sch 2.2(a)(x)

Co-Designing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT

Jumbunna Institute of Indigenous Education and Research,
Research Unit

March 2022

UTS UNIVERSITY OF TECHNOLOGY SYDNEY

Jumbunna Institute for Indigenous Education and Research acknowledges the ongoing custodianship of Country of Aboriginal and Torres Strait Islander peoples and pay our respects to Elders past and present. We acknowledge the ongoing resistance of Aboriginal and Torres Strait Islander peoples, particularly regarding the forced removal of Aboriginal and Torres Strait Islander children and young people from their families.

This project was commissioned by the Justice and Community Safety Directorate, ACT Government, and completed by a team including Larissa Behrendt, Lindon Coombes, Paul Gray, Jacynta Krakouer, James Beaufils, Wendy Hermeston and Alison Whittaker.

Suggested citation: Gray, P., Coombes, L, Beaufils, J., Krakouer, J., Hermeston, W., Whittaker, A., and Behrendt, L, *Co-Designing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT,* Sydney, Jumbunna Institute, 2022.

We acknowledge the engagement and contribution of Aboriginal and Torres Strait Islander and non-Indigenous participants and stakeholders, including the Our Booris Our Way Implementation Oversight Committee, the ACT Aboriginal and Torres Strait Islander Elected Body, the ACT Government, and the ACT Human Rights Commission.

The Jumbunna Institute for Indigenous Education and Research acknowledges that Canberra has been built on the lands of the Ngunnawal people. We also acknowledge the Wreck Bay Aboriginal Community.

We know that the best interests of our children are to grow up with family, knowing our culture, strong in identity as proud Aboriginal and Torres Strait Islander people.[1]

We must stop the processes that continue to discriminate against our families and change policies and practices to ensure families are supported to keep their children at home.
We want our kids to be safe and nurtured. We want the self-determination to find and manage our own solutions and support services.
Our community needs confidence that past mistakes will not be repeated.
We don't want our families to be punished for their circumstances. We want to be guided to find the right supports and services in order to be safe and confident parents.[2]

[1] *Our Booris, Our Way* Final report, December 2019, p. 104.
[2] *Our Booris, Our Way* Interim report, August 2018, p. 2.

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Executive Summary

Background

The disproportionately high rights of intervention by government agencies in the lives of Aboriginal and Torres Strait Islander children and families, and the poor outcomes achieved for Aboriginal and Torres Strait Islander children and young people has long been a critical concern for communities. A key element of addressing these inequities is the establishment of adequate oversight and accountability mechanisms focused on the rights and interests of Aboriginal and Torres Strait Islander children and young people. The recent *Our Booris, Our Way* Review examined the over-representation of Aboriginal and Torres Strait Islander children and young people in out-of-home care in the ACT. Among the numerous recommendations was a call for greater accountability of child protection systems and practice, including the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner. The recommendation emphasised the need for adequate authority to promote and uphold the rights and interests of Aboriginal and Torres Strait Islander children, to engage closely with the Aboriginal and Torres Strait Islander community of the ACT, and to advise, oversee and where necessary intervene to ensure that all Aboriginal and Torres Strait Islander children and young people have the full enjoyment of their rights.

Subsequent work, including the 2021 *Protection of Rights Services Review* further reiterated the importance of establishing an Aboriginal and Torres Strait Islander Children's Commissioner to provide a "specific, culturally informed, culturally safe and accessible oversight body".[3] It noted that contributors to that review envisaged a role with broad functions and responsibilities focused on Aboriginal and Torres Strait Islander children and young people and their families, and spanning health, education, family, justice and community contexts.

The ACT Government agreed in principle to establish an Aboriginal and Torres Strait Islander Children's Commissioner in July 2020.

Building on this work, the Jumbunna Institute for Indigenous Education and Research was invited to facilitate community dialogues to develop a proposed model for the Aboriginal and Torres Strait Islander Children's Commissioner role, including its functions and powers, governance, connection and location, role characteristics and selection processes. Jumbunna undertook a three-phase approach to engage with stakeholders, developing and presenting a community discussion paper, facilitating a series of community dialogues and stakeholder engagements, followed by a final refinement session with Aboriginal and Torres Strait Islander stakeholders including members of the Our Booris Our Way Implementation Oversight Committee, the ACT Aboriginal and Torres Strait Islander Elected Body, representatives of Aboriginal Community Controlled Organisations, and supported by the ACT Justice and Community Safety Directorate and current Commissioners of the ACT Human Rights Commission. Unfortunately, the impact of the COVID-19 pandemic throughout 2021 interrupted the engagement process and required a range of accommodations, including the use of online videoconferencing for most community dialogues. It also limited the opportunity to engage with the Wreck Bay Aboriginal community; an outstanding issue that requires further engagement in subsequent steps towards the establishment of the Aboriginal and Torres Strait Islander Children's Commissioner.

Approach

The Community Discussion Paper stage provided an overview of the conversation to date, including the *Our Booris, Our Way* Final Report and the *Protection of Rights Services* Review. Additionally, it was informed by a review of the literature and the internationally recognised Paris Principles which outline the standards for the establishment of National Human Rights Institutions. These include:

[3] Insight Consulting Australia, *Protection of Rights Services Review* (2021), 92.

- a clear mandate and authority to independently exercise its responsibilities, including powers of inquiry and investigation
- engagement with all stakeholders, including community, government, service providers and experts to protect and promote human rights
- cooperation with other human rights bodies
- the opportunity to influence systems and practice
- resources and infrastructure to effectively carry out their responsibilities
- a clear, transparent and participatory appointment process

The foundations of this project were further informed by the analysis of the national Aboriginal and Torres Strait Islander children's peak body, SNAICC - National Voice for our Children, which considered the application of these principles in the context of promoting and protecting the rights and interests of Aboriginal and Torres Strait Islander children and young people. It was also informed by the experiences of Aboriginal and Torres Strait Islander statutory officers appointed to similar roles in other jurisdictions. The Discussion Paper was presented in an online webinar in November 2021. Direct engagements with the ACT Aboriginal and Torres Strait Islander Elected Body and the Our Booris Our Way Implementation Oversight Committee also set the scene for the community dialogues and ensured key input into the process.

Community Dialogues were held throughout November and into December, including online interviews and group conversations with stakeholders. In some circumstances, direct engagements with Aboriginal and Torres Strait Islander organisations and stakeholders were requested, included where possible (given public health settings at that time) in-person conversations. A special session with young people from currently in detention was also arranged. In some instances, community stakeholders expressed frustration with the long process of reform and what was viewed as a lack of commitment to action and structural change to address entrenched inequities affecting Aboriginal and Torres Strait Islander children and families. Community stakeholders outlined their perspective of the opportunity for the role and key elements to ensure it was successful at driving much-needed change. In addition to engagements with Aboriginal and Torres Strait Islander stakeholders, government stakeholders were also invited to participate through their Directorates, including education, health and community services, as well as Commissioners from the ACT Human Rights Commission. Together, these dialogues represented the bulk of the input into the development of the proposed role, and were used to develop a series of key points regarding the functions and powers, governance and connections, and role characteristics and selection process to be tested and finalised through the final refinement phase.

In the final refinement phase, key stakeholders including members of the ACT Aboriginal and Torres Strait Islander Elected Body, the Our Booris Our Way Implementation Oversight Committee, and representatives from Aboriginal Community Controlled Organisations, as well as ACT Human Rights Commissioners and representatives of JACS tested key themes and proposals arising from the Community Dialogues towards finalisation of the proposed models. Using a consensus approach, Aboriginal and Torres Strait Islander participants worked towards agreement on the functions and powers, governance and connections, role characteristics and selection processes. They also identified key non-legislative enablers and additional factors that they felt would be critical to the success of the role.

Findings

Through the three-stage process a proposed model was developed to inform efforts to legislate for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT. Respondents were clear to place their aspirations and expectations for this role within a broader context of persistent inequity and systems failure. While the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner was seen as an important development in achieving greater transparency and accountability of systems affecting Aboriginal and Torres Strait Islander children and

young people (and their families and communities), respondents noted that further structural change is needed to address these inequities. In particular, themes related to self-determination and accountability were raised, and the need for systems and practice that operate from the perspective of Aboriginal and Torres Strait Islander communities. Respondents highlighted the need for healing-based, restorative systems and practices. Further, stakeholders were keen to guard against a 'tokenistic' role, with limited mandate and resourcing to achieve substantive change, or a role 'set up to fail' through an overly broad mandate and accompanying expectations that would be impossible to achieve.

Within this context, respondents outlined a Commissioner role with a broad human rights mandate, including key instruments such as the UN Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous Peoples, and associated optional protocols and publications (such as Committee Comments and other resources) regarding the application of these instruments in the context of Indigenous children and young people, and Indigenous communities more broadly. Consistent with previous engagements, they noted a broad scope, including all areas affecting the lives and wellbeing of Aboriginal and Torres Strait Islander children and young people, including those systems that significantly impact on their families. Respondents emphasised the importance of the Commissioner being suitably empowered to undertake individual and systemic advocacy, including a mandate to intervene in matters early in decision making processes and influence the outcome of such decisions in ways that are consistent with the recognition and full enjoyment of the rights and interests of Aboriginal and Torres Strait Islander children and young people, individually and collectively. While respondents noted the important role of complaints processes, there was a consistent view to prioritise advocacy and intervention. However it was recognised that the Commissioner may nevertheless have an important role supporting existing complaints processes to be more accessible and responsive to the needs of Aboriginal and Torres Strait Islander children and young people and their families. It is important this is carefully communicated and implemented, to ensure that Aboriginal children and families experience a 'no wrong door' service, and don't feel rebuffed or redirected in raising their concerns with the office of the Aboriginal and Torres Strait Islander Children's Commissioner. Systemic advocacy included undertaking investigations and reviews under the Commissioner's own initiative, and influencing systems, policies and practice to safeguard the rights and interests of Aboriginal and Torres Strait Islander children. Transparent reporting that respects the diversity of the Aboriginal and Torres Strait Islander community of the ACT was seen as a key element of building accountability and confidence in the role.

The independence of the role was a key principle that stakeholders valued highly. There was clear consensus that the role must be independent in the exercise of its authority, consistent with the Paris Principles. Stakeholders also emphasised the importance of close relationships with the Aboriginal and Torres Strait Islander community of the ACT, respecting the diversity of this community across the ACT and including the Wreck Bay Aboriginal community. Those was seen as a core responsibility of the proposed Commissioner. However stakeholders were in general agreement that a legislative mandate for the establishment of an Advisory Group was unnecessary, and may constrain the development of effective place-based solutions. Rather, the legislation should effectively enable such approaches, with it being the responsibility of the Commissioner to engage with the Aboriginal and Torres Strait Islander community of the ACT to establish the appropriate mechanisms.

Relationships with government stakeholders and service providers were seen in a more functional light, reflecting the role of the Commissioner in providing effective independent oversight and advocacy to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people. Such relationships were seen as an important part of influencing change and achieving outcomes for children and families. Further, there was a view that the role should be independent of, although enjoy a close working relationship with, the ACT Human Rights Commission, to maximise impact for the community while preserving the distinct positioning desired of the Aboriginal and Torres Strait Islander Children's Commissioner. This is consistent with the Paris Principles emphasising the importance of influencing change and working with other human rights organisations in the promotion of rights. Noting this positioning, stakeholders felt that the Commissioner should be located in an open and accessible space that is welcoming to Aboriginal and Torres Strait Islander children and young people. It was further noted that this may be complemented by 'satellite' locations, including a regular presence within youth detention and other residential facilities to ensure access for Aboriginal and Torres Strait Islander children and young people in these settings.

Finally, stakeholders emphasised the importance of a clear, transparent and participatory selection process, consistent with the Paris Principles. Stakeholders emphasised a focus on values in addition to demonstrated knowledge, skills and experience relevant to the broad scope and responsibilities of the role. The ability to engage effectively with stakeholders, including in particularly Aboriginal and Torres Strait Islander children and young people, and families and communities more broadly, was seen as critical. There was also broad consensus on the importance of including representatives of the Aboriginal and Torres Strait Islander community of the ACT in the recruitment process in order to build confidence in the role. However, it was clear that this involvement must be transparent and accountable, guarding against real or perceived conflicts of interest which might undermine this goal. Aboriginal and Torres Strait Islander children and young people were also identified as a key group who might be involved in the selection process, given the importance of effective engagement with this population for the success of the role.

Proposed Model

These views, and others, were tested through the final model refinement session with Aboriginal and Torres Strait Islander stakeholders, towards consensus of the final model. This discussion is outlined in greater detail in the relevant section of the report. The outcome of this process is outlined generally in Table 1, below. Broadly, the role is related to the existing Public Advocate and Children and Young Persons Commissioner role, including oversight, compliance and monitoring, and advocacy and inquiry functions.

In recognition of the needed for broader systemic change, additional issues were identified that must be considered alongside the legislative and establishment processes. First, direct engagement with the Wreck Bay Aboriginal Community is warranted, providing an opportunity for that community to contribute to the legislative framework and key enablers of the Commissioner role, and its relationship with their community. Second, the Commissioner role must be adequately resourced to deliver on its significant mandate. Third, given existing under-resourcing relative to need, and expected increases in demand arising from the work of the Commissioner, there is a need for increased resourcing of Aboriginal and Torres Strait Islander child and family services to enable actions identified through individual and systemic advocacy. Fourth, ongoing reform of various related systems in partnership with the Aboriginal and Torres Strait Islander community of the ACT, including full implementation of the *Our Booris, Our Way* recommendations is necessary to maximise the impact of the proposed role, including mechanisms to realise aspirations for self-determination and self-governance by and for Aboriginal and Torres Strait Islander communities in the ACT. Fifth, further engagement with the Aboriginal and Torres Strait Islander community of the ACT is needed throughout the legislative and establishment process, including a guarantee of community review of draft legislation towards endorsement before moving to establishment. This should be supported by a clear timeline for progress, and transparent conversations with community stakeholders towards agreement on necessary resourcing for the Commissioner and their team. Finally, community stakeholders requested a commitment to a relatively short-term review process following implementation, enabling the Commissioner and community stakeholders to raise challenges and propose refinements in the legislation, policy and resource enablers to effectively deliver on the mandate to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people in the ACT.

Table 1 - Proposed Model

Domain	Legislative	Non-Legislative enablers
Functions and Powers	Explicit mandate to promote and protect the rights of Aboriginal and Torres Strait Islander Children, with a broad scope across all systems affecting Aboriginal and Torres Strait Islander children and young people Linked to key human rights instruments (including UN Convention on the Rights of the Child and UN Declaration on the Rights of Indigenous Peoples), aligned to existing human rights legislation in the ACT Explicit reference to focus on Aboriginal and Torres Strait Islander children and young people, from a cultural standpoint, and noting the importance of connectedness – to family, community, culture and Country – as critical to best interests. Clear expectation for transparency and accountability to the Aboriginal and Torres Strait Islander community, including at least annual reporting to the ACT Legislative Assembly and Aboriginal and Torres Strait Islander community. Reporting to be independent of government. Authorised for individual and systemic advocacy, own-motion inquiry, investigation and research, with a holistic framework that understands children and young people in their developmental context Enable active oversight of government systems' interactions with Aboriginal and Torres Strait Islander children, including those monitoring and compliance responsibilities invested in the current Public Advocate and Children and Young People Commission, as well as strong provisions to enable access to Aboriginal and Torres Strait Islander children, particularly in closed institutions. Inclusion into scope of role the opportunity to provide advice to government regarding relevant policy development activities, at the discretion of the Commissioner Proactive focus. Authorised to recommend action from government agencies and relevant child and family services to promote and protect the rights of Aboriginal and Torres Strait Islander children (individually and collectively), with provision to require a response outlining the steps taken. Authorised to join matters at any stage, including as a party in court proceedings relevant to the rights and interests of an Aboriginal and Torres Strait Islander child or children, to inform the decision makers including the Court Clear authorisation to share and receive information regarding Aboriginal and Torres Strait Islander children and	Adequate resourcing of Commissioner's office to enable individual and systemic advocacy, including experienced case managers and advocates, as well as community liaison Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap. Increased investment in Aboriginal and Torres Strait Islander child and family services to enable action given anticipated increase in demand Commitment to future review of role design, ensuring functions and framework fit for purpose Effective relationship with government to enable input to policy development activities where relevant, including notification mechanisms for relevant policies that are of particular importance to the role of the Commissioner advocating for Aboriginal and Torres Strait Islander children and young people in the ACT

	young people, including from government agencies, service providers, and the ACT Human Rights Commission	
Governance and Connection	Clear statutory independence, established as a standalone office (not positioned within the ACT Human Rights Commission) Clear expectations to engage continuously with all segments of the Aboriginal and Torres Strait Islander community of the ACT Enablers for the establishment of an Aboriginal and Torres Strait Islander Community Advisory and/or Children and young People Advisory, at the discretion of the Commissioner and according to their own processes.	Resourcing for continuous engagement, including possible Advisory group(s), accessible office space and 'hub' design (including presence at Bimberi). Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap.
Selection Process	Guidance that the appointment process is to be undertaken in partnership with the Aboriginal and Torres Strait Islander community Appointed by Minister, based on recommendations from transparent and collaborative appointment process	Transparent, multi-staged recruitment strategy, including attributes and expectations, community representation in process and management of possible conflicts of interest

Final Report

Introduction

The *Our Booris, Our Way* Review investigated the disproportionately high rates of intervention by the statutory child protection system in the lives of Aboriginal and Torres Strait Islander children and families in the ACT, finding a system in desperate need of reform. The Review made 28 recommendations for urgent change, spanning systems, policy and practice, intended to end the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, improve the experiences and children and families, and shape a better future through holistic systems that promote healing rather than inflicting further harm.

Among these urgent recommendations from the *Our Booris Our Way Committee* was the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner; an independent and empowered statutory officer to promote transparency and accountability of systems affecting their children. The recommendation specifically noted the need for specific authority and capacity to intervene and engage in child protection processes, making an immediate difference for Aboriginal and Torres Strait Islander children and families.

This recommendation follows similar steps in other jurisdictions, including Victoria, Queensland and South Australia, to appoint independent statutory officers focused on Aboriginal and Torres Strait Islander children and young people, providing varying levels of oversight and accountability of government systems. The need for greater monitoring and accountability of child protection systems has been a central feature of Aboriginal and Torres Strait Islander child protection advocacy nationally for some time, with accountability identified as a core *Building Block* for reform as part of the SNAICC-led *Family Matters Roadmap* released in 2016[4].

Concurrent and subsequent reviews, including the *Protection of Rights Services Review,* and the *Inquiry into Child and Youth Protection Services,* have likewise emphasised the importance of adequate monitoring and accountability of such systems, and the support of the Aboriginal and Torres Strait Islander community for the establishment of such a role. However the specific design characteristics of the role remained unclear. An expansive remit presented potential challenges in balancing the requirements of different functions, and the foundational point of delivering meaningful outcomes for Aboriginal and Torres Strait Islander children and young people, their families and communities.

Working alongside the *Our Booris Our Way Implementation Oversight Committee ('OBOWIOC and the Aboriginal and Torres Strait Islander Elected Body,* the Jumbunna Institute for Indigenous Education and Research ('Jumbunna') facilitated a series of dialogues to develop a clear model to guide legislative and other efforts towards establishing this important role. These dialogues included community members, local community organisations, nominated government stakeholders and current Commissioners within the ACT Human Rights Commission towards clarifying the functions and powers, governance and connections, location, role characteristics and selection process for the appointment of a dedicated Aboriginal and Torres Strait Islander Children's Commissioner in the ACT.

