

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE
SELECT COMMITTEE ON COVID-19 PANDEMIC RESPONSE
INTERIM REPORT 2**

**Presented by
Andrew Barr MLA
Chief Minister
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INTRODUCTION

The Government would like to thank members of the community and community groups who have provided submissions or evidence to the Committee.

The Government would also like to note that any responses which are noted or agreed in principle are contingent on future Government funding decisions.

OVERARCHING ACT GOVERNMENT COMMENTS

The COVID-19 health emergency has fundamentally changed the lives of all Australians. ACT Government measures and early action through the National Cabinet have, so far, proved highly successful in containing the outbreak of COVID-19 in the ACT.

COVID-19 Cases in the ACT

As at 30 June 2020, there have been 108 confirmed cases of COVID-19 in the ACT with 105 people recovering and three deaths recorded. The last confirmed case in the ACT was recorded on 6 June. This success has allowed the ACT to begin gradually easing COVID-19 restrictions. Further information on the easing of COVID-19 restrictions and social distancing requirements that remain in place can be found at the [ACT Government's COVID-19 website](#).¹

ACT Government response to the Standing Committee Interim Report 1

The ACT Government tabled its response to the Select Committee's first interim report in the Legislative Assembly on 4 June 2020. The Report included 24 recommendations relating to the COVID-19 pandemic response in the ACT around the themes of: whole of government; housing; rental debts; ending fixed-term tenancies; housing provision; community services; health; hospitality; tourism and commercial rates.

The response to the first interim report outlined the breadth of work that has been undertaken across the ACT Government in response to the global pandemic. The Government agreed to 12 recommendations, agreed in principle to two recommendations and noted ten recommendations.

Stage 2 of COVID-19 Easing of Restrictions Roadmap

The ACT Government continues its approach toward easing of restrictions following the 3 Stage '[COVID-19 Easing of Restrictions Roadmap](#)'.² The ACT progressed to Step 2.2 from midday Friday 19 June 2020. Key changes in this stage include the capacity for all indoor and outdoor gatherings to accommodate a maximum of 100 people within the 1 per 4 square

¹ <https://www.covid19.act.gov.au/>

² <https://www.covid19.act.gov.au/resources/canberra-recovery-plan>

metre rule. For hospitality venues, the maximum number of patrons excludes staff, and alcohol can now be served without food.

Additional venues and activities allowed to reopen under Step 2.2 include:

- Cinemas and movie theatres;
- Indoor amusement centres, arcades and outdoor/indoor play centres;
- Betting agencies (Tab and Keno);
- All performances in all locations (including concert venues, theatres, arenas, auditoriums or outdoor venues);
- Return to full-contact training for all sports;
- Circuit training in gyms; and
- Universities/CIT and other vocational training providers to increase face-to-face learning where possible.

The new restrictions allow a continuation of sport and recreation activities in groups of up to 100 participants/players, including coaches, referees, trainers and spectators in indoor and outdoor spaces (including pools).

Stage 3 will be considered in July and will include the potential for larger gatherings.

COVID-19 Emergency Response Legislation Program

The ACT Government COVID-19 Emergency Response Legislation Program consists of the *COVID-19 Emergency Response Act 2020* (passed in April 2020), the *COVID-19 Emergency Response Legislation Amendment Act 2020* (passed in May 2020), and the *COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 2)* (introduced to the Legislative Assembly in June 2020). Together, this legislation program supports the ACT community by giving urgent effect to Commonwealth agreements and supporting operational requirements to allow the ACT Government to adapt to additional and extraordinary measures implemented as a result of the COVID-19 pandemic.

The ACT Government worked collaboratively not only across Directorates and Agencies, but also with external stakeholders. This was key to delivering outcomes urgently and within restricted timeframes for the benefit of ACT community.

ACT Government Education Response to COVID-19

ACT public schools moved to remote and online learning at the beginning of term 2 in response to the COVID-19 pandemic. During this time, all 88 public schools continued to operate, with 13 safe and supervised sites operating to provide access to a physical school site for students that needed it.