This report sets out in brief the background and key considerations for establishing the Commissioner role, the approach taken to engage stakeholders in the development of the model, and outlines the proposed model developed through this process. It briefly outlines the context for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT, including the Paris Principles, internationally recognised standards for human rights institutions, such as a Children's Commissioner,

[4] SNAICC, Family Matters Roadmap 2017)

intended to protect and promote human rights, and that provide a framework for setting out the functions of human rights oversight bodies.[5]

Finally, a summary of themes arising from engagement with Aboriginal and Torres Strait Islander community and other stakeholders are presented, leading to a proposed 'consensus model', and supported by rationale and stakeholder expectations for the dedicated Commissioner role. Stakeholders outlined the need for a broadly defined role to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people in the ACT, emphasising in particular the need to approach considerations about the rights and best interests of Aboriginal and Torres Strait Islander children from the cultural standpoint of the Aboriginal and Torres Strait Islander community, rather than the non-Indigenous community from whose standpoint such systems currently operate to the detriment of Aboriginal and Torres Strait Islander children. We heard about the importance of a clear mandate and statutory authority to scrutinise systems and practices affecting Aboriginal and Torres Strait Islander children, and to proactively intervene to promote systems change and better decision making in those significant processes that affect the lifelong wellbeing of Aboriginal and Torres Strait Islander children and young people, and the future of our communities. Finally, the process emphasised that an appropriately empowered commissioner has a critical role to play, but will only realise the full benefits for Aboriginal and Torres Strait Islander children and young people, families and communities if accompanied by other significant structural and practice reforms, such as those recommended in the *Our Booris Our Way* Report. This theme was clearly stated in that report, which noted:

> *"There is no one, single policy that will change our children's futures – our recommendations address systemic and practice changes that we know will improve the outcomes for our children. These recommendations need to be implemented quickly – there is no time for slow, steady implementation – this is a child protection emergency.[6]"*

Background

The *Our Booris, Our Way* review, initiated by the ACT Government in June 2017, investigated disproportionately high numbers of Aboriginal and Torres Strait Islander children and young people involved with the ACT child protection system, including in Wreck Bay.

A co-design process involving representatives from Aboriginal Community Controlled Organisations and other community members outlined the scope and governance of the review, including the establishment of the *Our Booris, Our Way* Steering Committee (the Steering Committee). The review included five key elements, including extensive case reviews, community engagement, interviews with children, parents, carers and families, a public submissions process and data analysis arising from the case reviews.[7] The Wreck Bay Aboriginal Community, which is located on the south coast of NSW in the Jervis Bay Territory, is governed by the laws of the ACT and receives ACT services, including those affecting children and young people such as child protection and education, and was included in the review.[8]

The *Our Booris, Our Way* Final Report (the Final Report) examined why Aboriginal and Torres Strait Islander children and young people enter care, along with the systemic issues in the ACT statutory child protection system. Its focus was mainly on informing system, policy and practice improvements, including:

- Strategies for reducing the high numbers of Aboriginal and Torres Strait Islander children in care
- Improving children's experiences and outcomes in care, including ties to community and culture

[5] The Paris Principles are the *Principles relating to the Status of National Institutions*, adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993 and endorsed by the World Conference on Human Rights. See <https://www.un.org/ruleoflaw/files/PRINCI~5.PDF>.
[6] Our Booris, Our Way Finaly Report, p.103
[7] Our Booris, Our Way Final Report, p. 23
[8] Our Booris, Our Way Final Report, p. 70.

- Exiting children from care via improved, safe and supported pathways to restoration.[9]

The Final Report, released in December 2019, set out its findings based on evidence gathered through the five key elements of the review outlined above, including comprehensive reviews into the cases of over 300 Aboriginal and Torres Strait Islander children and young people who were in contact with the ACT child protection system on 31 December 2017.[10]

The Steering Committee spoke plainly about the involvement of Aboriginal and Torres Strait Islander children in the Final Report, who, at the time of the release, were 16.3 times more likely to be in out-of-home care (OOHC) than non-Indigenous children.[11]

The Steering Committee found the ACT child protection system to be an inherently biased one, that served to discriminate against Aboriginal and Torres Strait Islander children and families. The Committee specifically called out children's experiences as heavily burdened by 'a lack of active efforts, poor consistency in experience and decision making, discrimination, and cultural dislocation.[12]

Crucial changes were needed to improve a system viewed as continuously failing Aboriginal and Torres Strait Islander children involved with child protection in the ACT, with devastating and enduring consequences for local families and communities. The Steering Committee made some 28 recommendations for reform, including around improving care and protection practice. For the Committee, the report represented a long overdue call to action. The Steering Committee saw the Report's proposed reforms as upholding the rights and cultural security, in the spirit of self-determination, of Aboriginal and Torres Strait Islander children and young people in contact with the system.

The need for a dedicated Aboriginal and Torres Strait Islander Children's Commissioner in the ACT

A major focus identified during the review concerned an ongoing lack of transparency and need for oversight in the ACT child protection sector. Establishing a dedicated Aboriginal and Torres Strait Islander Children's Commissioner (the Commissioner), as highlighted in the *Our Booris, Our Way* Interim Report (the Interim Report), could address the critical need for oversight. The role could carry out 'comprehensive review[s] and [give] advice to the child protection system on issues of culture and equity.'[13]

The Steering Committee laid out the case for a dedicated commissioner in its *Our Booris, Our Way* Final Report recommendations. A Commissioner could step in and support Aboriginal and Torres Strait Islander children and families, not only by carrying out reviews, but also via specific powers to:

> *[I]ntervene and engage in child protection processes. The Commissioner, on an ongoing basis, would provide monitoring, advice and advocacy on systemic and individual cases. The Commissioner would be able to advise and influence government on a broad spectrum of issues that impact our children across both government and non-government services including for example, education, health, housing, child protection and provide independent advice on issues of culture and equity. They would also have the specific ability to engage as a party to case conferences and provide alternative pathways to resolution than court orders. It is the desire of the community for the Commissioner to be more engaged and connected to the community through current Aboriginal Community Controlled Organisations (ACCO) and the future Aboriginal Child Care Association that would distinguish it from other jurisdictions' singular rights-based framework.[14]*

[9] *Our Booris, Our Way* Final Report, December 2019, p. 12.
[10] *Our Booris, Our Way* Final Report
[11] *Our Booris, Our Way* Final report, December 2019, p. 5.
[12] *Our Booris, Our Way* Final Report, December 2019, p. 12.
[13] *Our Booris, Our Way* Interim report, August 2018, p. 5.
[14] *Our Booris, Our Way* Final Report, December 2019, p. 79.

This recommendation follows the appointment of dedicated Aboriginal and Torres Strait Islander Children's Commissioners in other jurisdictions, including Victoria in 2013, with similar roles established in Queensland and South Australia. SNAICC, the National Voice for Children and Family Matters have led calls over recent years for the establishment of dedicated Aboriginal and Torres Strait Islander Commissioners for children and young people in each state and territory, as well as nationally (a National Commissioner). Creating a National Commissioner in particular, could build on impetus created by establishment of Aboriginal and Torres Strait Islander Children's Commissioner roles in Victoria and South Australia, and 'contribute to more effective, consistent, efficient and accountable systems and services for Aboriginal and Torres Strait Islander children and young people'.[15]

A National Commissioner was identified as crucial to improving systems and the oversight of services, transparency and accountability and to improved protection of Aboriginal and Torres Strait Islander children and young people's rights. SNAICC also proposed that the Paris Principles provide a framework for establishing the national Aboriginal and Torres Strait Islander Children's Commissioner role.

The Paris Principles are internationally-recognised minimum standards for the establishment of National Human Rights Institutions NHRIs that protect and promote human rights, such as a Children's Commissioner. The Principles are suitable for assessing and establishing such a role, because they provide a guide for 'the status, structure, mandate, composition, powers and methods of operation of domestic human rights entities.'[16]

For a NHRI to effectively meet best practice standards and support improved outcomes for Aboriginal and Torres Strait Islander children and young people, according to the Paris Principles, there are key elements to be incorporated, including:

- A clear mandate and legal authority to undertake the Children's Commissioner role that ensures its independence and autonomy from other parties (such as government and non-government organisations), including powers of inquiry and investigation
- Engagement with stakeholders, including government, non-government organisations, experts and the broader community, to protect and promote human rights.
- Co-operation with other human rights bodies
- The opportunity to influence systems, policies and practice, including the ability to make recommendations and relevant follow up actions regarding the response to recommendations
- Clear, transparent and participatory appointment processes, with a pre-determined criteria
- Funding and infrastructure necessary to carry out their job effectively.

The principles set out the responsibilities of NHRIs, including:

- Provide advice or recommendations on the promotion and protection of human rights, including legislation and policy
- Inquire into matters where there has been a violation of human rights, whether including individual and systemic circumstances
- Publish reports (for instance, annual reports or reports from inquiries) including tabling with legislature
- Cooperate with other human rights bodies, including international human rights systems
- Raise public awareness about human rights issues.

The Paris Principles provide important guidance for establishing the role of Aboriginal and Torres Strait Islander Children's Commissioner in the ACT, and for how the role and mandate might best be enshrined

[15] SNAICC, Family Matters – Position Paper – Establishment of a Aboriginal and Torres Strait Islander Children and Young Persons National Children's Commissioner October 2019), 5.
[16] SNAICC/Family Matters Options Paper, p.7.

in law.[17] The Principles framed the community dialogue and co-design process around establishing an ACT Aboriginal and Torres Strait Islander Children Commissioner role.

The ACT Government agreed in principle to the recommendation for a dedicated Aboriginal and Torres Strait Islander Children's Commissioner in July 2020. Since then, the case for the role has been building. The community dialogue and co-design process regarding the Commissioner role has taken place in the context of broader reviews into the ACT care system, and Australia-wide conversations regarding the role of a national Aboriginal and Torres Strait Islander Children's Commissioner.

The ACT's Standing Committee on Health, Ageing and Community Services initiated an inquiry into Child and Youth Protection Services, in light of a case involving the unjust removal of five Aboriginal children from their mother. The inquiry centred on the ability to share information in the ACT child protection system in accordance with the *Children and Young Persons Act 2008* (ACT) (*Children and Young Persons Act*), 'with a view to providing the maximum transparency and accountability so as to maintain community confidence in the ACT's care and protection system.'[18] Information sharing is acknowledged by the ACT government as critical to the delivery of effective, equitable and efficient care and protection services.[19]

A report from the inquiry, released in July 2020, contained evidence of a lack of appeal and review rights, and barriers to the sharing of important, sensitive information, that was:

> *[C]ounterproductive to transparent and accountable decision-making ... such a culture is not in the best interests of a child or young person—[who] the system seeks to serve.*[20]

The inquiry Standing Committee's recommendations for reform included proposals for improving information sharing and mechanisms for external review. The Committee explicitly noted the need to open care decision-making to increased scrutiny and transparency, in compatibility with provisions under the *Human Rights Act*.[21] The proposed Aboriginal and Torres Strait Islander Children's Commissioner role may assist in achieving these recommendations, for example holding the care system to account by challenging decisions early in proceedings, via individual advocacy or systems-level advocacy and review.

The *Our Booris, Our Way* review and the inquiry into Child and Youth Protection Services occurred alongside the *Protection of Rights Services Review*, which commenced in June 2020. This review considered the extent to which protection of rights services reforms implemented in the ACT in 2016, including restructuring the operation of protection of rights services, achieved their intended aims.

The review examined, via community engagement and stakeholder input, the *Our Booris, Our Way* review recommendation to establish a dedicated Aboriginal and Torres Strait Islander Children's Commissioner. The review included a finding that:

> *[S]elf determination of Aboriginal and Torres Strait Islander people in the ACT ought to include oversight and advocacy. The[ir] current experience ... in terms of outcomes, services and systems warrants a specific, culturally informed, culturally safe and accessible oversight body.*[22]

The review noted the potential for a Children's Commissioner, if properly supported and resourced, to 'lift all oversight in the ACT for Aboriginal and Torres Strait Islander people [via connections with relevant institutions, including] the HRC, Ombudsman, Human Services Registrar, Inspector of Correctional Services, Official Visitors, etc.' [23]

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[17] SNAICC/Family Matters Options Paper, p.7.
[18] ACT Govt 9th HACS Report on Child and Youth Protection Services, Part 2 (July 2020), p. 7.
[19] Govt Response to Protn of Rights Services Review.
[20] ACT Govt 9th HACS Report on Child and Youth Protection Services, Part 2 (July 2020), p. viii.
[21] ACT Govt 9th HACS Report on Child and Youth Protection Services, Part 2 (July 2020), Recommendations 19-21, pp. 59-61.
[22] ACT Govt – ACT JACS Directorate, Protection of Rights Services Review (2021), 92.
[23] Insight Consulting Australia, *Protection of Rights Services Review* (2021), p.84.

The review documented both community support and community expectations around the functions and responsibilities of an independent, dedicated Children's Commissioner, with oversight of matters relating to Aboriginal and Torres Strait Islander families. Participants in the *Protection of Rights Services* review envisaged the role as having broad functions and responsibilities; they agreed the role must:

> 1) Focus on children, young people (with culturally flexible definition) and their families
>
> 2) Be holistic regarding child outcomes –covering health, education, family, justice and community contexts.[24]

The *Protection of Rights Services Review* emphasised the need for concentrating the work of the Children's Commissioner on improving universal services and systems and early intervention) to help prevent Aboriginal and Torres Strait Islander children's entry into out-of-home care OOHC) and the juvenile justice system. This review also highlighted the importance of designing in collaboration with community, a coherent model for the role, that is responsive to community needs and aspirations and able to efficiently and effectively deliver on its mandate.[25] It flagged key areas of contention, including how community expectations for complaints handling functions might be positioned alongside strong oversight, accountability and advocacy functions, how the Commissioner might navigate connections with the Aboriginal and Torres Strait Islander community while exercising independence, including oversight of Aboriginal organisations, and community views regarding key attributes of a successful Commissioner to guide appointment processes.

The ACT government agreed to recommendations in the *Protection of Rights Services Review* for a new Aboriginal and Torres Strait Islander Children's Commissioner, with:

- A wider remit to amplify oversight for Aboriginal and Torres Strait Islander services and outcomes more broadly
- Appropriate information sharing powers and,
- An agreed Protocol to provide governance and collaboration between the Children's Commissioner and the HRC[26]

The ACT government also agreed to the recommendation that the dedicated Children's Commissioner should be Aboriginal and/or Torres Strait Islander. Further, there was agreement in principle to the recommendation that the Commissioner have similar powers and functions to those of the Public Advocate and Children and Young People Commissioner and the ability to actively support complainants to access existing HRC complaints processes. The government viewed details such as the location of the role as to be determined via the present Aboriginal community-led engagement and co-design process.[27]

It must be noted that local Aboriginal and Torres Strait Islander community and stakeholders have expressed considerable frustration with the multiple reviews into the ACT care system, which some viewed as symptomatic of ongoing failures in the statutory care system that contribute to the continuing over-representation of Aboriginal and Torres Strait Islander children in care in the ACT.[28] This echoes the urgency emphasised in the *Our Booris Our Way Report*[29], including the recommendation to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

Based on this background literature and reports from prior engagements with the Aboriginal and Torres Strait Islander community of the ACT, Jumbunna was invited in mid-2021 to work with the *Our Booris, Our Way* Implementation Oversight Committee and JACS, to develop a three-phase approach to engaging community and other stakeholders in the further refinement of the role towards its timely establishment. This process was further informed through informal conversations with relevant similar statutory officers in other jurisdictions, to focus the community dialogues on key issues that are informed from their own views

[24] Insight Consulting Australia, *Protection of Rights Services Review* (2021), p. 81.
[25] ACT Commissioner Project Plan Draft COVID Revision – 2020, p. 1.
[26] Govt Response to Protn of Rights Services Review.
[27] Govt Response to Protn of Rights Services Review.
[28] ACT Government, Standing Committee on Health, Ageing and Community Services 9th HACS Report 11 – Report on Child and Youth Protection Services, Part 2 July 2020) , citing 90 Submission No. 9—Canberra Restorative Community Network, p. 4.
[29] Our Booris Our Way Report, above n. 11

and the experiences of similar processes in other jurisdictions. Community dialogues and consultations with other stakeholders focused on clarifying and refining:

- Functions and powers of the proposed Commissioner – the role's human rights mandate and scope of powers of oversight, inquiry, and investigation, including individual and systemic advocacy, complaints handling and other responsibilities
- Governance, connections, location – including concerning the independence and plurality of the role, how it co-operates with other human rights entities and the relationship between the Commissioner and diverse groups within the ACT Aboriginal and Torres Strait Islander community, including in Wreck Bay
- Role characteristics – including key skills and attributes expected of the Commissioner as well as the recruitment process, and
- How the role might be established and operationalised in the ACT.

The responses of those who took part in consultations will have significant implications for the way the Aboriginal and Torres Strait Islander Children's Commissioner works.[30]

Establishing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT

The Jumbunna Institute for Indigenous Education and Research at the University of Technology, Sydney (UTS), was asked to facilitate this engagement process to further develop the proposed Aboriginal and Torres Strait Islander Children's Commissioner role for the ACT. In partnership with the *Our Booris Our Way Implementation Oversight* Committee and the ACT Government Justice and Community Safety (JACS) Directorate, Jumbunna developed a three-stage approach, including development and presentation of a community discussion paper, a series of community dialogues and stakeholder engagements, and a final model refinement session to share the key themes of the community dialogues and finalise the proposed model. In addition to the *Our Booris Our Way Implementation Oversight Committee,* Jumbunna also met with the ACT Aboriginal and Torres Strait Islander Elected Body to discuss the proposed approach. The approach was also submitted to the UTS Human Research Ethics Committee, and was granted ethics approval. This process is outlined in Table 2 – Consultation Process.

While this process was planned to commence in mid-2021, localised lockdowns and border closures in response to the ongoing COVID-19 pandemic delayed the opportunity for direct engagement. Following this delay, and given uncertainty about the possibility of future waves as well as a sense of urgency from the OBOWIOC for the establishment of the role, it was determined the process would commence in November 2021 with a hybrid approach including online platforms and COVID-safe in-person sessions where permitted by public health guidelines. The discussion paper was released in November 2021[31], including an online Webinar to talk through the key issues and consultation approach. This was advertised through local Aboriginal and Torres Strait Islander community organisations.

Community networks were likewise used to advertise community dialogues, held in late November 2021. A website was developed to host relevant documentation and enable interested community stakeholders to register for co-design sessions[32]. Community stakeholders were also invited to contact the Jumbunna team directly if preferred, in order to offer the greatest flexibility for community participation. Relevant government directorates were approached by JACS to nominate representatives who were subsequently invited to participate by the Jumbunna team. A similar invitation was made current Commissioners through the ACT Human Rights Commission. Through JACS and staff at the Bimberi Youth Justice Centre, Aboriginal and Torres Strait Islander children in detention were also given an opportunity to participate. Participant information sheets were provided to interested participants, with consent provided in writing prior to the session, or verbally at the commencement of each session.

[30] Discn paper (2021), p 4.
[31] See, https://jumbunna.files.wordpress.com/2021/11/act-aboriginal-childrens-commissioner-discussion-paper.pdf
[32] See, https://jumbunna.institute/2021/11/02/have-your-say/

Table 2: Consultation process

Consultation phase	Detail
1. Release of a community discussion paper. Aligned with the Paris Principles; released 5 November 2021.	• Provided brief overview of conversations arising from the *Our Booris, Our Way* Final Report and the *Protection of Rights Services* Review etc. Informed stakeholders about the literature and experiences of other relevant jurisdictions in establishing similar independent oversight roles • Provided main opportunity for community stakeholders to take part in co-design process and shape final Commissioner model • Informed by community stakeholder input. • Jumbunna hosted an online community session to discuss the paper
2. Community dialogue stakeholder engagement Held in November 2021.	• Community dialogue sessions (duration approx. 3 hours), intended to maximise community reach and opportunity for participation • One session with the Aboriginal and Torres Strait Islander Elected Body • Four individual interviews and six open sessions held with community stakeholders (five online, one in person). Some organisations rescheduled the pre-booked sessions for interviews at suitable times. • Two sessions held with stakeholder government department nominees • One session held with the ACT Human Rights Commission • One session held with Aboriginal and Torres Strait Islander youth in detention in the ACT. • Topics included the Commissioner's functions and powers and their prioritisation by stakeholders, governance, recruitment structures. Also discussed location both physically and in relation to other stakeholders (especially community), connections and relationships, and the process for recruitment of a Commissioner and its operationalisation generally. • To ensure participants felt comfortable to speak freely, sessions were not recorded. Instead, facilitators noted discussions and expectations about the role.[33]
3. Final co-design or refinement session. Facilitated by Jumbunna 10 December 2021.	• Aim was to collaborate on developing the model, and work towards achieving a level of consensus about participants' expectations for the Commissioner role. • Enabled stakeholders to share insights from the community dialogues and other discussions. • Conducted with stakeholders from government and the ACT Human Rights Commission.

In total, the community dialogue and stakeholder engagement phase included one online information session, and six open online community dialogues, as well as five interviews with community stakeholders or other special sessions. One in-person session was offered but not attended. There were two online sessions with government representatives, and one with Commissioners of the ACT Human Rights Commission. Overall attendance was low, reflecting engagement challenges arising from the ongoing pandemic and community fatigue, as well as the numerous recent processes seeking community input on similar matters (discussed above). The ongoing pandemic particularly limited engagement with the Wreck Bay Aboriginal community, and this remains an outstanding issue that should be addressed in the coming stages including legislative drafting and role development.

Following the community dialogue phase, a final refinement session was hosted in-person in Canberra, facilitated by the Jumbunna team and support by JACS. This session allowed the key themes arising from the dialogues to be shared and tested with community stakeholders in a collective session towards the development of the final model. This session was attended by eight community stakeholders from the

[33] From Next Steps, Jumbunna discn paper, p 7

community dialogues, including members of the Our Booris, Our Way Implementation Oversight Committee and Aboriginal and Torres Strait Islander Elected Body as well as representatives of Aboriginal Community Controlled Organisations. Three Commissioners from the ACT Human Rights Commission also attended, offering their experience in similar roles and knowledge of their enabling legislation to assist the deliberations of community stakeholders.

Emerging themes from the community dialogue sessions are summarised in the next section, 'What we heard'. Outcomes from final refinement session are summarised in the 'Final refinement session' section below.

What We Heard

Community Dialogues

Conversations with community stakeholders revealed a number of key themes related to the areas of interest; functions and powers, governance and connections, location and selection process.

Need for broader systems change

Many respondents were clear to position their input regarding the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner in a broader context of persistent system and practice failures, reinforcing the need for significant systems change beyond the appointment of a Commissioner. Put simply, community respondents were clear that the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner would have an important role to play in elevating the need and opportunities for change alongside Aboriginal and Torres Strait Islander communities in the ACT, that must be accompanied by action from government to address the underlying problems of systems, policies and practice that fail to protect and promote the rights and best interests of Aboriginal and Torres Strait Islander children and young people.

Respondents expressed frustration about ongoing systems failures and the harm inflicted on Aboriginal and Torres Strait Islander children and young people, their families and communities, particularly through coercive systems such as child protection and juvenile justice systems. In particular, despite reviews and ongoing community advocacy, many respondents noted very limited substantive change, with Aboriginal and Torres Strait Islander children and young people continuing to be disproportionately affected, particularly with respect to more intrusive interventions such as youth detention and out-of-home care. Many respondents noted the poor performance of these systems relative to other Australian jurisdictions. They felt that the ACT could and should be performing much better for Aboriginal and Torres Strait Islander children, families and communities. This frustration extended to delays enacting the changes recommended by the Our Booris Our Way report in a timely manner, including the appointment of the proposed Aboriginal and Torres Strait Islander Children's Commissioner. As outlined above, many community stakeholders felt a dedicated Aboriginal and Torres Strait Islander Children's Commissioner was essential in providing adequate oversight attuned to the rights and interests of Aboriginal and Torres Strait Islander children and young people. While the existing functions within the ACT Human Rights Commission were noted, respondents felt that there was a critical need for significantly greater focus on promoting and protecting the rights of Aboriginal and Torres Strait Islander children in the ACT.

As part of this broader systemic change, themes related to self-determination and accountability were regularly noted. Respondents wanted to see decisions about Aboriginal and Torres Strait Islander children to be in the hands of their community, with greater transparency and accountability to Aboriginal and Torres Strait Islander communities. Respondents consistently noted the importance that such systems centre and operate from the perspective of the Aboriginal and Torres Strait Islander communities they are intended to serve. This included a focus on systems and practices that were healing-based and restorative, reflecting the importance of connectedness, rather than coercive and punitive, and that contributes to disconnection and isolation of children and families.

It was generally within this context that respondents engaged with questions regarding the functions and powers, governance and connections, location and selection process of the proposed Aboriginal and

Torres Strait Islander Children's Commissioner for the ACT. Community stakeholders wanted a system that operates on their terms, and a Commissioner role that operated for them. Community stakeholders outlined a large, expansive role for the proposed Commissioner role, in response to the urgent need to address these systems that were variously described as poorly suited, racist and oppressive. Community stakeholders were clear that the role must be properly empowered through legislation, and adequately resourced to fulfill its mandate. There were concerns about the harms of a 'tokenistic' role that lacks the necessary mandate and resources to make a substantive difference for Aboriginal and Torres Strait Islander children and young people, individually and collectively. One respondent noted that they "don't want it to be another tokenistic role. It has to be about practical outcomes that should be achieved."

At the same time, community stakeholders recognised that the necessary and overdue systems changes were beyond the sole responsibility of the proposed Commissioner role, and did not want to see the role "set up to fail" through an overwhelmingly broad mandate, particularly given concerns about the level of resourcing that would be provided to support the Commissioner to undertake their functions effectively. They did not want to see the role co-opted into almost 'shadow' roles – shadow child protection service, shadow judiciary, shadow Minister – but to actively engage with these systems to monitor outcomes, promote urgent change to systems and practices, and hold them accountable to do better for Aboriginal and Torres Strait Islander children, families and communities.

Functions and Powers

Broad human rights mandate with a cultural lens

Community respondents consistently called for the proposed Commissioner role to be guided by a broad human rights mandate, centred specifically on the rights and interests of Aboriginal and Torres Strait Islander children. Respondents consistently noted that properly understanding and promoting the rights and interests of Aboriginal and Torres Strait Islander children requires taking the perspective of Aboriginal and Torres Strait Islander communities, and operating from that 'cultural lens'. Some respondents felt that including a specific reference to this cultural lens when framing the mandate for the role may be beneficial, noting in particular the importance of connectedness – to family, community, culture and Country, in promoting the rights and interests of Aboriginal and Torres Strait Islander children and young people, as well as the importance of equitable access to opportunities and outcomes.

Many respondents particularly noted that the 'best interests of the child', as understood from an Aboriginal and Torres Strait Islander standpoint, should be elevated through this role. Community stakeholders noted that this concept is often not well understood or promoted through existing systems affecting Aboriginal and Torres Strait Islander children, failing to properly value key elements critical to their lifelong wellbeing including genuine lived experience and immersion in culture and community. Further, respondents wanted the Commissioner role to take an 'active' stance, with many respondents noting the importance of getting these decisions right the first time, in order to prevent later issues and harms arising from poor decisions that respondents felt were common within these systems. Some respondents specifically noted the existing role of the Public Advocate and the Commissioner for Children and Young People as a useful model or starting point with respect to the legislated functions and powers to consider for the proposed role of an Aboriginal and Torres Strait Islander Children's Commissioner. However, respondents reiterated that the exercise of these functions and powers must reflect the cultural perspective and expectations of the Aboriginal and Torres Strait Islander community of the ACT.

Broad remit across systems

While respondents were often focused on the harms caused through the juvenile justice and child protection systems as being pressing issues requiring attention, community stakeholders consistently identified a broad scope for the proposed role.

This was clearly articulated by one respondent who noted that the Commissioner role should include "anything that plays a role in our babies' lives". Another respondent noted that the role is about 'standing up for our kids', holding those who exercise power over our kids accountable. This reflects the breadth of the mandate but also the high interest in particular systems, with many respondents noting the history of

violence and harm perpetrated by child protection and justice systems and their ongoing impacts experienced by Aboriginal and Torres Strait Islander children, families and communities.

Individual and Systemic Advocacy

Respondents consistently outlined a role for the Commissioner that included individual and systemic advocacy on behalf of Aboriginal and Torres Strait Islander children and young people, their families and communities. This mandate should make clear community expectations for a proactive stance and enable the Commissioner to receive and share information about Aboriginal and Torres Strait Islander children, to intervene in systems to promote and protect their rights in real time, and to request action and follow up on steps taken to secure their rights, both individually and collectively. This advocacy should be holistic in nature, breaking down silos within government systems and keeping children at the centre in a way that understands the social, cultural and political context of their lives. Respondents noted this should include powers for inquiry and investigation under the Commissioner's own initiative, and must be supported by an adequately resourced team that is able to respond to community need.

Within individual advocacy, community stakeholders outlined a mandate that extended to the authority to 'intervene' in matters to actively advocate during decision making processes in order to support change for Aboriginal and Torres Strait Islander children and young people that understands their family, community and cultural context. As noted generally with respect to the broad mandate of the role, there was clear consensus from community stakeholders about the importance of culture for Aboriginal and Torres Strait Islander children and young people. Respondents asserted that the Commissioner must safeguard the right of all Aboriginal and Torres Strait Islander children and young people to grow up in culture, particularly those affected by the out-of-home care or juvenile justice systems. Community stakeholders wanted to see the Commissioner making a difference in the lives of Aboriginal and Torres Strait Islander children and young people "in real time", noting the importance of the developmental period for lifelong wellbeing. Stakeholders saw effective early individual advocacy as an important part of preventing systemic harms that were a pressing concern for many respondents, creating a more positive trajectory for Aboriginal and Torres Strait Islander children and young people, their families and communities.

Young people noted the importance of individual advocacy not coming from a place of judgement of Aboriginal and Torres Strait Islander children and families, but is able to empathise with them, value their voices, and advocate for their rights. They outlined a mandate that would enable the proposed Commissioner role to get involved in the circumstances of Aboriginal and Torres Strait Islander children and young people "as soon as possible", to provide advocacy and "help them have a voice". Young people also emphasised the importance of education and awareness, and suggested that the proposed Commissioner might be able to provide young people with advice about the system's response to their circumstances, what else might be done to create a change, and work with young people and their families to achieve that change.

Connection to family was repeatedly raised by stakeholders as an issue for individual advocacy. Respondents noted the need for an empowered or authoritative position that can step in and hold what they experienced as often 'closed' or defensive systems and services to account regarding their efforts to safeguard the cultural rights of Aboriginal and Torres Strait Islander children and young people, including connections to family and community. Community stakeholders felt it important that the Commissioner have the necessary authority and standing across the system to "make the changes happen". For some respondents, current accountability mechanisms lacked the necessary powers to intervene. They suggested creating a pathway for the proposed Commissioner to challenge decisions and promote a better understanding of the rights and interests of Aboriginal and Torres Strait Islander children and young people broadly, as well as the implications of this in specific matters. Such a role might directly advocate with decision makers within government or the judiciary to inform decisions about the future of Aboriginal and Torres Strait Islander children and young people. Another suggestion was to develop an 'injunction' function that might allow the Commissioner to intervene in a decision making process and provide advice.

For some respondents, the Commissioner role should be able to 'compel' action, particularly regarding the connection of Aboriginal and Torres Strait Islander children and young people to family, community,

culture and Country, support for identity formation and development, and guard Aboriginal and Torres Strait Islander children against the harms of systems that perpetuate racial injustice. Some specific actions raised by stakeholders included the ability to review actions taken by Police, Corrections and child protection agencies, to take action if there have been failures in the duty of care, compel documents and testimony, and have strong investigative powers, focused on transparency and building community confidence.

Many respondents also noted that to be effective, the Commissioner may require a team including advocates, guardians, and experienced case managers, with a deep understanding of ethical and professional practice frameworks. These processes should be structured in order to support Aboriginal and Torres Strait Islander children and young people, families and communities navigate complex systems.

Community stakeholders noted the likely relationship between individual advocacy and systemic change, with the opportunity of learnings from an individual matter informing broader systemic change to help every young person in similar circumstances. Respondents also acknowledged that individual advocacy can be an area of high expectation and demand within the community, and this presents potential risks in overwhelming the focus of the role. Respondents noted that effective individual advocacy can be extremely time consuming, and limited resources may result in community expectations not being met. If the role is not adequately resourced to make a difference, it would not be possible to gain the confidence of the Aboriginal and Torres Strait Islander community. Further, clear provisions for the sharing of information would be needed to ensure the Commissioner would have access to all the information they need to provide individual advocacy.

Systemic advocacy was noted as an important aspect of holding governments, services and broader systems affecting Aboriginal and Torres Strait Islander children and young people accountable, including in particular ensuring that government departments and services comply with their own policies and practices, such as the Aboriginal and Torres Strait Islander Child Placement Principle. Some respondents expressed concern that systems continue to co-opt principles and safeguards developed by and for Aboriginal and Torres Strait Islander communities, such as the ATSCIPP, and apply them in ways that detract from their purpose, perpetuating the disconnection of Aboriginal and Torres Strait Islander children and young people through non-Indigenous processes. Providing this oversight and accountability of systems was noted as requiring specific powers of review, including access to information, as well as the opportunity to interview or seek testimony from officials, delegates and other stakeholders.

Systemic advocacy was seen as an important element in promoting systems change, both within specific systems, but also across systems as part of a more holistic, coordinated response that breaks down the ‘silos’ established by governments. Community respondents again noted the importance of a holistic service system with coverage across the ACT, with a need for “flipping the model” to focus on prevention and early intervention. Respondents noted the need to put a stop to ongoing harms arising from current systems, including in particular the destruction of identity, culture and connections for Aboriginal and Torres Strait Islander children and young people, such as through removals under child protection legislation. The challenges inherent in this role were clearly understood, with community stakeholders raising that achieving change in such systems is often extremely difficult. Stakeholders noted the need to address racism and structural violence that they saw as inherent in the system, and predicted institutional resistance, noting the importance of the role being adequately supported to assert authority with respect to the rights and interests of Aboriginal and Torres Strait Islander children and young people.

The Commissioner was seen as having an important role in shining a light on systems that undermine Aboriginal and Torres Strait Islander families, working alongside the community to put forward alternative approaches that are grounded in the rights and interests of Aboriginal and Torres Strait Islander children. supporting service system (re)design, through their research, advocacy and recommendations – something that young respondents particularly noted. Many respondents noted that key indicators were “going the wrong way”, expressing the urgent need for significant systemic reform. The Commissioner should include the scope to follow up on any actions taken in response to their recommendations, to provide oversight of active change.

Systemic advocacy was also seen as including undertaking and publishing research regarding the impact of various systems on Aboriginal and Torres Strait Islander children and young people, elevating statistics

and reporting on outcomes achieved by these systems and practices that are understood from a community standpoint. This should include both immediate outcomes but also 'downstream' impacts, particularly for child protection and other intrusive interventions. Community stakeholders reported that the role should challenge persistent stereotypes and assumptions that underlie these systems, and promote systems change that is oriented towards self-determination and healing, holding services and governments accountable for outcomes experienced by Aboriginal and Torres Strait Islander children, families and communities, and promoting equity in service system design, investment and outcomes. Through these actions, the Commissioner would have a role in identifying where systems, practices or reforms have failed to achieve their stated aims, and guide better alternatives. For example, one respondent noted a family support program that was imposed on community, and poorly suited, but nevertheless implemented. Similarly, calls for family conferencing within systems was noted as another area requiring attention, as some respondents felt this was not done well. There was broad consensus that the scope of systemic advocacy by the Commissioner should include independent review of programs or services, so that programs that underperform for Aboriginal and Torres Strait Islander children and families can be identified and, working with the Aboriginal and Torres Strait Islander community, alternatives can be developed and implemented.

Some community stakeholders noted that the Commissioner's systemic advocacy might also include input into government policy. While there was general support for this, there was also wariness about how this might be managed. There was an awareness that the proposed Commissioner role cannot be required to be everywhere at once, and a mandate requiring input on government policy affecting Aboriginal and Torres Strait Islander children and young people may provide a significant impost on the role that threatens its independence, drawing it towards a government-led agenda of reform. However, the Commissioner may also have a role in undertaking community engagement and consultation about proposed changes, as well as providing oversight and accountability for proposed reforms or recommendations to ensure action. Some respondents expressed concern about governments misunderstanding or re-casting recommendations in a way that is not beneficial to Aboriginal and Torres Strait Islander children, families and communities. Some respondents further expressed frustration that reforms and action on recommendations had become increasingly superficial and failed to grapple with the deeper structural issues necessary to achieve substantive change. Respondents were clear that the proposed Commissioner must be able to hold governments accountable for substantive changes to the systems they administer and their impact on Aboriginal and Torres Strait Islander children, particularly those that are known to cause harm. In particular, the independent Commissioner may have an important role in elevating Aboriginal and Torres Strait Islander voices with respect to proposed reforms or recommendations to promote alignment with community perspectives, particularly given the proposed positioning of the Commissioner as being culturally grounded and exercising its role in close connection with the Aboriginal and Torres Strait Islander community of the ACT.

Community stakeholders also identified the need for transparency, both in terms of clearly outlining the efforts of the Commissioner in advocating for Aboriginal and Torres Strait Islander children and young people, but also in promoting transparency and public accountability of systems affecting Aboriginal and Torres Strait Islander children and young people. Some respondents felt that the Commissioner could have an important role in 'demystifying' systems such as the statutory child protection system through community education.

While there was consensus on the need for the proposed Commissioner to hold systems accountable and 'create social change', there was concern that this increase in scrutiny may in turn increase already high demands placed on under-resourced Aboriginal community-controlled services.

One respondent noted that the role might have legislated powers to hold perpetrators accountable for harm caused to children and young people. This respondent noted that often, even when harms are substantiated (for example in juvenile justice or out-of-home care settings), there are no consequences for those responsible for this harm. It was suggested that this might include the opportunity to make recommendations for prosecution of those causing harm in relevant circumstances.

Complaints

Receiving and responding to complaints had been identified as a key area point of contention through the previous consultations processes, and was a particular area of focus given the specific and often contrasting stance and standards of complaints handling relative to individual advocacy, and their resource intensive nature. Respondents were specifically asked about the role of the proposed Commissioner in receiving and responding to complaints from Aboriginal and Torres Strait Islander children and young people, families and community stakeholders. In short, most respondents prioritised individual advocacy to actively promote and protect the rights of Aboriginal and Torres Strait Islander children, and suggested that while the Commissioner should have a role in supporting access to complaints processes for Aboriginal and Torres Strait Islander children and families and assist in ensuring those processes are culturally safe and responsive, these processes might remain within the specialised system within the ACT Human Rights Commission.

Respondents noted that complaints processes can often be a difficult space for community members to navigate, including concerns about racial discrimination, noting in particular the different standards and processes associated with formal complaints mechanisms. However in the absence of other empowered mechanisms to get systems to listen to their concerns for their children and young people, such processes often become a key site for engagement in trying to create the necessary change to safeguard their children's rights and wellbeing. Some stakeholders noted that complaints should likewise be approached from an Aboriginal and Torres Strait Islander standpoint, requiring a cultural lens as well as effective community engagement. For other respondents, there was a need for 'balance', acknowledging the issue of organisations or systems 'investigating' or resolving complaints about their own systems and conduct, but concern about placing too much responsibility and expectation in this proposed role. Rather, it was suggested that the Commissioner role could provide oversight and escalation of other complaints processes. That is, the Commissioner may support existing complaints mechanisms within the Human Rights Commission, assisting Aboriginal and Torres Strait Islander complainants to engage with and navigate these processes when and as required, and promoting access and cultural safety of these processes.

Ultimately, it emerged through the community dialogues that the informal language of 'complaint' is used somewhat interchangeably with that of advocacy. The focus of community stakeholders were relatively consistent – the need for an accessible, authoritative mechanism that was able to engage with decision makers across the system, particularly at the time of decisions, and use their voice to challenge the status quo that undervalues the specific needs of Aboriginal and Torres Strait Islander children and elevate their rights and interests, as well as the concerns of their family and community, to create immediate and substantive change for Aboriginal and Torres Strait Islander children and young people, their families and communities – something that will "make a difference". While review of past actions and accountability for process failures was a part of this, there was acknowledgement that the necessary elements of complaints processes often occur after harm has incurred. Stakeholders acknowledged that complaints processes can be an important aspect of accountability, however there was a consistent view across community respondents to prioritise a focus on proactive processes that can ensure cases progress on the right trajectory as early as possible.

Access

Many respondents noted the importance of the Commissioner being accessible to Aboriginal and Torres Strait Islander communities, particularly children and young people. Young people themselves noted that there should be many avenues for engagement and advocacy, so that children and young people, families and communities can easily raise issues, and have confidence that the Commissioner will be able to make a difference. Accessibility should include consideration of the diverse needs of community members, including children and young people, and families, with disability, so that access is "easy and inclusive", and anyone that needs help is able to come forward. It was noted that this could include delegates in juvenile justice facilities, connections with Official Visitors, and other opportunities to streamline access for all members of the community.

Reporting

There was clear consensus about the importance of reporting for the proposed Commissioner role, providing an opportunity for transparency and informing the community about their work, including key concerns, opportunities and challenges. However, community stakeholders were clear that they do not want the role to be overly focused on formal written reporting – they expect to see the Commissioner out in the community, engaging with them and taking practical steps to make a difference. Community stakeholders were adamant that reporting should be public and transparent, while protecting the privacy of children and families, and in particular distributed to the Aboriginal and Torres Strait Islander community, consistent with principles of transparency, accessibility and accountability.

Governance and Connections

Independence

There was clear consensus among community stakeholders that the role must be independent, carrying its own legislated mandate to undertake its work, free from interference, and on an equal footing to other similar roles in the ACT.

Community stakeholders generally noted the importance of a strong connection and relationship with the Aboriginal and Torres Strait Islander community (see below), however noted that the authority, and responsibility, must sit independently with the Commissioner. While some respondents noted the significant overlap with existing Commissioners (including in particular the Public Advocate and the Commissioner for Children and Young People), community stakeholders were clear that the proposed role was a standalone role with full authority, rather than a deputy or delegated role that has emerged in other jurisdictions. There was a concern that such a positioning may create a view that the role, and therefore the rights and interests of Aboriginal and Torres Strait Islander children and young people, were in some way secondary or not as important. Respondents also noted that administrative processes, particularly funding and resourcing decisions, may undermine the important principle of independence and the ability of the Commissioner to fulfil its mandate.

Relationship with the Aboriginal and Torres Strait Islander community

Stakeholders agreed that a strong relationship between the proposed Commissioner and the Aboriginal and Torres Strait Islander community is a key feature that is critical to the success of the role. Respondents emphasised the importance of regular and consistent engagement with children and young people, families and community stakeholders, and noted that this should be a core responsibility of the Commissioner.

Community stakeholders noted their expectation for the Commissioner to regularly be out in community, purposefully engaging with Aboriginal and Torres Strait Islander children and young people and the broader community, with a particular focus on those in specific settings like detention or out-of-home care.

Young people noted that consistency was an important feature, identifying the importance of a regular, ongoing presence to enable relationships to form, particularly with respect to children and young people themselves. They also noted the importance of good working relationships with Aboriginal community organisations and services. This was echoed by all community stakeholders. Respondents were clear that the role must serve the whole community, including Wreck Bay, and work hard to engage children and families who are the most isolated.

Positive relationships with the Aboriginal and Torres Strait Islander community were also identified as being critical to the wellbeing of the Commissioner, given the importance of connectedness for Aboriginal and Torres Strait Islander people. Such support would be a key factor in guarding against burnout.

Respondents were specifically asked about the establishment of a community advisory group, and whether that should be mandated, permitted or avoided. There was general consensus about the importance of ongoing community engagement, promoting access to community voices and community and cultural advice. A community advisory council was broadly seen as a possible mechanism for promoting these connections, however there were mixed views regarding whether such a body should be

mandated or not. Some respondents noted that a mandated community advisory group may be a 'headache' for a Commissioner, particularly if vulnerable to 'community politics'. Additionally, some respondents noted that various organisations already have youth advisories that may be able to be utilised to inform the Commissioner. There was general agreement across a number of stakeholders that the Commissioner should engage with the community to consider how best to develop and manage these relationships in the exercise of their responsibilities, including the core role of ongoing and respective community engagement. This should have respect for the diversity of the ACT Aboriginal and Torres Strait Islander community, including but not limited to the Aboriginal and Torres Strait Islander Elected Body and Aboriginal Community Controlled Organisations.

Where a community advisory is established, respondents felt it should have a diverse representation, reflecting the diversity of the Aboriginal and Torres Strait Islander community in the ACT. This could include Elders, advocates, service providers, and those with lived experience. Hearing the voices of those most affected by these systems was seen as particularly important for the Commissioner, including children and young people, however it was noted that doing so requires special consideration and support to ensure that all community members are safe and supported in their engagement with the Commissioner.

Relationship with Government and non-Indigenous service providers

Community stakeholders identified that the proposed Commissioner's relationship with government and other stakeholders should be characterised by the Commissioner's exercise of independent, empowered oversight and accountability of these systems to the Aboriginal and Torres Strait Islander community, and should include functional relationships across agencies to promote change in systems and practice that protect and promote the rights of Aboriginal and Torres Strait Islander children and young people.

Community stakeholders noted the importance of effective relationships with systems affecting Aboriginal and Torres Strait Islander children, including in particular child protection, police, youth justice and corrections, with an identified need for strong relationships at both the practice and management levels. Young people noted the importance of the Commissioner having effective relationships with management within systems to influence change and ensure that the experiences of Aboriginal and Torres Strait Islander children improve through both systemic and individual advocacy. Respondents noted this can be challenging due to the often 'closed' nature of these systems, as well as relatively high staff turnover in some cases, which can affect the development of functional relationships in the longer term.

Relationship with ACT Human Rights Commission

Community stakeholders were asked specifically about the positioning of the proposed Aboriginal and Torres Strait Islander Children's Commissioner relative to the existing Human Rights Commission. There were mixed views about whether the Aboriginal and Torres Strait Islander Children's Commissioner should be positioned within or independent from the ACT Human Rights Commission, with stakeholders debating the benefits and limitations on both sides. There appeared to be more support from community stakeholders for the Aboriginal and Torres Strait Islander Children's Commissioner to be independent from the ACT Human Rights Commission. There was however agreement that their work is deeply interrelated, with both the Commissioner and the ACT Human Rights Commission anticipated to benefit from close reciprocal relationships between their respective roles.

There was broad consensus about the important role played by the Human Rights Commission, and their ongoing role in representing the rights and interests of Aboriginal and Torres Strait Islander people within their areas of responsibility. Noting the particular similarities with the role of the Public Advocate and Commissioner for Children and Young People, community stakeholders reported that the proposed role is not about 'duplicating' those mechanisms but providing a clear focus on the specific rights and interests of Aboriginal and Torres Strait Islander children and young people. One respondent noted that "there has to be something written into it to get those positions to work together", noting that often complex circumstances affecting a child or family requires a coordinated response. It was anticipated that the proposed Aboriginal and Torres Strait Islander Children's Commissioner would likely complement the work of the Human Rights Commission through close, collegiate relationships, providing an important Aboriginal and Torres Strait Islander standpoint to inform protection of rights services more generally.

However, while the proposed Commissioner should work on a similar basis as existing Commissioners, there were mixed views on whether it should nevertheless be positioned distinct from the Human Rights Commission. A number of considerations were raised. For some, the existing Commission had not created sufficient change to systems and practice, and it was hoped that a different positioning might be helpful, with an explicit goal towards substantive change. Others felt that a distinct positioning emphasises the specific focus and independence of the Aboriginal and Torres Strait Islander Children's Commissioner, and enables greater relationships with the Aboriginal and Torres Strait Islander community on a different footing from the established systems. On the other hand, placement within the Human Rights Commission may provide a unique, supportive environment for the Commissioner to undertake their role. Similar to the emphasis on independence, some raised concerns that the proposed role, if placed within the Human Rights Commission, may be shaped by the established 'culture' and approach of the Human Rights Commission, constraining the need for this role to be shaped by and for the Aboriginal and Torres Strait Islander community. It was also noted that responsibility for Aboriginal and Torres Strait Islander perspectives within the Human Rights Commission can be a heavy burden for an individual senior executive within a broader non-Indigenous organisational space, whereas having the opportunity to shape the role as an Aboriginal and Torres Strait Islander space may be particularly beneficial as the role evolves.

Location

The majority of community stakeholders identified that the Aboriginal and Torres Strait Islander Children's Commissioner should have their own physical space, oriented towards engagement with members of the Aboriginal and Torres Strait Islander community of the ACT. Respondents emphasised the importance of promoting accessibility and suggested an outreach model that might actively engage with the diversity within the Aboriginal and Torres Strait Islander community of the ACT, including in particular a regular presence at closed institutions to safeguard the rights and interests of Aboriginal and Torres Strait Islander children.

Community stakeholders stated that the Commissioner should develop an open and accessible space where Aboriginal and Torres Strait Islander people, and particularly children and young people, feel welcome. Some noted that 'central' locations within the ACT can raise challenges for access, particularly given the need for transport and greater police presence in city areas, which can increase negative interactions between Aboriginal and Torres Strait Islander community members and police.

One approach that was proposed and received support from stakeholders was to establish a 'hub' model, that included a key location as well as 'satellite' sites to increase community engagement, providing multiple points of contact for community. This might include a regular or semi-regular presence at Aboriginal and Torres Strait Islander services and community-controlled organisations, providing ease of access across the ACT, and thereby reaching a broader cross-section of the Aboriginal and Torres Strait Islander community in the ACT. These satellite sites could include youth detention facilities, providing a clear presence and opportunity for engagement for Aboriginal and Torres Strait Islander children and young people affected by these systems. It was noted that COVID-19 had created challenges in terms of access, and these would need to be resolved to ensure that the Commissioner has adequate powers to ensure access to children and young people, particularly those experiencing higher degrees of coercion or control by the state.

Role Characteristics and Selection

Community stakeholders were asked about their expectations for the skills and characteristics of a successful Aboriginal and Torres Strait Islander Children's Commissioner, as well as the process for selection. Stakeholders identified a range of key attributes and characteristics to guide the appointment of the Commissioner, including in particular community engagement and relationship building, integrity and authenticity, influence and advocacy, as well as a deep understanding of Aboriginal and Torres Strait Islander families and communities, and demonstrated impact working to promote and protect their rights and interests. Stakeholders clearly expressed a desire for community representatives to participate in the recruitment process, which should be multi-staged and include an opportunity to demonstrate their skills engaging effectively with Aboriginal and Torres Strait Islander children and young people. Community

representation in the appointment process must be transparent and manage possible conflicts of interest so as to not undermine the standing of the role and the Commissioner in the community.

Young people in particular noted that the Commissioner must be someone who listens and is able to understand the experiences of Aboriginal and Torres Strait Islander children and young people. That young people feel heard and understood was seen as key to the success of the role, with a young person noting that young people are likely looking for “people who are like us. People we can connect with”. Young people noted that authenticity and integrity were critical, someone who is genuine in their engagement with children and young people, and are committed to making a difference, even if they don’t have all the answers. Young people expect the Commissioner to take a collaborative stance in their work, and are committed to coming to following through, and following up.

Community stakeholders more broadly noted the importance of someone who understands the sorts of systems that affect Aboriginal and Torres Strait Islander children and young people and their experiences of injustice, and are committed to achieving positive outcomes. Familiarity with legislative frameworks was seen as useful, as were skills in research, engagement and advocacy – someone who is prepared to stand up for children and young people, to hold government and services to account. Demonstrated ability to effectively engage with Aboriginal and Torres Strait Islander communities was identified as a key skill, particularly engagement with Aboriginal and Torres Strait Islander children and families, along with a record of creating social change. There was limited support for stringent formal qualifications requirements. Rather, respondents emphasised the importance of considering holistically the contribution of qualifications alongside a broader understanding of relevant skills and experience in determining the right person for the role. Respondents noted that this should also include demonstrated contribution to Aboriginal and Torres Strait Islander communities. Put simply, a key indicator of capacity to effectively promote and protect the rights and interests of Aboriginal and Torres Strait Islander people was demonstrated evidence of impact for Aboriginal and Torres Strait Islander communities in relevant fields. Respondents further expressed that successful candidates should be well grounded in the history, values and perspectives of Aboriginal and Torres Strait Islander communities, with an understanding of how our communities operate, particularly within the local ACT context. The Commissioner should be professional, open to criticism and respectful of Aboriginal and Torres Strait Islander people and community structures. Most respondents felt strongly that it should be an Aboriginal and Torres Strait Islander person, and further emphasised the importance of a deep understanding of the ACT Aboriginal and Torres Strait Islander community. While many felt this would be best served by someone with strong community connections in the ACT, some respondents noted that the Commissioner need not necessarily be from the ACT but should nevertheless have a demonstrated capacity to build the relevant relationships and community connections deemed critical to the role.

Community stakeholders also identified the importance of providing ongoing professional and cultural support to the successful applicant and their team, given the scope and demands of the role, and the need to ensure they were actively supported to manage the pressures and challenges that will inevitably face the role. Providing adequate supports to the Commissioner was seen as necessary to enable them to be successful in the role.

Community stakeholders expressed a strong interest in community members being actively involved in the selection process for the proposed role. However many expressed caution, noting that community involvement in the selection process is about building community confidence in the role, and as such should take care not to undermine the independence of the role and its mandate to serve the whole community. Some respondents expressed that the panel may include ‘one or two’ community representatives, as well as a highly regarded external or independent panel member. Some respondents similarly suggested that community representation might be served by relevant Aboriginal Community Controlled Organisations supporting Aboriginal and Torres Strait Islander children and young people, however others noted this should carefully consider potential conflicts given the proposed role of the Commissioner in promoting accountability in service provision. Some respondents further noted that an existing Human Rights Commissioner may be well placed to contribute an independent perspective, bringing an informed view of the broad work before the Commissioner.

There was consensus regarding the importance of an open and transparent recruitment process, with clearly defined criteria and expectations aligned to the senior executive nature of the role. A multi-staged

process that includes children and young people received some support, and may additionally include references that demonstrate the applicant's effective work with Aboriginal and Torres Strait Islander communities.

Other System Stakeholders

Representatives of government agencies (including both Aboriginal and non-Indigenous respondents) and current serving Commissioners within the ACT Human Rights Commission also participated in consultations as key stakeholders for the proposed Aboriginal and Torres Strait Islander Children's Commissioner. Representatives of government agencies provided insights based on their individual perspectives and experiences, and is not understood as representing the views of the government, or any directorate, at large. Serving Commissioners were well positioned to offer important insights regarding the operation of similar roles, including the exercise of their functions and powers, and relationship with government and community stakeholders, with implications for the proposed role.

Functions and Powers

Cultural input and oversight of systems

Government stakeholders felt that an Aboriginal and Torres Strait Islander Children's Commissioner would promote cultural safety and responsiveness of systems and practice. This was seen as a key anticipated benefit of the appointment of an independent Aboriginal and Torres Strait Islander statutory officer, providing a touchstone for government regarding its work with Aboriginal and Torres Strait Islander children and young people, in a way that promotes 'cultural safety' in this work. It was anticipated that the appointment of an Aboriginal and Torres Strait Islander Children's Commissioner may play an important role in enabling systems and services that are culturally safe, emphasising the important cultural standpoint anticipated of the role.

Broad remit across systems

Government respondents echoed those of community stakeholders in suggesting a broad scope that spanned systems and policies that affect the lives of Aboriginal and Torres Strait Islander children, similar to the existing legislated functions and powers of the Public Advocate and Children and Young People Commissioner. There were concerns that an overly broad remit may be unachievable and lessen the impact of the Commissioner, emphasising the importance of managing expectations and focusing on impact for Aboriginal and Torres Strait Islander children and young people.

Government respondents particularly noted the range of relevant systems and policy initiatives that might fall within the Commissioner's purview, including early years, First 1000 days, education strategy, maternal and child health, justice health, juvenile justice, mental health, alcohol and other drug services, family violence, and child protection services.

Like Aboriginal and Torres Strait Islander community stakeholders, both government and Commission respondents raised concerns about a possible unwieldy scope for the role, which may reflect or establish expectations that are unachievable within the functions and resources of the role. It was suggested that developing a relatively narrower scope, that can be clearly communicated and understood by all stakeholders, may be beneficial rather than this role attempting to tackle all current challenges, and trying to meet the needs of all stakeholders. Importantly, outcomes for Aboriginal and Torres Strait Islander children and young people should be prioritised.

Broadly, government stakeholders proposed the existing Public Advocate and Commissioner for Children and Young People as a possible model, anticipating similar functions and powers for the proposed role focused on the needs of Aboriginal and Torres Strait Islander children and young people. However, Commissioners noted that role is currently managed under some 42 different legislative instruments, making the role difficult to conceptualise and communicate clearly. Commissioners particularly focused on the need for clear information sharing provisions to enable the Commissioners role, including what information is able to be shared or accessed, in what circumstances, and through which processes.

Individual and Systemic Advocacy

Respondents from government agencies and the ACT Human Rights Commission supported a role that included both individual and systemic advocacy, noting the relationship between the two. These responsibilities were noted as the key mechanisms for achieving change and should be undertaken in a way that is holistic and culturally grounded. It was noted these functions need to be enabled through appropriate mandates, including information sharing and the authority to make recommendations and follow up on actions undertaken, whether related to individual advocacy or systems reform. Enablers also included an adequately resourced team, with individual advocacy noted as particularly resource intensive to achieve substantive change for children and families.

Respondents from government agencies acknowledged the opportunity for advocacy, guidance and support for children and families. There was a sense that an independent voice could be helpful in providing an alternate perspective of matters and help agencies to "get it right" when working with Aboriginal and Torres Strait Islander children and families. Similar to community stakeholders, it was noted that individual advocacy should include a role to 'intervene' in proceedings, and to provide independent oversight on matters to ensure that efforts are coordinated and effective, and that agencies and services are delivering on their responsibilities. This might include participating in case conference and action review processes, and include an opportunity to escalate urgent or persistent challenges within the agency, or with the responsible Minister, to ensure timely resolution.

Commissioners likewise noted the important role of individual advocacy, and how this informs understanding of systemic issues that may warrant attention and broader systemic change. Commissioners recommended that connecting these issues is important to making the most of limited time and resources, approaching individual advocacy with a systems lens and seeing the systemic issues within it. Commissioners further noted that matters for individual advocacy often involve considerable complexity, requiring effort and engagement to "shift the tide". Commissioners advised that in their experience this is most often achieved through relationships and strategic advocacy, rather than simply an application of statutory powers, which may be limited. It was further noted that existing statutory language, such as section 879 of the ACT Children and Young People Act (2008), notes that the Public Advocate "may ask an ACT child welfare service to provide information, advice, guidance, assistance, documents, facilities or services in relation to the physical or emotional welfare of children and young people". However, such entities are defined somewhat narrowly relative to the proposed scope outlined by community stakeholders and may need to be expanded in order to adequately enable the provision of assistance from relevant services working with Aboriginal and Torres Strait Islander children and families consistent with the expectations of stakeholders.

Importantly, Commissioners noted the resource intensive nature of individual advocacy, and how this can quickly consume the time, focus and efforts of a Commissioner, particularly given community expectations for representation which are likely to be considerable for an Aboriginal and Torres Strait Islander Children's Commissioner. Compliance review responsibilities similarly create significant challenges for resource management for Commissioners.

Government stakeholders also noted the important opportunity for systemic oversight offered by the proposed role, establishing a voice that comes from a cultural perspective or standpoint in the operation of important systems affecting children and young people. It was further suggested that the role might engage with relevant recommendations, and generate their own, regarding system reforms for Aboriginal and Torres Strait Islander children and young people, and provide ongoing monitoring, oversight and advocacy about those reform efforts. It was also suggested that the proposed Commissioner may have an ongoing role monitoring the implementation of key policy safeguards such as the ATSICPP or provide advice about specific merits or factors in decision making, such as in child protection systems. It was suggested that there is an important opportunity to address the power imbalances between Aboriginal and Torres Strait Islander families and communities, and government agencies and services providers.

Some respondents emphasised the need for focus across systems, including those that are often 'indicators' for downstream challenges for children and young people. For example, school absences and exclusions were noted as often being the 'tip of the iceberg' indicating other challenges facing children and families, and the Commissioner may have a valuable role in pulling together the threads of these

different systems, raising these complexities and encouraging systems to work more effectively together in serving Aboriginal and Torres Strait Islander children and young people.

Commissioners noted that systemic advocacy is often where the biggest impact can be achieved, as well as raising the interactions between individual and systemic advocacy. Experiences emerging from individual matters often elucidate broader systems issues that can be taken forward to achieve changes to systems and practice. Commissioners also noted that recommendations can be made, at both the individual and systems level, with provisions to follow up and report on actions taken by responsible parties, and that such provisions can be used to place pressure on decision makers to achieve change. They noted that achieving change for children and young people is the key focus and is often achieved through ways that are not always direct, but through providing different perspectives to a given problem, in addition to the awareness of independent scrutiny.

Complaints

Respondents from government agencies and the ACT Human Rights Commission broadly suggested that complaints handling might best be managed through relationships with existing processes within the ACT Human Rights Commission, with the Commissioner supporting these mechanisms and providing opportunities for escalation if needed.

There was general consensus from respondents within government and Commissioners regarding the opportunity to leverage rather than duplicate existing complaints processes, particularly through the Human Rights Commission, which were generally considered to be working well following recent changes to streamline and specialise those processes. For some, it was suggested that complaints processes are not always the most appropriate, and are often positioned at a different point in the system than those where they felt Aboriginal and Torres Strait Islander stakeholders are most likely to want to see change. However it was recognised that complaints processes can be an effective way for children and families to raise issues and get them on the agenda for resolution, an opportunity for 'feedback' about the experience of community members of government systems and services. Commissioners noted that it is important to identify early in engagement with community members whether their concern is best managed through a complaints process or individual advocacy, given the different standards and requirements of each – a structured, formal conciliation process, or support and advocacy while navigating complex systems. Some respondents from government noted that the proposed Commissioner may have some role in complaints handling, alongside existing systems, perhaps as an option of last resort, with a focus on getting agencies and services to work effectively with families and each other in the first instance and providing avenues for escalation if necessary.

Access

Government stakeholders and Commissioners agreed that accessibility of the role to the Aboriginal and Torres Strait Islander community would be critical to the success of the role. Commissioners in particular noted the importance of community members knowing that they can pick up the phone and reach a person about their concern, and that person will listen and respond in some meaningful way.

Reporting

Representatives of government agencies and Commissioners all agreed that public reporting is an important responsibility of the Commissioner, proposing annual reporting as a minimum benchmark that provides transparency while ensuring that the Commissioner is not unduly weighed down by burdensome reporting requirements.

Reporting was identified as critical to transparency and accountability of the Commissioner role back to the community, communicating clearly to the community how they have been promoting and safeguarding the rights and interests of Aboriginal and Torres Strait Islander children and young people.

However there was also agreement that overly burdensome reporting requirements can take Commissioners away from their key responsibilities of actively making a difference for the community. Others noted that there is already a considerable library of reports and inquiries, suggesting that a focus on further proliferation of reports would have limited success, with efforts focused on overseeing reforms

and response to identified issues. It was suggested that communities would like someone 'hands on', someone they can see doing the work on the ground.

Annual reporting was seen as a good minimum benchmark, with some respondents suggesting this may be an important area for flexibility, to see what it looks like in practice, allowing the role to develop. This would lead to a greater understanding of the expectations and needs of community members, with an opportunity to further adapt the role including through legislating more specific or more regular reporting requirements if warranted.

Governance and Connections

Independence

Government and Commission respondents consistently acknowledged the importance of the role being connected to the Aboriginal and Torres Strait Islander community, however emphasised that independence of the role is critical to the success of the role.

Relationship with Aboriginal and Torres Strait Islander community

Government and Commission respondents agreed that the Commissioner's relationship with the Aboriginal and Torres Strait Islander community is critical to the role. It was noted that there are many ways this might be achieved, including through a formal community reference or advisory group, however this should be left to the Commissioner to manage as part of their core engagement responsibilities. Enablers including resourcing for sitting fees, and community liaison roles, were also noted as supporting this connection.

Stakeholders emphasised the importance of this relationship being established and negotiated between the Commissioner and Aboriginal and Torres Strait Islander communities themselves, noting the diversity of the ACT Aboriginal and Torres Strait Islander community and the importance that the Commissioner engages broadly. There was broad consensus amongst these respondents about the value of a community reference group, with the Commission noting the presence of a reference group as part of their cultural safety charter. Commissioners noted that there are various ways to establish such an advisory and suggested a mix of community representatives including Elders and children and young people.

A community advisory group may provide an important feedback mechanism for the Commissioner, as well as the opportunity to hear about 'what's happening on the ground', informing their work. However, this is not a role that is exclusive to an advisory group, with the Commissioner having a significant responsibility to engage broadly with the Aboriginal and Torres Strait Islander communities they serve, including in particular children and young people. Such relationships also support the Commissioner culturally, and provides an opportunity to inform the community about their work. However, the input of the advisory should not be determinative in the work and direction of the Commissioner. Respondents noted that there must be clarity about the role and expectations of such groups, retaining the independence and authority of the Commissioner. Finally, sitting fees were raised as an important element in valuing the time and contribution of advisory panel members. Commissioners further noted the important role that community liaison officers play within their teams, serving as important connection points between the Commissioner and the community.

Relationship with government and services

Government respondents noted that the relationship with government agencies and service providers is characterised by the need to provide oversight and accountability of those agencies and services. Respondents particularly noted the opportunity of the role in promoting greater 'cultural responsiveness', influencing government directions and contributing to setting the agenda for reform. Some respondents also noted that government agencies may be able to consult with the Commissioner about proposed actions and reforms, not to duplicate or replace community consultation, but serves as an additional opportunity for feedback and expertise. Again, safeguarding the independence of the Commissioner was emphasised, with respondents expressing caution about how the provision of advice is structured so as to not create the possibility for a Minister to direct the work of the Commissioner. However, Commissioners

noted the importance of functioning relationships with Ministers and other leaders in terms of influencing change. They noted the broad 'tool kit' available to the Commissioner to achieve change, utilising not just their statutory powers but also soft skills and relationship management as well as the opportunity to independently raise issues with the community of the ACT, such as through the media.

Relationship with the Human Rights Commission

Government respondents and Human Rights Commissioners noted the anticipated benefits and efficiencies of positioning the proposed Commissioner within the ACT Human Rights Commission, while acknowledging that the Aboriginal and Torres Strait Islander community must be comfortable with how the Commissioner is positioned.

Respondents in government agencies noted the importance of a close working relationship between the proposed Aboriginal and Torres Strait Islander Children's Commissioner and the Human Rights Commission, with some suggesting they might be co-located. It was noted there would likely be mutual benefits to this, with the collegiate relationships provided by the Commissioners supporting the proposed Commissioner in their work, while the Commissioner can contribute a unique cultural perspective across the Human Rights Commissions. However, these respondents also expressed caution about the risk of duplicating existing processes, encouraging operational and procedural clarity so as to not weigh down oversight and advocacy bodies that should be agile and responsive with unnecessarily complex bureaucratic processes.

Commissioners likewise identified similar opportunities, including the ability to work collaboratively across the Commission, providing agility and responsivity for community members, and increasing options for communities to engage with the work of the Commission. Commissioners noted that co-location would create efficiencies, particularly when navigating the often high level of intervention in the lives of children and young people and their families who come to the attention of the Commission, and in providing a coordinated response. Commissioners also emphasised the importance of clear information sharing provisions, particularly if the Aboriginal and Torres Strait Islander Children's Commissioner is not structurally positioned within the Human Rights Commission, to ensure that relevant information can be shared in a timely way.

Role Characteristics and Selection

A similar array of role characteristics was identified by government respondents and Commissioners, including community engagement and genuineness, being trusted by the Aboriginal and Torres Strait Islander community, and the ability to strategically influence change in complex systems under significant pressure. They should have a strong understanding of human rights frameworks and their application, particularly with respect to Aboriginal and Torres Strait Islander communities. It was expressed that the Commissioner should be an Aboriginal or Torres Strait Islander person, appointed through a rigorous and transparent processes that appropriately includes community representatives.

Government respondents identified a range of characteristics they felt would be associated with success in the role. This included an individual who was seen as 'authentic' and thereby able to gain the confidence of the Aboriginal and Torres Strait Islander community of the ACT, and was seen as having the appropriate authority to advocate for Aboriginal and Torres Strait Islander children and young people, as well as the skills to appropriately and effectively engage with the diverse stakeholders associated with the role - Aboriginal and Torres Strait Islander children and young people, families, communities, government agencies, service providers, senior bureaucrats, and Ministers. Engagement with children and young people was particularly identified as a critical skill – being able to make children and young people feel comfortable, to listen to the voices of Aboriginal and Torres Strait Islander children and young people, and to effectively represent their voices in conversations with government, community and other stakeholders, so their voices are heard and that their experiences, opportunities, and outcomes are improved.

As with community stakeholders, values were identified as much as skills or experience, including a strong ethical core, demonstrated application of human rights principles, as well as discretion and an understanding of privacy and cultural sensitivity. Some respondents noted curiosity as an important characteristic – someone that doesn't think they are the expert in all things, but is able to engage broadly,

is committed to understanding the issues in their complexity, and works collaboratively to address challenges and promote the rights and interests of Aboriginal and Torres Strait Islander children and young people.

There was general consensus that the Commissioner should be an Aboriginal and Torres Strait Islander person, someone who is respected by the community, and is able to navigate the systems and relationships both within the Aboriginal and Torres Strait Islander community of the ACT, but also with government.

Commissioners reflecting on their own experience in similar roles noted characteristics such as resilience and pragmatism, particularly given the size of the task facing the Commissioner, and the slow pace of change. It is important that the Commissioner is experienced managing significant pressure and competing demands and is able to manage these issues effectively. Strong communication skills, including written and oral, formal and informal, were seen as important in achieving the Commissioner's underlying goal of creating change that promotes the rights and interests of Aboriginal and Torres Strait Islander children and young people. Like other stakeholders, engaging with children and young people effectively was highly important, being able to understand their perspective and engage without being patronising.

Importantly, Commissioners reflected that while it is important that an adequate mandate is provided through legislation, the parameters of the oversight role are such that achieving change is often about the strategic application of those responsibilities, the positioning and stance of the Commissioner, and how they manage these structures and relationships. Commissioners noted that the individual in the role is the biggest factor in the success of the role, rather than the legislated powers that they wield. This emphasises the importance of getting the selection process right, to identify and appoint an individual with the right skills, values and determination to make a difference for Aboriginal and Torres Strait Islander children and young people.

With respect to the selection process, government and Commission respondents identified the importance of involving young people in that process. It was suggested that given the importance of effective engagement with children and young people, an opportunity to assess these core skills in action may be a beneficial step in a multistage recruitment process. Further, while respondents also noted that Aboriginal and Torres Strait Islander communities may like to be involved in the selection process, and were generally supportive of this feature, it was noted that it would be important to manage real and perceived conflicts of interest, to ensure a fair and transparent process.

Generally, it was suggested that the role be advertised broadly, utilising a diverse range of networks, with a clear description of the high-level skills, attributes and experience required of this executive level role. An appropriately skilled panel, including some appropriate community representation, could be convened to assess applicants and oversee a multi-stage process that includes direct observation of their skills. From this process, recommended candidates can be provided to the Minister to make the final determination about the role, consistent with other similar roles.

Finally, and as identified by other stakeholders, Commissioners and government respondents noted the importance of providing adequate support to the Commissioner to enable them to function effectively within the job. The high pressure and high expectations of the role, particularly for the Aboriginal and Torres Strait Islander community, and the likelihood of persistent barriers and slow change creates difficult social and emotional circumstances for the individual occupying the role. There was a strong consensus of the need to ensure that the successful applicant was actively supported as part of the occupational safety for the role.

Final Model Refinement session

Following the Community Dialogues and conversations with other systems stakeholders including government representatives and the ACT Human Rights Commission, a final refinement session was held providing an opportunity to test emerging themes and reach agreement regarding expectations for the role. This session was attended by community stakeholders, JACS representatives as well as existing Commissioners with the Human Rights Commission. To organise this facilitated session, a table of key

themes from previous individual and group consultation was developed and provided to all attendees. Through the session, stakeholders worked through the table towards refinement of the proposed model.

The table included areas of consensus arising from the series of community dialogues (green cells), areas requiring further clarification or resolution (orange cells) and finally additional suggestions for testing (red cells), either to be further developed and included within the consensus model, or to be declined and discarded by community representatives. This organising schema was applied across key areas explored through the community dialogues: Function and Powers, Governance and Connection, and Role Characteristics and Selection. The contents of this table are outlined below in sets of Tables related to 'consensus points', 'clarification points', 'test points', along with outcomes of those discussions.

Through the community dialogues, additional considerations were raised by various stakeholders that, while not specifically within the scope of establishment of the Aboriginal and Torres Strait Islander Children's Commissioner role, were nevertheless considered to be important to its establishment, function and, ultimately, its success. These were also raised during this session, to test stakeholder agreement, and invite additional input.

Functions and Powers

Participants agreed that the proposed Aboriginal and Torres Strait Islander Children's Commissioner should be legislated to include the following functions and powers (see Tables 3-5 below):

- A clear, legislated human rights mandate related to the education, promotion, protection and oversight of the enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people, with a link to key human rights instruments including the UN Convention on the Rights of the Child, UN Declaration on the Rights of Indigenous Peoples, and other relevant optional protocols. This may include specific reference to the obligation to protect and uphold the rights of children and young people affected by coercive systems, for example the child protection system, juvenile justice, and other similar systems.
- That this mandate should explicitly centre the distinct rights of Aboriginal and Torres Strait Islander children and include reference to this cultural standpoint. For example, this might include a statement about the Commissioner's responsibility to promote an understanding of the best interests of Aboriginal and Torres Strait Islander children consistent with their cultural rights, as well as language on the importance of connectedness in understanding, promoting and protecting the rights and best interests of Aboriginal and Torres Strait Islander children – connection to family and kin, connection to community, connection to culture, and connection to Country.
- That the mandate should be broad, authorising the Commissioner to include any system, policy or practice that affects the enjoyment of the rights and interests of Aboriginal and Torres Strait Islander children and young people. This should take a holistic lens, and include consideration of relevant issues affecting their parents, families and communities, and their particular implications for full enjoyment of rights by Aboriginal and Torres Strait Islander children and young people. This approach should centre Aboriginal and Torres Strait Islander children within a holistic conceptual framework of social and emotional wellbeing that understands the importance of their family, community and cultural context. As such, it includes broader services to parents and families, in recognition that the impact of those services is directly relevant to the rights and interests of Aboriginal and Torres Strait Islander children and young people.
- That the legislation enshrines and protects the statutory independence of the Commissioner
- Outline the expectation that the Commissioner exercises their duty in a way that is fair, transparent and accountable to the Aboriginal and Torres Strait Islander community of the ACT
- Outline the expectation that the Commissioner is authorised to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people individually and collectively, including individual and systemic investigation, inquiry, research and reporting.

- The role should be authorised and resourced to undertake reviews, inquiries and research under their own motion regarding matters affecting Aboriginal and Torres Strait Islander children and young people and the full enjoyment of their rights, individually and collectively.
- The role should be authorised and resourced to engage in individual advocacy, including interaction with government systems and judicial processes. This includes the authority to join such processes as a party, in order to raise awareness of issues related to the full enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people, individual and collectively.
- Advocacy should be positioned as proactive and restorative, it should be forward focused, grounded in the rights and wellbeing of Aboriginal and Torres Strait Islander children and young people, towards preventing systemic harms and placing children and young people on positive trajectories as early as possible, given the developmental implications for children and young people over their lives.
- Through this advocacy, the Commissioner should be authorised to make recommendations and direct government agencies and relevant services to undertake actions to promote and/or protect the rights and interests of Aboriginal and Torres Strait Islander children and young people, individually or collectively. Such agencies or services should be required to provide feedback on a reasonable timeframe specified by the Commissioner regarding what actions they have taken to address the issues raised by the Commissioner, and the outcome of those actions.
- The mandate should not confer a standalone complaint handling responsibility, but should outline connections with the existing complaints processes administered by the Human Rights Commission, enabling the Commissioner to further support efforts to promote access, safety and responsiveness of the complaints process for Aboriginal and Torres Strait Islander people in the ACT.
- To enable the effective exercise of these functions, the mandate should clearly authorise the Commissioner to receive and share information and data about Aboriginal and Torres Strait Islander children and young people, relevant to its role to promote and protect the full enjoyment of their rights. Information sharing provisions should extend to government, services providers, and the Human Rights Commission. Information sharing provisions should include appropriate provisions requiring government agencies and services to provide data and respond to questions and requests for information from the Commissioner.
- Consistent with the existing compliance and monitoring responsibilities of the Public Advocate and Children and Young Persons Commissioner, government agencies must inform the Aboriginal and Torres Strait Islander Children's Commissioner of key actions and engagement through the exercise of their authority regarding a child known to be, or who may reasonably be believed to be, an Aboriginal and Torres Strait Islander child.
- The mandate should further include, at the discretion of the Commissioner, an opportunity to review and provide recommendations about legislative and policy changes that may impact on the rights and interests of Aboriginal and Torres Strait Islander children and young people. This may include establishing processes whereby government agencies complete an impact statement or otherwise inform the Commissioner about proposals that may impact the full enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people.
- That the mandate includes strong authorisation that enables a regular presence for Aboriginal and Torres Strait Islander children in detention or out-of-home care to protect and uphold their rights. This should include strengthened authority for access, with the COVID-19 pandemic revealing concerning limitations that undermined the opportunity for scrutiny and accountability of these systems.
- That the Commissioner has a responsibility to report to the ACT Legislative Assembly and the Aboriginal and Torres Strait Islander community of the ACT at least annually regarding their work. Public reporting and engagement with community in a broad way that demonstrates respect for

the diversity of the Aboriginal and Torres Strait Islander community of the ACT is a key consideration for transparency and accountability of the role.

- The Commissioner may provide advance copies of their report to stakeholders, including the ACT Government or relevant Minister, at their own discretion, but with assurances on independence and transparency in reporting.

In outlining this proposed role, respondents expressed a number of concerns, including how such a culturally grounded mandate might be expressed in legislation, the need for strong provisions that reflect the broad role, and the opportunity to test these positions, including how complaints are managed, through implementation, and to make timely adjustments if required.

There were concerns about how this mandate might be reflected in the language of any proposed legislation. Elevating and giving effect to Aboriginal and Torres Strait Islander cultural standpoints was particularly seen as a potential site of difficulty, given that government and legal systems are designed from a significantly different cultural standpoint. Further, while noting that the proposed role includes many of the functions already invested in the Public Advocate and Children and Young People Commissioner role, it was suggested to streamline the legislative instruments to promote clarity on the role's functions and powers. Given the already high expectations and pressure that the role faces, community clarity on its responsibilities is a key element to managing those expectations and promoting community confidence. This can be achieved by including all the functions of the role in a consolidated legislative instrument, instead of being distributed across numerous pieces of legislation. Finally, community stakeholders noted that the ACT Government should commit to an ongoing process of partnership, continuing to involve Aboriginal and Torres Strait Islander stakeholders in the legislative drafting process and ensuring an opportunity for feedback and revisions, towards final agreement. Community stakeholders noted in particular that the Wreck Bay Aboriginal community must be involved in this process, given challenges experienced to date.

Stakeholders noted that the positioning of complaints handling was a particular area for future consideration. Respondents particularly focused on the need for empowered proactive advocacy and were concerned about the risk of dividing or overwhelming the capacity of role through including a full complaints handling function as well. However it is also recognised that Aboriginal children and families may approach the Aboriginal and Torres Strait Islander Children's Commissioner with a range of concerns, including complaints, and should feel heard and supported whatever avenue they choose to engage. It was felt that benefits could be gained by connecting with existing complaints mechanisms within the Human Rights Commission, reviewing relevant complaints and data, providing warm referrals, and otherwise supporting access and progress of complaints, simultaneously managing resources. However respondents noted this is difficult to gauge until implementation, when the results of this proposed arrangement can be assessed. Community members requested the opportunity to review this arrangement, among others, after a period of implementation, and to make changes as required to ensure equitable access to effective advocacy and complaints handling for Aboriginal and Torres Strait Islander people in the ACT. Importantly this should be carefully communicated and transparently implemented with a focus on ensuring all community members are supported in raising concerns related to the rights and interests of Aboriginal and Torres Strait Islander children and young people.

Respondents expressed caution regarding the suggestion that the role might exercise more significant powers to make legal findings or recommend prosecution where individuals or agencies are found to be responsible for harms. There was broad agreement in the importance of holding accountable those responsible for harm to children and young people, including breaches in duty of care, however it was noted that such provisions may undermine the broader work of the role. It would require significant formal structures to exercise these functions in line with established standards and may reduce the likelihood of engagement from key stakeholders. Given the priority for monitoring, oversight and accountability of systems and practices, and the desire for proactive advocacy, stakeholders felt that extending the role in this way was not currently desired.

Finally, it was suggested that alterations to existing processes may be needed to address known challenges. For example, the COVID-19 pandemic has raised concern about challenges regarding access to children and young people in closed institutions, necessary for ongoing scrutiny and oversight. It is important that the Aboriginal and Torres Strait Islander Children's Commission has suitable authority

for reasonable access. Similarly, it was suggested that the current definition of 'welfare services' created uncertainty about the scope of services that may be subject to direction from the Commissioner. It is important that the Commissioner is authorised to recommend action from any relevant child and family service, and require feedback on action taken to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children, individually or collectively.

Table 3 - Consensus Points – Functions and Powers

Consensus Points	Outcome
Functions and Powers	
Clear human rights mandate – education, promotion, oversight of the enjoyment of rights etc, centred on the rights of Aboriginal and Torres Strait Islander children (noting that the ACT Human Rights Act includes that, but also perhaps limited). Link to Human Rights standards – UNCRC, UNDRIP, optional protocols	Agreed by Co-Design group
Broad scope – all issues affecting Aboriginal and Torres Strait Islander children with scope.	Holistic, culturally based understanding that centres children but appreciates and includes their broader context within family, community and culture
Independence	Agreed by Co-Design group, office and spaces.
To be, and to promote, transparency and accountability	Agreed by Co-Design group, noting this is across various communities
Systemic advocacy functions – able to undertake reviews and inquiries under their own motion into systems/issues affecting Aboriginal and Torres Strait Islander children and the full enjoyment of their rights. Supported by powers to access share information, interview relevant officials, etc	Agreed by Co-Design group, noting the holistic approach including families agreed above.
Individual advocacy functions – include information sharing provisions (and any relevant protections), ability to join/intervene in legal matters where the rights of an Aboriginal or Torres Strait Islander child (or children, collectively) may be affected, information sharing provisions, requirement that government departments/delegated services (in case of NGOs) provide a response detailing how the concerns raised by the Commissioner have been addressed. Also information sharing provisions – similar to existing powers PA/Children's Commissioner	Agreed by Co-Design group, noting proactive stance and expectation that the Commissioner be involved in making a difference for children and families

Consensus Points	Outcome
Joining as a party in court matters was understood not as duplicating the role of the judicial officer, but in ensuring that all of the relevant information was available to the judicial officer with respect to the rights and interests of the child and young person.	Agreed by Co-Design group
Share information with relevant parties, particularly Human Rights Commission	Information and understanding. Knowledge sharing roles
Individual advocacy must be supported by case managers, working with the authority of the Commissioner.	Agreed by Co-Design group
Access for community, and particularly Aboriginal and Torres Strait Islander children, seen as essential	Agreed by Co-Design group. Multiple locations – 'hub' model with community presence
Requirement for transparent reporting, preferably to ACT Legislative Assembly/public.	Agreed by Co-Design group, noting need to report transparently to the Aboriginal and Torres Strait Islander community of the ACT, respecting the diversity of this community.

Table 4 - Clarification Points – Functions and Powers

Clarification Points	Outcomes
Functions and Powers	
Include language about cultural standpoint, perhaps linking to best interest (promoting understanding of the best interests of Aboriginal and Torres Strait Islander children consistent with their cultural rights).	Agreed by Co-Design group. Queries regarding how this will be built into the legislation as processes not structurally suited to understand and apply Aboriginal and Torres Strait Islander standpoints
Language on importance of connectedness – to family, community, culture and Country, in enjoyment of rights.	Agreed by Co-Design group
Advocacy should be forward looking, solutions focused, and grounded in the rights and wellbeing of Aboriginal and Torres Strait Islander children.	Agreed by Co-Design group. Emphasised the proactive stance, intent to prevent harm through systems, inappropriate decision making.
Existing mechanisms associated with the Public Advocate (such as being informed of particular events involving children etc) should also be extended to the proposed Commissioner, where those events are known to involve Aboriginal or Torres Strait Islander children, or when it becomes known that a child involved may be Aboriginal or Torres Strait Islander. (Again emphasises the importance of good relationships with the work of the Human Rights Commission)	Agreed by Co-Design group.
Complaints handling (as a formal process) not broadly a priority relative to a more empowered individual advocacy role. Potential to divide attention of the Commissioner in a way that consumes significant resources. Could be adequately managed by effective relationship with current complaints handling process. This might include supporting and reviewing complaints involving/related to Aboriginal and Torres Strait Islander children and young people, making warm referrals for community members to the complaints process, and otherwise supporting access and progress of complaints related to Aboriginal and Torres Strait Islander children and young people.	Agreed by Co-Design group. However the group noted that this is difficult to assess until implementation. As such, there should be further opportunity to evaluate this approach during implementation and consideration of alternatives if necessary
Strong community visitor's role, to enable regular presence for children in detention or in OOHC in a way that promotes their engagement with rights protection services.	Agreed by Co-Design group. Critical. COVID-19 has revealed limitations in access in some circumstances, may need to be strengthened.

Clarification Points	Outcomes
Should reports go through a process with the relevant Department first? Careful not to undermine independence, but have heard that this can ensure accuracy of information, promote opportunities for change, and strengthen advocacy through responding to feedback.	Agreed

Table 5 - Test Points – Functions and Powers

Test points	Outcome
Functions and Powers	
May include specific reference to children affected by coercive systems, and obligation to promote and uphold those rights (justice and child protection)	Agreed by Co-Design group
Provisions for exercise of stronger powers akin to prosecutorial or other similar roles, to make findings or adverse findings about a person, (could be seen as stronger complaints handling involvement). Would need to carefully consider how this would be structured legally, how the provisions for procedural fairness and other legal standards would be reflected, etc. Remains challenges in moving to action.	Not agreed by Co-Design group – stakeholders raised concerns about the potential 'chilling' effect this might have on fulfilling the core monitoring, oversight, and investigation functions of the role. Effective and timely exercise of these responsibility considered priority in achieving meaningful change for children and young people. Other processes exist for the investigation of harm of children and young people.
Informed about policy development, or require government departments to complete an impact statement regarding the rights of Aboriginal and Torres Strait Islander children under the proposed policy or reform (and provide that to the Commissioner)	Agreed by Co-Design group – could be broadly referenced in legislation and then be operationalised as impact statement or other process. Needs to retain independence of the role, who exercises their discretion in how to focus their time and resources in serving the interests of Aboriginal children and young people
Legislation that the Commissioner simultaneously reports to ACT Legislative Assembly and a relevant Aboriginal body or bodies? Would need to determine which bodies.	Agreed by Co-Design group that it was important that the Commissioner report to the Aboriginal and Torres Strait Islander community of the ACT, as part of positioning community engagement as a primary responsibility. Legislation should note responsibility to report to the ACT Legislative Assembly and publicly/to the community. However there was agreement that this should not explicitly prioritise any particular community entity or organisation, given the diverse nature of the Aboriginal and Torres Strait Islander community of the ACT.
Ability to impose 'injunction' was noted, reflecting intent to prevent decisions considered to be harmful to go forward without review. Given separation of roles with the judiciary, this is challenging, but important to work out given the developmental implications of decisions and the way systems	Not agreed by Co-Design group

Test points	Outcome
reinforce themselves. It could be that giving the Commissioner power to join as a party might allow adequate time (with the permission of the Court) to provide the necessary advice.	

Governance and Connection

Stakeholders in the final deliberations of this project noted the following characteristics related to the governance and connections of the Aboriginal and Torres Strait Islander Children's Commissioner role (see Tables 6-8 below):

- emphasised that a strong relationship with the Aboriginal and Torres Strait Islander community was critical to the role. The Commissioner's role should explicitly encourage engaging widely with the Aboriginal and Torres Strait Islander community of the ACT, including Wreck Bay, and particularly Aboriginal and Torres Strait Islander children and young people.
- The role should have a clear relationship and agreement with the Human Rights Commission, including information sharing provisions (outlined above), that outlines how they will work in a coordinated manner to protect and promote the rights of Aboriginal and Torres Strait Islander children and young people
- That the role develops effective relationships with government stakeholders and service providers to promote oversight, accountability and influence that protects and promotes the rights and best interests of Aboriginal and Torres Strait Islander children and young people.
- The legislation should enable the establishment of an Aboriginal advisory board, at the discretion of the Commissioner and established through their own process. Respondents noted this can be a useful structure to support effective consultation and should reflect the diversity of the Aboriginal and Torres Strait Islander community of the ACT, including children and young people. As noted above, the key principle is the Commissioner's responsibility to engage widely with the Aboriginal and Torres Strait Islander communities they serve. Importantly, exercise of authority remains with the Commissioner.
- Aboriginal and Torres Strait Islander community stakeholders requested that the role be established as a standalone office, external to the Human Rights Commission, although connected to it through information sharing provisions and other cooperation agreements. Dedicated liaison officers may assist in operationalising this relationship to the mutual benefit of all stakeholders
- Stakeholders expressed support for a 'hub' model that would enable the Commissioner to have a regular presence across the community, including Aboriginal child and family organisations, out-of-home care, and youth detention facilities. How this may operate in partnership with the Wreck Bay community must be further explored, but should consider the importance of community connection, consistent service provision, and the wellbeing of staff delivering challenging services in a community setting. These processes must be determined in partnership with the Wreck Bay Aboriginal community directly, including the necessary resources to realise these relationships in practice.

Respondents further noted that relationships with all stakeholders should be two-way connections, sharing knowledge and expertise to promote the full enjoyment of the rights of Aboriginal and Torres Strait Islander children and young people. However, these are largely interpersonal in nature and not legislative, although are enabled by information sharing provisions and the broad mandate of the role.

Managing relationships with government agencies was seen as a key element to influencing policy and practice, and should include functional relationships across systems and organisations. Further, it was determined that the Aboriginal and Torres Strait Islander Children's Commissioner should be positioned external to the Human Rights Commission, to safeguard and strengthen the Aboriginal and Torres Strait

Islander cultural standpoint in the operationalisation of the role. Respondents also noted the additional cultural load that can be carried by Aboriginal and Torres Strait Islander people in non-Indigenous organisations and systems, and this positioning is intended to promote the office of the Aboriginal and Torres Strait Islander Children's Commissioner as an Aboriginal and Torres Strait Islander space. However it was noted that the Commissioner should develop a strong relationship with the Human Rights Commission, including mutual support and coordination of key, interrelated functions. Finally, connections with the Aboriginal and Torres Strait Islander community should recognise the diversity of the local community, and should not structurally prioritise any specific organisation, but engage broadly in order to protect and promote the rights of all Aboriginal and Torres Strait Islander children in the ACT.

Table 6 - Consensus Points – Governance and Connection

Consensus Points	Outcomes
Governance and Connection	
Strong relationship with Aboriginal and Torres Strait Islander community. Consensus regarding the ability/commitment to engage with diverse community stakeholders. In particular, access of children, families and communities in the Wreck Bay community	Agreed by Co-Design group. Acknowledged importance of engagement with Wreck Bay community – more is needing to be done to include them in this process.
Strong relationship with Human Rights Commission	Agreed by Co-Design group. Two-way relationships.
Strong relationship with government and service providers (oversight and monitoring role)	Agreed by Co-Design group. Two-way relationships.
Able to manage relationships with government departments and service providers to influence systems and practice. In particular, relationships with senior managers within child protection, youth justice and police.	Agreed by Co-Design group. Relationships to engage with and influence key decision makers, including practitioners and administrators/executive.
Potential value of an advisory board, including young people and those with lived experience of these systems – centred on the child.	Agreed by Co-Design group. Responsibility of the Commissioner.
Legislative enablers of an advisory group, but not necessarily a requirement. Clear provision outlining role of community engagement with diverse community.	Agreed by Co-Design group. Should include resources to support active involvement of community stakeholders, valuing of their time
Independence assured – any advisory is not positioned to direct the commissioner.	Agreed by Co-Design group

Table 7 - Clarification Points - Governance and Connection

Clarification points	Outcomes
Governance and Connection	
Extent to which these relationships should be reflected in legislation (beyond information sharing provisions)	Agreed by Co-Design group. Stakeholders noted two-way relationship.

Clarification points	Outcomes
Whether the establishment of an Aboriginal Children and Young Persons advisory group should be required/enabled. Is this distinct from the community advisory group?	Agreed by Co-Design group. Responsibility of the Commissioner though – should not be compelled, but is an expression of their approach to engagement (and alternate avenues as well)
General sense that the Commissioner should be outside the current ACT Human Rights Commission, but closely connected. Raises question about the extent to which the separation is structural or physical. There could be efficiencies to aligning some of the administrative components, but care to preserve the standpoint and authority of the role. It was noted that while the collegiate nature of the Commission can provide support/strengthen the role, there can be issues of cultural load when establishing an Aboriginal role in a non-Indigenous organisation, even in leadership positions. How is this relationship best structured, including in legislation?	Agreed by Co-Design group. Role should be established outside of ACT Human Rights Commission, but closely connect. Aim to preserve independence and unique positioning, cultural context, and focus.
A community hub model has been suggested, through which the role (team) might regularly work at local ACCOs and Bimberi, in order to promote access for community.	Agreed by Co-Design group
Community hub model would include at least two staff positioned in Wreck Bay, with role designed to reflect broad mandate to promote rights of Aboriginal and Torres Strait Islander children (with connections back to their colleagues/well-being supports).	Co-Design group reiterated that model for the relationship with the Wreck Bay Aboriginal community must be established in partnership with that community and with their consent

Table 8 - Test Points - Governance and Connection

Test points	Outcome
Governance and Connection	
More formalised structure that connects Commissioner to Aboriginal community. May be a positive step towards Aboriginal self-determination (exercise of political authority to appoint empowered oversight of child rights). Consistent with potential role within a strong self-determination model in which Aboriginal community exercises jurisdiction in relevant areas (see for example BTH recommendations). Challenges in positioning, building authority in diverse local community.	Not agreed by Co-Design group – independence of the role was considered to be a key organising principle. Relationship with community through engagement as a key responsibility of the Commissioner.
In addition to team resource and structure to deliver on function and role (individual and systemic advocacy), could include a liaison team to foster connection across Human Rights Commission and the exercise of their power, complementing existing resources and providing peer support for Aboriginal staff in those roles. Aim to build connection and further strengthen service delivery to Aboriginal and Torres Strait Islander communities.	Agreed by Co-Design group. However depends on the broader resourcing envelope, given anticipated high demand on the Commissioner and team

Role Characteristics and Selection Process

Stakeholders finally considered the appointment process, with unanimous agreement on the importance of a transparent process that protects the role from challenges of real or perceived conflicts of interest, thereby promoting legitimacy and community confidence in the role (see Tables 9-11). This should include clearly defined description and role expectations, key attributes, and a participatory selection process that includes appropriate community representation and independent panellists, as well as offering an opportunity for applicants to demonstrate core skills, including engagement with Aboriginal and Torres Strait Islander children and young people.

Respondents noted that the role must be recognised as a senior executive position, and should be recruited as such, with specialist recruitment support to identify appropriately skilled Aboriginal and Torres Strait Islander applicants and encourage them to apply. Local Aboriginal and Torres Strait Islander networks can also be utilised to encourage a strong talent pool for the role.

The role should have clearly defined expectations in promoting and protecting the rights of Aboriginal and Torres Strait Islander children and young people. Key attributes included community engagement, strong values and advocacy skills, The ability to engage effectively with Aboriginal and Torres Strait Islander communities, particularly children and young people, was seen as a core skill. Stakeholders suggested that this might be demonstrated through the recruitment process, as part of a multi-stage process that includes application, panel interview, and direct assessment of short-listed candidates. For example, short-listed applicants might join with the Public Advocate and Child and Young People Commissioner to facilitate an engagement with Aboriginal and Torres Strait Islander children and young people. Such an arrangement allows for direct observation of core skills that may be difficult to assess indirectly,

The panel should include independent and community representatives, with stakeholders suggesting this might include a current Commissioner as an experienced independent panel member, as well as Aboriginal and Torres Strait Islander stakeholders. It was emphasised that a large selection panel may become unwieldy, and that a single trusted community representative may be selected. This process must ensure appropriate management of conflicts of interest and offer appropriate transparency to ensure community confidence in the process. The panel might also include an external Aboriginal and Torres Strait Islander person with experience in similar executive level roles (for example, Aboriginal and Torres Strait Islander people serving in similar positions in other jurisdictions). The resulting recruitment report would nominate candidates for the consideration of the Minister for final appointment.

The consultation also tested whether the Commissioner might be appointed through an Aboriginal body or process. This would enhance the exercise of self-determination by the Aboriginal and Torres Strait Islander community and create direct accountability to the community through the appointment process. Stakeholders again noted the need to ensure engagement across diverse communities that may be undermined through such an approach. As such this suggestion was not supported at this time.

Table 9 - Consensus Points - Role Characteristics and Selection

Consensus Points	Outcomes
Role Characteristics and Selection	
Ability to understand the standpoint of Aboriginal people in the ACT, and the rights and interests of Aboriginal and Torres Strait Islander children.	Agreed by Co-Design group. Through engagement with all community groups.
Strong values of advocacy	Agreed by Co-Design group
Strong connections in the ACT community or demonstrated ability to build them and work with the community.	Agreed by Co-Design group

Consensus Points	Outcomes
Agreement that the community, and in particular children and young people, should play a role in the appointment.	Agreed by Co-Design group, noting the need for transparency, particularly around the management of conflicts of interest
Important that it is seen as a fair and impartial process. Critical to community confidence in the role.	Agreed by Co-Design group

Table 10 - Clarification Points - Role Characteristics and Selection

Clarification points	Outcomes
Role Characteristics and Selection	
Selection process for community representatives in recruitment	Agreed by Co-Design group noting that community involvement necessary. Should be impartial, respected, free from conflicts. Better to not have too many, as this can be unwieldy
Suggestions range from one or two community representatives on the panel, a respected community member and a highly regarded external Aboriginal person with experience in similar appointments (for example, could call on an established Aboriginal commissioner to fulfil a role as independent panel member), or a panel comprised of Aboriginal community stakeholders (like the OBOWIOC, or in the longer term, any established advisory group.	Agreed by Co-Design group – few representatives, identified through consultation with particular focus on experience, wide community respect, to ensure community confidence
Preferred way to involve young people in the appointment process. Suggestion that shortlisted candidates meet/engage with Aboriginal and Torres Strait Islander children and young people (would need to be careful to do so in a way that is not exploitative – for example, could partner with the current commissioner to ensure that information provided in the consultations can be gathered and actioned.	Agreed by Co-Design group – active demonstration of engagement with children and young people considered particularly useful, and could partner with Public Advocate. This would ensure process is not performative or exploitative, and respect the time and input of children and young people by contributing to a meaningful process
Suggested that a sitting member of the Commission might also assist on the panel.	Agreed by Co-Design group
Establish a shortlist/recommendation that is broadly acceptable to the community, for the Minister to select.	Agreed by Co-Design group

Table 11 - Test Points - Role Characteristics and Selection

Test points	Outcome
Role Characteristics and Selection	
Appointment by an Aboriginal body. However this may create community tensions, place additional pressure on the role and the Aboriginal body (for example, Elected Body or other structure), and undermine the role. Would require very sensitive development of the Aboriginal community body to ensure diverse representation and community confidence	Not agreed by Co-Design group – rather, Co-Design group expressed priority for principle of independence and as such should not be structurally aligned to any particular existing structure.

Additional Considerations

Additional considerations were also raised by stakeholders which were not directly part of the process to establish the Aboriginal and Torres Strait Islander Children's Commissioner but were considered to be critical to its success. This includes action on broader systems and practice change to promote and protect the rights of Aboriginal and Torres Strait Islander children and communities, increased investment in critical child and family services, and the need for ongoing engagement with the Aboriginal and Torres Strait Islander community through the legislative and establishment process, but also following a period of implementation, to provide an opportunity to further adjust the role to meet community needs and expectations.

There remains an urgent need for significant structural change, including those recommended through the *Our Booris Our Way Report.* The recommendation for the Aboriginal and Torres Strait Islander Children's Commissioner specifically noted the important relationship with existing community structures as well as the recommended Aboriginal Child Care Association in demonstrates explicitly the interrelated nature of reforms, and the way that various recommendations may enhance or limit the benefit of others. Systemic change that enhances recognition of the right to self-determination, particularly in the administration of child protection and juvenile justice systems, remains an outstanding enabler of transformational improvement.

Other specific issues reiterated through this model refinement process included the anticipated need for increased investment in Aboriginal and Torres Strait Islander child and family services, and the need for an ongoing process of partnership in the development of the role, including the legislative process and resourcing, to ensure that the recommendations are adequately implemented. Stakeholders also noted the need to review the role, as opposed to the inaugural Commissioner, following its establishment, to ensure that the role functions as intended for Aboriginal and Torres Strait Islander children and young people. This review might be planned for 12 to 18 months following establishment and may be led by the Commissioner in partnership with the community, providing an opportunity to address any unanticipated gaps or issues associated with the role's mandate, functions or authority that may emerge during implementation.

Proposed Model

Through these dialogues, a proposed model was developed, outlining the functions and powers, governance and connections, and role characteristics and selection processes, to inform subsequent legislative and implementation processes. This proposed model is outlined below, identifying areas to be reflecting in legislation as well as additional considerations for establishing the role.

The proposed model shares a number of legislated functions and powers with the existing role of the Public Advocate and Children and Young Persons Commissioner, including oversight, compliance, monitoring and advocacy functions. It would exercise a broad scope and human rights mandate, with all issues affecting Aboriginal and Torres Strait Islander children within its remit. However, the proposed Aboriginal and Torres Strait Islander Children's Commissioner is expected to exercise these functions and powers in a distinct way that reflects the rights of Aboriginal and Torres Strait Islander children as

Indigenous children, understanding that the best interests of Aboriginal and Torres Strait Islander children are grounded in their worldview, and connections to family, community culture, and Country. For example, Section 27 of the *Human Rights Act 2004* recognises the distinct cultural rights of Aboriginal and Torres Strait Islander peoples, with a particular focus on cultural and spiritual practices, language and knowledges, kinship ties, and relationship to Country. The expectations of community respondents regarding the application of a cultural standpoint in the exercise of the role's functions and powers are consistent with this understanding of the distinct rights of Aboriginal and Torres Strait Islander peoples, including children and young people, however clearly go beyond the limited cultural rights outlined. Rather they reflect a broad understanding and application of the distinct rights of Aboriginal and Torres Strait Islander children and young people as indigenous children, outlined through various human rights instruments (including the Declaration on the Rights of Indigenous peoples, as well as relevant guidance in the application of the Convention on the Rights of the Child and General Committee Comments regarding implications for indigenous children and young people from an Aboriginal and Torres Strait Islander perspective, consistent with established principles of self-determination and self-governance. The Aboriginal and Torres Strait Islander Children's Commissioner's exercise of its functions and powers for oversight and accountability must be consistent with this broader understanding in order to adequately promote and protect the rights of Aboriginal and Torres Strait Islander children and young people in the ACT.

The role would engage in both individual and systemic advocacy, understanding the clear connections between these two functions. Like the existing Public Advocate and Children and Young Persons Commissioner role, government agencies should be required to inform the proposed Aboriginal and Torres Strait Islander Children's Commissioner when they undertake particular actions involving Aboriginal or Torres Strait Islander children or young people. This should include interactions with police and justice systems, child protection interventions, as well as relevant actions related to mental health and education systems (such as non-voluntary in-patient treatments and reporting related to school exclusions .

It is proposed to be explicitly authorised to request, receive and share relevant information regarding Aboriginal and Torres Strait Islander children and young people, and is expected to take a proactive stance to promote and protect their rights and interests. This includes explicit powers to join legal matters as a party, informing agencies and courts in the exercise of their responsibilities in matters affecting Aboriginal and Torres Strait Islander children and young people. It also includes the opportunity to make recommendations and direct action on safeguarding the rights of Aboriginal and Torres Strait Islander children and young people, and receive timely feedback from those agencies about the actions they have taken in response, with appropriate provisions for transparent reporting that balances individual privacy for children and families and the need for public transparency and accountability of agencies, particularly those that exercise considerable powers.

The role is further proposed to be able to undertake inquiries and research under its own initiative, spanning beyond and across systems in applying a holistic and intergenerational understanding of development and wellbeing. It is expected to report publicly, both to the ACT Legislative Assembly and directly to the Aboriginal and Torres Strait Islander community of the ACT, with respect for the diverse mechanisms for community engagement within the ACT and with the intent of ensuring transparency and accountability to the community. To deliver on this mandate, it must be adequately resourced, including in particular skilled case managers and advocates to support children and families requiring assistance. It was further suggested that the mandate for this role be consolidated to provide greater clarity of the scope of the role and its responsibilities as part of promoting transparency and accountability, managing community expectations and building confidence in the role.

The proposed role is expected to be positioned independent from the existing Human Rights Commission, but work in close collaboration with them in promoting the rights and interests of Aboriginal and Torres Strait Islander children and young people. The role is not proposed to exercise a significant complaints handling function, but will work with existing processes to support the accessibility, safety and responsiveness of those mechanisms. While not directly an application of self-determination, being appointed and authorised through non-Indigenous processes, this is intended to emphasise its distinct positioning and orientation towards the Aboriginal and Torres Strait Islander community it serves and enable greater opportunity for the Commissioner to develop critical relationships with the community. This

is also potentially an important part of ‘future-proofing’ the role. As the community, supported by the Commissioner role, continue to progress the significant transformational change necessary to truly meet the needs of Aboriginal and Torres Strait Islander children and families grounded in self-determination, this position offers a clearer opportunity to transition the role to offer the independent oversight of Aboriginal and Torres Strait Islander designed and administered systems, including in child protection and juvenile justice.

To support primary connections to the Aboriginal and Torres Strait Islander community, the Commissioner will be enabled to establish, at its own discretion, and according to its own processes, an Aboriginal and Torres Strait Islander Community Advisory Group. While the responsibility of the Commissioner, stakeholders clearly expressed that such groups would be most beneficial if representing the diversity of the Aboriginal and Torres Strait Islander community of the ACT, and might particularly include children and young people, and those with lived experience of those systems that most impact the lives of Aboriginal and Torres Strait Islander children. Respondents noted the importance of appropriate sitting fees to value the time of community stakeholders invited to serve on the Advisory Group. In addition to the opportunity for an Advisory Group, respondents also proposed a ‘hub’ model to enable greater accessibility and engagement, with particular provisions for engagement with Aboriginal and Torres Strait Islander children and young people in out-of-home care, and a regular independent presence within juvenile justice facilities.

The proposed Commissioner’s relationship with government agencies and service providers is expected to be characterised by its function and powers as an oversight and monitoring body. It was also noted that the Commissioner should have an opportunity to provide advice to government when considering or implementing reforms to policy and practice that it feels may affect the lives of Aboriginal and Torres Strait Islander children and young people and the enjoyment of their rights. This might include a clear legislative enabler that positions the provision of such advice as ‘in-scope’ for the function of the role, but without creating an unworkable mandate that delays policy development and interferes with general governance processes or compromising the independence of the role by requiring ongoing engagement with policy development activities. Respondents expressed the importance of independence from government in particular, including transparent funding to provide confidence that the role is not undermined through such processes.

Finally, for many, the skills and attributes of the Commissioner, and their team, were as important as its mandate and legislative authority. Given the broad scope of the role, how the Commissioner directs its efforts and intentions will have significant implications for the accountability of the systems and services it oversees, and the confidence of the community it serves. Respondents provided an outline of the diverse skills and attributes of an effective Aboriginal and Torres Strait Islander Children’s Commissioner, noting in particular the importance of engagement with Aboriginal and Torres Strait Islander communities, and particularly children and young people. Similarly, an inclusive, multi-stage process was also proposed, with appropriate community representation, while managing any possible conflicts of interest to ensure community confidence in the process, and therefore community confidence in the Commissioner. It is important that this is an ongoing process alongside Aboriginal and Torres Strait Islander community representatives and is seen as transparent, fair and impartial by community stakeholders.

Table 12 - Proposed Model

Domain	Legislative	Non-Legislative enablers
Functions and Powers	Explicit mandate to promote and protect the rights of Aboriginal and Torres Strait Islander Children, with a broad scope across all systems affecting Aboriginal and Torres Strait Islander children and young people Linked to key human rights instruments (including UN Convention on the Rights of the Child and UN Declaration on the Rights of Indigenous Peoples), aligned to existing human rights legislation in the ACT Explicit reference to focus on Aboriginal and Torres Strait Islander children and young people, from a cultural standpoint, and noting the importance of connectedness – to family, community, culture and Country – as critical to best interests. Clear expectation for transparency and accountability to the Aboriginal and Torres Strait Islander community, including at least annual reporting to the ACT Legislative Assembly and Aboriginal and Torres Strait Islander community. Reporting to be independent of government. Authorised for individual and systemic advocacy, own-motion inquiry, investigation and research, with a holistic framework that understands children and young people in their developmental context Enable active oversight of government systems' interactions with Aboriginal and Torres Strait Islander children, including those monitoring and compliance responsibilities invested in the current Public Advocate and Children and Young People Commission, as well as strong provisions to enable access to Aboriginal and Torres Strait Islander children, particularly in closed institutions. Inclusion into scope of role the opportunity to provide advice to government regarding relevant policy development activities, at the discretion of the Commissioner Proactive focus. Authorised to recommend action from government agencies and relevant child and family services to promote and protect the rights of Aboriginal and Torres Strait Islander children (individually and collectively), with provision to require a response outlining the steps taken.	Adequate resourcing of Commissioner's office to enable individual and systemic advocacy, including experienced case managers and advocates, as well as community liaison Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap. Increased investment in Aboriginal and Torres Strait Islander child and family services to enable action given anticipated increase in demand Commitment to future review of role design, ensuring functions and framework fit for purpose Effective relationship with government to enable input to policy development activities where relevant, including notification mechanisms for relevant policies that are of particular importance to the role of the Commissioner advocating for Aboriginal and Torres Strait Islander children and young people in the ACT

	Authorised to join matters at any stage, including as a party in court proceedings relevant to the rights and interests of an Aboriginal and Torres Strait Islander child or children, to inform the decision makers including the Court Clear authorisation to share and receive information regarding Aboriginal and Torres Strait Islander children and young people, including from government agencies, service providers, and the ACT Human Rights Commission	
Governance and Connection	Clear statutory independence, established as a standalone office (not positioned within the ACT Human Rights Commission) Clear expectations to engage continuously with all segments of the Aboriginal and Torres Strait Islander community of the ACT Enablers for the establishment of an Aboriginal and Torres Strait Islander Community Advisory and/or Children and young People Advisory, at the discretion of the Commissioner and according to their own processes.	Resourcing for continuous engagement, including possible Advisory group(s), accessible office space and 'hub' design (including presence at Bimberi). Collaborative work agreement with the ACT Human Rights Commission, including with respect to complaints handling and support, as well as compliance and monitoring functions to coordinate efforts particularly in areas of potential overlap.
Selection Process	Guidance that the appointment process is to be undertaken in partnership with the Aboriginal and Torres Strait Islander community Appointed by Minister, based on recommendations from transparent and collaborative appointment process	Transparent, multi-staged recruitment strategy, including attributes and expectations, community representation in process and management of possible conflicts of interest

Conclusion

The recommendation to appoint an Aboriginal and Torres Strait Islander Children's Commissioner follows from the *Our Booris Our Way* Report, which focused on the experiences of Aboriginal and Torres Strait Islander children and families, and community in the ACT. It is one of twenty-eight significant recommendations put forward by Aboriginal and Torres Strait Islander community representatives through the report, which span structural, systemic, policy and practice reforms to address the devastating impacts of these systems and improve outcomes and wellbeing for their children and families.

Like the *Our Booris Our Way* report, we consistently heard about the community's deep concerns, particularly associated with the imposition of statutory systems that disproportionately affect Aboriginal and Torres Strait Islander children and young people in the ACT. Echoing the Standing Committee on Health, Ageing and Community Services *Report on Child and Youth Protection Services,* which outlined an opaque system with limited accountability, we heard about the need for independent and empowered oversight to ensure transparency and promote accountability. Community stakeholders expressed their disappointment at the results achieved by current systems, including the high rates of child removal relative to other jurisdictions. We heard community expectations that a jurisdiction like the ACT, with a relatively small population and geographic size, must do better for Aboriginal and Torres Strait Islander children and young people.

Similarly, the Standing Committee on Health, Ageing and Community Services identified that many of the concerns related to child protection systems are fundamentally about trust. Specifically, they noted that "despite numerous reviews and inquiries into various aspects of the system stretching back over a decade or more – trust in the system by the people to whom the system seeks to serve and the community of which the system is a part continues to remain at low levels." The issue of trust of statutory child protection systems specifically, and government services more generally, takes on a particular hue for Aboriginal and Torres Strait Islander communities, for whom these systems have imposed significant harms over generations. Establishing the trust of Aboriginal and Torres Strait Islander communities is not a matter of building the trust of "the community of which the system is a part", as these systems have never been of our communities, but imposed upon us. There remains significant work to transform systems affecting Aboriginal and Torres Strait Islander children and young people, grounded in recognition of the right of Aboriginal and Torres Strait Islander peoples to self-determination and self-governance. Promoting greater transparency and accountability of these systems to the Aboriginal and Torres Strait Islander community similarly remains an outstanding area for reform.

Most importantly, community stakeholders remain committed to working together with government to drive the urgent change necessary to safeguard their children's rights, and their futures.

The appointment of an Aboriginal and Torres Strait Islander Children's Commissioner is a key piece of this reform agenda, providing independent and authoritative oversight of systems affecting Aboriginal and Torres Strait Islander children and young people in the ACT, as well as the responsibility to intervene when necessary to promote and protect their rights. Drawing on the *Principles Relating to the Status of National Human Rights Institutions* ('Paris Principles'), dialogues were held with Aboriginal and Torres Strait Islander communities, government stakeholders and existing Commissioners within the ACT Human Rights Commission, towards consensus on the key functions and powers, governance and connections, location, and role characteristics and selection process.

In general, there was a clear call for a specific focus on the rights and interests of Aboriginal and Torres Strait Islander children and young people, reflecting the unique application of these rights for Indigenous children and young people[34], and the importance placed on centring Aboriginal and Torres Strait Islander perspectives and culture in advocacy about Aboriginal and Torres Strait Islander children. The specific parameters of the role are outlined in detail above, including its broad human rights mandate, authority for proactive monitoring and oversight including individual and systemic advocacy, and important

[34] UN Committee on the Rights of the Child CRC), *General comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child]*, 12 February 2009, CRC/C/GC/11, available at: https://www.refworld.org/docid/49f6bd922.html [accessed 20 January 2022]

connections to the Aboriginal and Torres Strait Islander community, the ACT Human Rights Commission, government agencies and other relevant service providers.

Community stakeholders focused particularly on the significant challenges experienced by Aboriginal and Torres Strait Islander children, families and communities, and the poor outcomes achieved through various systems, including child protection and juvenile justice systems, for Aboriginal and Torres Strait Islander children. They raised concerns that this context creates potential risks when establishing such a role, namely the need to manage impossible expectations to drive immediate change across entrenched structures, which in turn may undermine confidence in the role when it fails to achieve them. These concerns were echoed by government respondents and existing Commissioners within the ACT Human Rights Commission. While it was clear that community stakeholders had high expectations for the role and its potential to provide oversight and accountability of systems and services, as well as unapologetic advocacy for their children and young people, there was also keen awareness of the limitations of the Commissioner role. The many challenges and demands facing the role from its inception were also on the mind of respondents when emphasising the importance of ongoing support to promote the social and emotional wellbeing of the Commissioner and their team.

The proposed model outlined through this process is broadly consistent with the Paris Principles in that it proposes a clear human rights mandate and legislative authority, with powers of inquiry and investigation independent from government and other organisations. It includes engagement with community and respect for community diversity, and is expected to work in cooperation with other human rights bodies to influence systems, policies and practice affecting Aboriginal and Torres Strait Islander children and young people. It is expected to report public at least annually, raising awareness of human rights issues affecting Aboriginal and Torres Strait Islander children and young people. Finally, it is expected to be appointed through a transparent and participatory process, including in particular Aboriginal and Torres Strait Islander children and young people, to ensure suitability and gain the confidence of the community.

There have been limitations in this process, as well as additional issues identified that will have significant implications for the success of the role. As such, it is important that they are considered alongside the establishment process. First, the ongoing pandemic made usual processes of engagement difficult. Engagement with the Wreck Bay Aboriginal Community was particularly limited, and warrants further attention throughout the legislative process, to ensure that the proposed role fulfils its mandate to safeguard the rights of all Aboriginal and Torres Strait Islander in the ACT. This includes determining how the proposed Commissioner engages with the Wreck Bay Aboriginal community in an ongoing way, and the resources required to support these functions. Second, the Commissioner role should be adequately resourced to deliver on this mandate, with particularly attention to the anticipated high level of expectation and need present within the community.

Third, an anticipated effect of increasing scrutiny of how systems promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people is a significant increase in demand on Aboriginal and Torres Strait Islander Community-Controlled Organisations to deliver services to Aboriginal and Torres Strait Islander children and families. Such services are generally under-resourced relative to need, and increased investment in these services will be necessary to ensure that the service system, and community more broadly, may respond to that need. Fourth, ongoing reform of various systems, including full implementation of the Our Booris Our Way recommendations, is critical to making the most of the proposed role. This includes commitment to realising in systems and practice the exercise of self-determination and self-governance by and for Aboriginal and Torres Strait Islander communities.

Fifth, it is important that the ACT Government continue to engage with the Aboriginal and Torres Strait Islander community of the ACT in the development and implementation of the role. This includes genuine partnership through the legislative processes, and the opportunity to review, edit and endorse the final proposed legislation. The legislative drafting process should start immediately, working with Aboriginal and Torres Strait Islander community stakeholders to develop a consolidated Bill to establish the Commissioner in a timely way. This process should include specific engagement with community representatives regarding the draft legislation, and a clear timeframe for progress to ensure that the establishment of the role remain on track. This should also include transparency on the resourcing dedicated to the Commissioner and their team, which should be reflective of the significant ongoing over-

representation of Aboriginal and Torres Strait Islander children in child protection and juvenile justice, as well as the poor outcomes achieved by various systems for Aboriginal and Torres Strait Islander children and young people more generally, in order to meet the significant demand for oversight, accountability and advocacy that is anticipated to face the role from its establishment.

Finally, we heard that much will be learned about the role throughout implementation. As such, the role should be reviewed early in the term of the inaugural Commissioner, providing an opportunity for the community, the Commissioner, and other stakeholders to propose refinements or enhancements to the role, for strengthening its mandate and authority. Importantly, this is not a review of the Commissioner's performance, but of the legislative, policy and resource enablers of the role, and whether it is satisfactorily meeting the needs of the Aboriginal and Torres Strait Islander community.

OUR BOORIS *our way*

UTS UNIVERSITY OF TECHNOLOGY SYDNEY

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Background

In 2019, the *Our Booris Our Way* review of the Australian Capital Territory (ACT)'s child protection system was published. The report's findings were clear:

> **"The experience of Aboriginal and Torres Strait Islander children in contact with the child protection system in the ACT is one of: a lack of active efforts, poor consistency in experience and decision making, discrimination, and cultural dislocation."**
>
> *Our Booris, Our Way Steering Committee (2019)*

The Our Booris, Our Way Steering Committee made 28 recommendations for urgent reform. A key recommendation was to create a dedicated Aboriginal and Torres Strait Islander Children's Commissioner role to provide active oversight and promote improved outcomes for children and families. The *Our Booris Our Way Steering Committee* stated that they wanted:

> *"The Commissioner to provide monitoring, advice and advocacy on systemic and individual cases, on an ongoing basis. The Commissioner should be able to advise and influence government on a broad spectrum of issues that impact our children across both government and non-government services including for example, education, health, housing, child protection and provide independent advice on issues of culture and equity. They would also have the specific ability to engage as a party to case conferences and provide alternative pathways to resolution than court orders.*
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> *It is the desire of the community for the Commissioner to be more engaged and connected to the community through current Aboriginal Community Controlled Organisations (ACCO) and the future Aboriginal Child Care Association that would distinguish it from other jurisdictions' singular rights-based framework."*

The ACT Government has committed to establishing an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT, to be enshrined in legislation. The community must play a key role in designing the Aboriginal and Torres Strait Islander Children's Commission role, its priorities and focus, positioning and characteristics, to have confidence that it is able to effectively meet the needs of children, families and communities. This process will be facilitated by UTS Jumbunna, working closely with the *Our Booris Our Way Implementation Oversight Committee,* and include a series of community dialogues to develop the:

- functions and powers,
- governance structures,
- most appropriate location,
- connections and collaborative relationship with other stakeholders, including the community and other oversight agencies, and
- process for recruitment.

This paper has been prepared to help the ACT Aboriginal and Torres Strait Islander community make decisions about an appropriate model for an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT that is able to promote and protect the rights of their children.

Principles for Human Rights Oversight Bodies

The Paris Principles are internationally-recognised standards for institutions intended to **protect and promote human rights**, such as a Children's Commissioner. These principles include:

- A clear **mandate** and **legal authority** to undertake their role **independent** of other parties (such as government and non-government organisations), including powers of **inquiry** and **investigation**
- **Engagement** with stakeholders, including **government, non-government organisations, experts** and the **broader community**, to protect and promote human rights.
- **Cooperation with other human rights bodies**
- The opportunity to **influence** systems, policies and practice, including the ability to **make recommendations** and relevant **follow up actions** regarding the response to recommendations
- **Clear, transparent** and **participatory** appointment processes, with a pre-determined criteria
- **Funding and infrastructure** necessary to carry out their job effectively.

Together, these principles outline the functions of human rights oversight bodies, such as:

- **Make recommendations** regarding human rights issues, including legislation and policy.
- **Inquire** into matters where there has been a **violation of human rights,** whether including individual and systemic circumstances.
- **Publish reports** such as annual reports or inquiries including tabling with the legislature
- **Cooperate with other human rights bodies**, including international human rights systems
- **Raise public awareness** about human rights issues.

Self-determination is not an element of the Paris Principles, as this is generally assumed, however requires specific attention when considering efforts to promote and protect the rights of Indigenous peoples. It is worth considering how self-determination is reflected in the design and implementation of this role, particularly given its prominence in delivering improved outcomes for Indigenous children, including child welfare and youth justice, with self-determination a key recommendation of the *Bringing Them Home* Report.

An Aboriginal and Torres Strait Islander Children's Commissioner should **monitor and report on** human rights issues affecting Aboriginal and Torres Strait Islander children and young people, holding governments and systems to account, promoting transparency and public accountability for the Aboriginal and Torres Strait Islander community, and respecting Aboriginal and Torres Strait Islander governance.

These principles have been enacted in different ways in various jurisdictions. In many circumstances, the legislated mandate of Children's Commissioners has been on systemic issues, with limited mandate for individual advocacy or intervention, with direct reporting to parliament, sometimes following a feedback process with the Minister or relevant department. Some are narrowly focused on specific systems, or part of the systems (such as out-of-home care), while others have a broader remit.

You can read more about similar roles in SNAICC's *Options Paper – Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People,* available here.

Key considerations for the ACT Aboriginal Children's Commissioner

As noted above, the Paris Principles provide important guidance for establishing the role of Aboriginal and Torres Strait Islander Children's Commissioner in the ACT, and how the role and mandate might best be enshrined in law. This is the focus of these consultations, and will have significant implications for the way the Aboriginal and Torres Strait Islander Children's Commissioner goes about their work.

This section will outline the broad areas for discussion towards developing a model for the ACT. It includes exploring issues such as:

- Whether the role will **focus on systemic issues** such as regulation, monitoring and oversight of the child protection system **or individual cases** (such as inquiries into child deaths in child protection or individual advocacy **, *or both,*** and if so, how these functions will be managed, and what powers might be required
- Whether the Aboriginal and Torres Strait Islander Children's Commissioner will have a **complaints handling function,** and, if so, how this will be positioned alongside other key roles such as individual or systemic advocacy, which reflect different assumptions and standpoints.
- Whether the Aboriginal and Torres Strait Islander Children's Commissioner will have a **broader focus on multiple systems** (whether their role will go beyond child protection and youth justice, to also focus on education, health, etc.).
- If the Aboriginal and Torres Strait Islander Children's Commissioner is **attached to the existing ACT Human Rights Commission**, **or has its own standalone office**.
- The **relationships** between the Commissioner and other key stakeholders, including the ACT Human Rights Commission, the judiciary, and the Aboriginal and Torres Strait Islander community
- The **requirements and process for selection** of the Commissioner, including the key characteristics, skills and values of an effective Commissioner, and how the Aboriginal Torres Strait Islander community, including Aboriginal and Torres Strait Islander children and young people, might be involved in the selection process.
- **The duration of the term the Aboriginal and Torres Strait Islander Children's Commissioner will serve** the specific period of appointment, and whether Commissioners can serve multiple terms .

Function and Powers

There are a broad range of potential functions to be considered for defining how the Aboriginal and Torres Strait Islander Children's Commissioner will protect and promote the rights of Aboriginal and Torres Strait Islander children, consistent with community expectations. This will include clearly describing the role's mandate, and how the functions and powers might best be positioned to deliver on this mandate.

Through *Our Booris Our Way,* the Aboriginal and Torres Strait Islander community expressed an interest for the proposed Aboriginal and Torres Strait Islander Children's Commissioner to provide monitoring, advice and advocacy on both systemic issues and individual matters, and across key areas including education, health, housing, child protection, and culture and equity. Different jurisdictions have approached this in different ways, including providing an explicit rights-based mandate, or outlining broad values such as safety, welfare or best interests, focused on a single system (such as child protection), or across multiple systems.

The Commissioner role might include a regulatory function regarding the implementation of the Aboriginal and Torres Strait Islander Placement Principle in child protection, and include

consideration of issues affecting the broader family, taking a holistic approach. This broad mandate may introduce challenges in effectively delivering for the community, creating potential conflicts in delivering on various functions, resource strain, or create structural difficulties when engaging with stakeholders to influence change.

One key area for consideration is whether the Commissioner should include a specific complaints handling role, which may require significant resourcing, and duplicate existing structures. However, providing a complaints handling role may improve access and choice for Aboriginal and Torres Strait Islander children and families. Alternatively, the Commissioner may play an oversight function regarding existing complaints processes (such as with the Human Rights Commission), with an interest in supporting improved complaints handling for Aboriginal and Torres Strait Islander people across the Human Rights Commission, as well as the discretion to intervene where needed.

In thinking about the roles and functions of the Commissioner, it is important to consider how certain roles functions might interact or even create challenges or potential conflicts (for example, the relationship between individual advocacy and impartially handling complaints), and the unique role that the Aboriginal and Torres Strait Islander Children's Commissioner might play within the ACT community. This includes relationships with existing human rights bodies, government agencies and the judiciary, all of which play a role in the lives of Aboriginal and Torres Strait Islander children and young people (discussed below).

1. What are the specific roles and functions that are desirable for an effective Aboriginal and Torres Strait Islander Children's Commissioner for the ACT?
2. Which of these roles or function are **most important** in meeting the expectations of Aboriginal and Torres Strait Islander Children's Commissioners?
3. In providing monitoring, advice and advocacy on individual matters, what should be the scope of the Commissioner's responsibility, and its relationship with other complaints handling and advocacy processes?

Governance, connections and collaborative relationships

Independence is an essential principle for an effective Aboriginal and Torres Strait Islander Children's Commissioner. However, effectively monitoring and influencing systems and practice to protect and promote the rights of Aboriginal and Torres Strait Islander children also requires good relationships with Aboriginal and Torres Strait Islander communities, as well as strong connections and collaborative relationships with a range of stakeholders, including community, government, and other oversight bodies, such as the ACT Human Rights Commission.

These relationships might be included in legislation, reflected through organisational structures, as well as the physical location and environment of the Commissioner (discussed below).

Governance should prioritise the principle of independence, and consider how to effectively promote representation of the community, influence government and key stakeholders, and provide accountability to the community. Community and cultural accountability is a key part of promoting confidence in the role. This might include a clear mandate for broad community engagement, including access to specific cohorts and populations (such as children and young people in out-of-home care or in youth justice). It may also include a requirement or option to established an Aboriginal and Torres Strait Islander Advisory Council, or youth council, to assist the Commissioner in exercising their responsibilities. There may be options to link governance of the ACT Aboriginal and Torres Strait Islander Children's Commissioner in with existing Aboriginal advisory or governance mechanisms as well but, if that is the case, the independence of the role should be preserved.

Other considerations include organisational decision making and the opportunity to direct adequate resources to fulfil their mandate, and whether the Commissioner is part of the ACT Human Rights Commission, or structurally independent. If so, what should the relationship be between the Aboriginal and Torres Strait Islander Children's Commissioner and other related roles in the ACT Human Rights Commission that would promote greater reach and impact through coordinating effort and influencing the exercise of these functions (such as advocacy and complaints handling roles). Effective collaboration across these structures is likely to increase reach and impact, and promote improved outcomes for Aboriginal and Torres Strait Islander

children and young people in the ACT. Similarly, other key relationships, such as with child protection and juvenile justice systems, are also worth considering, including if it is desirable for the Commissioner to be able to participate in child protection matters before the Courts, and if so, at what times and in what capacity.
Finally, reporting processes should also be considered, including annual, special and thematic reports, and how these processes promote transparency and accountability, particularly to the Aboriginal and Torres Strait Islander community. This might include a mandate to table reports simultaneously with Parliament and relevant Aboriginal and Torres Strait Islander community bodies, such as the ACT Aboriginal and Torres Strait Islander Elected Body.

4. What governance structures are necessary to effectively fulfil the mandate of the ACT Aboriginal and Torres Strait Islander Children's Commissioner?
5. What relationships are expected with respect to the Aboriginal and Torres Strait Islander community, and the ACT Human Rights Commission?
6. What should the Commissioner's mandate be with respect to reporting?
7. What mechanisms need to be put in place to ensure the ACT Aboriginal and Torres Strait Islander Commissioner is accountable to community?

Location

In addition to expectations and mandates to engage collaboratively with community and other stakeholders, the physical location and space occupied by the Commissioner can send a clear message about the Commissioner's role, independence and relationships. It is also a clear opportunity to communicate to Aboriginal and Torres Strait Islander children and young people, and the community more generally, about the priorities and values of the Commission.

The physical location of the Commissioner will also have impact on the nature of relationships. Co-locating the Commissioner with the Human Rights Commission, even if established through distinct legislation, is likely to foster closer relationships with other oversight bodies and support collaboration across the broader remit. Co-locating the Commissioner's role with an Aboriginal Community Controlled Organisation might signal an intent to work in a community-based way but may introduce potential conflicts and diminish the perception of independence.

8. Where should the Commissioner be located? Are there other considerations regarding the location and setting of the Commissioner to effectively deliver on its mandate?

Role requirements and selection

Appointed Commissioners should have the confidence of the community they serve. This can be promoted by involving the community in shaping the role, as well as the skills, knowledge and experience to undertake the role effectively, and the process for recruitment. It is important that these are clearly defined prior to appointment, promoting transparency in the selection process.
Relevant skills, knowledge and experience might include community engagement, navigating government systems and processes, strategic engagement, sector experience or formal qualifications, as well as cultural authority, integrity and community standing. Some of these features may be of more value to the community than others, while overly narrow or strict requirements may exclude some candidates from consideration.
Selection should involve a clear, transparent and participatory process. This could involve multiple stages and could include the active participation of representatives of the Aboriginal and Torres Strait Islander community (including children and young people specifically) in various ways such as publicising the role within the community or forming part of the selection panel. For example, it might be mandated that community members and children and young people participate on the selection panel, or include tasks intended to explore the candidate's competency in working with children and young people.

9. What personal and professional characteristics are essential for the ACT Aboriginal and Torres Strait Islander Commissioner to possess?
10. How should recruitment and selection be undertaken?

Next Steps

Aboriginal and Torres Strait Islander community members and other stakeholders including government and statutory officers are invited to share their views on the function and powers, governance structures, locations, connections and relationships, and process for recruitment of a Commissioner for Aboriginal and Torres Strait Islander Children in the ACT.

A series of community dialogues will be organised to provide an opportunity for community members to have their say. These will be facilitated by the Jumbunna Institute for Indigenous Education and Research team, led by Associate Professor Paul Gray, Distinguished Professor Larissa Behrendt, and Professor Lindon Coombes, working in partnership with the *Our Booris Our Way Implementation Oversight Committee,* and the ACT Justice and Community Safety Directorate.

Sessions will be advertised throughout the community and in partnership with local community organisations. We will also hear from government representatives and service providers. A final model will be developed through a final workshop with Aboriginal and Torres Strait Islander and government stakeholders. A report of the process will be developed and published for the community.

Relationships of the Aboriginal and Torres Strait Islander Children's Commissioner

Summary Table

	Principles	Comments
Functions and powers	Human rights mandate Inquiry and investigation	Some similar roles have an explicit mandate to promote and advocate for the rights of children. Others refer to broad concepts such as safety, wellbeing, or best interests. Some roles are given a broad mandate, while others might be specifically oriented towards particular systems – child protection, youth justice etc. Many statutory officers tend to have a focus on systemic issues affecting children. Some include scope for individual advocacy or complaints resolution, while others are limited in their mandate for individual matters. Some include specific powers of inquiry, including under their own motion, or at the request of the Minister. This can include powers to compel documents, access to sites, or other requirement to complete investigations. In some circumstances, this includes offence provisions for non-compliance.
Governance and connections	Independence Plurality Cooperation with other human rights bodies Relationship with community	Commissioner roles in Australia tend to be independent statutory officers, invested with their own authority. Some report to the Minister, while others may report directly to parliament, or to a parliamentary committee. Commissioners may be able to establish relevant advisory councils, including involving young people, or be mandated to establish advisory councils. Commissioners may be positioned as part of a broader institution (such as the ACT Human Rights Commission, or the Australian Human Rights Commission), or established in a standalone fashion. Some existing Aboriginal officers (see for example Queensland, Victoria and NSW) are within child-focused statutory bodies, which may include delegated authority, or other statutory connections to a principle commissioner/statutory officer. Many develop working relationships with other statutory officers, such as Ombudsman or Guardians, whether or not this relationship is established in legislation. Few have explicit formal relationships to Aboriginal community structures established in legislation, however tend to foster strong working relationships through regular, respectful engagement with the community.
Role Characteristics and Selection	Selection	Commissioners most often tend to be appointed by the Minister for a fixed term, and may follow a publicly advertised recruitment process. In some circumstances, key stakeholders have been involved in recruitment processes, for example including young people or community representatives on the selection panel, contributing to recommendations to the Minister. Some include specific tasks to demonstrate capacity to engage effectively with children and young people.

Attachment F.1: Authorisation and regulation of septic systems and sewage treatment plants in the ACT

1. The *Public Health Regulation 2000* (ACT) establishes a requirement for the installation or alteration of septic tanks in the ACT to be authorised by an 'authorised officer' – refer to Division 6.3 for details
    a. The *Water and Sewerage Act 2000* (ACT) also applies to the installation of a chemical toilet, a flushing toilet discharging to a septic system and a connection to a septic system, in the ACT (established at Part 1, Section 4).
2. ACT Public Health Officers within the ACT Health Protection Service (HPS) are appointed as 'authorised officers' able to provide permission for the installation of septic tanks in the ACT.
    a. Large scale septic systems within the ACT also require Environment authorisations from the ACT Environmental Protection Authority (EPA) to ensure ecological impacts are appropriately managed. Further detail is provided below.
3. The septic tank authorisation process is initiated by the submission of an 'Application to install or alter a septic tank, chemical toilet or sewage treatment plant' to ACT Health (HPS).
4. To assist authorised officers to make an informed judgement on the authorisation (or not) of a proposed septic tank and/or sewage treatment system, applications must be accompanied by a:
    a. Site plan, showing the:
        i. location of the premises and the proposed system;
        ii. effluent disposal system or irrigation areas;
        iii. distance from watercourses and boundaries or bores; and
        iv. north direction and dimensions of the disposal area.
    b. Geotechnical report on soil profile of the area and details of the soil percolation rate is required for all land application systems.
    c. System accreditation report.
        i. All works must comply with AS/NZ 1546.1, 1546.2, 1546.3 and 1547 as applicable.
5. ACT HPS also regulates septic tanks and sewage treatment plants in the ACT. This primarily involves, but is not limited to:
    a. authorising the installation or alteration of septic tanks and sewage treatment plants;
    b. undertaking inspections of sewage tank installations;
    c. responding to complaints relating to septic systems at domestic dwellings, such as odour, leakage and contamination, post-treatment water quality, etc.; and

d. where necessary, issuing directions to replace or alter toilets or treatment plants as required to comply with legislative requirements.

6. There are also authorisation and regulatory functions within the ACT EPA associated with large-scale or commercial septic systems, and sewage treatment plants, within the ACT.

    a. Under the *Environment Protection Act 1997,* an Authorisation is required for sewage treatment if the activity involves the discharge of treated or untreated sewage or septic tank effluent to land or water and having a peak loading capacity designed for more than 100 people per day. (Class A activity).

    b. An Environmental Agreement (or an Authorisation) is required for wastewater recycling that discharges recycled water onto land or into a waterway if the recycling involves—

        i. sewage treatment if the activity involves the discharge of treated or untreated sewage or septic tank effluent to land or water and having a peak loading capacity designed for more than 100 people per day, other than an activity involving the recycling of wastewater if there is no discharge to receiving waters (Class A activity);

        ii. the treatment for the purpose of reuse of wastewater (including effluent) in a treatment plant that has a capacity of greater than 3ML per year (Class B Activity); or

        iii. the reuse of more than 3ML per year (Class B activity).

7. Additionally, to provide a utility service in the ACT, including (but not limited to) the "conveyance, collection, treatment and disposal of sewage", a utility must be licensed under the *Utilities Act 2000* (ACT) unless the subject of an exemption made by decision of the Minister for Water, Energy and Emissions Reduction – refer to Divisions 2.4 and 2.5.

    a. Operators of sewerage utility services in the ACT may also have obligations under *Utilities (Technical Regulation) Act 2014* (ACT) and to the Technical Regulator established by this Act – refer to Section 10.

8. It should be noted that the ACT legislation referenced above is not an exhaustive list, as other ACT and Commonwealth legislative requirements and/or standards may also apply depending on a proposed application's scope.