Teachers designed and implemented programs to support remote learning which matched the school year and abilities of their students. Building on previous programs, additional

Chromebooks were distributed to year 4, 5 and 6 students, meaning that all students from years 4 to 12 had a personal device. Internet access was facilitated for families who did not have access. Where requested, access was made available through provision of a dongle or prepaid SIM.

As part of easing COVID-19 restrictions, ACT public school students and teachers began returning to classrooms across Canberra from Monday 18 May. The three stage return of on-campus learning saw all students back at public schools by 2 June:

- from Monday 18 May (week 4 of term 2): pre-school, kindergarten, years 1, 2, 7 and years 11 and 12 returned. College students attended a combination of on-campus and remote learning, with colleges making arrangements to support learning on-campus for students and subject matter that required it;
- from Monday 25 May (week 5 of term 2): years 3, 4 and 10 students returned; and
- from Tuesday 2 June (week 6 of term 2, following the Reconciliation Day long weekend): the remaining year levels of years 5, 6, 8 and 9 returned.

Inter-state and International travel

The ACT's positive response to COVID-19 and success in suppressing the virus is presenting a range of unique opportunities for our jurisdiction. The ACT currently has no active cases and has recorded over 29,000 negative test results.

Opportunities for broader inter-state and international travel are being considered for Canberra given that there has been only one confirmed case in recent weeks and no evidence of community transmission. Further easing of restrictions needs to be considered carefully to ensure the community remains safe and to prevent a resurgence of infections.

A travel bubble has been considered between the ACT and jurisdictions such as Tasmania as early as July 2020. Tourism authorities within jurisdictions are working with airlines and airports to establish a safe and commercially viable model that would consider how mandatory quarantine periods could be waived. This is important work for the ACT's tourism industry.

The ACT's position also presents the opportunity for a return to direct international flights and Canberra Airport has formally applied to the Australian Government to be a port for the potential Trans-Tasman bubble with New Zealand. The Chief Minister has also written to the Prime Minister and Prime Minister of New Zealand Jacinda Ardern in support of direct flights between Canberra and Wellington. This move would further strengthen Canberra's existing Sister City relationship with Wellington and promote international tourism in the Canberra region.

International students

Tertiary and international education are significant for the ACT economy, with the sector worth \$3.3 billion to the Territory and supporting over 20,000 jobs— meaning one in six Canberrans work for or study in our tertiary institutions.

The ACT is uniquely positioned to facilitate the safe return of a small number of international students returning to Australia. An ACT pilot program is being developed with the Australian National University (ANU) and the University of Canberra (UC). It would see an initial 350 international students who already have established ties returning to Canberra from a range of countries that would fly directly into Canberra Airport.

The ACT is a small jurisdiction, with access for direct international flights and is an ideal candidate to run a contained and responsible pilot program that will inform the nationwide approach to the return of international students. The ACT would be at the forefront of national policy development with the pilot informing the protocols and practices for a national approach for the safe return of students. The proposed July 2020 timing would be consistent with Step 3 of Canberra’s Recovery Plan Roadmap and would enable these students to continue their Semester 2 study as part of the ANU and UC campuses’ reactivation.

GOVERNMENT RESPONSE TO COMMITTEE RECOMMENDATIONS

Recommendation 1

The Committee recommends the ACT Government direct that all delegated legislation made in response to COVID-19 (including notifiable instruments) include a statement of compatibility outlining whether and how the instrument is compatible with human rights.

Government Response

Agreed in principle

The ACT Government has a strong, ongoing commitment to legislate in a manner that is compatible with human rights.

The Government has recently delivered on an election commitment to introduce a new process whereby all 'Significant Bills' are now accompanied by detailed human rights analysis in the explanatory materials. That is in addition to the Government's existing practice to include a discussion in the explanatory statement for every Government Bill which deals with the Bill's interactions with human rights.

Where delegated legislation made in response to the COVID-19 public health emergency has significantly engaged human rights, and it had been warranted and feasible to undertake detailed human rights analysis in the context of a fast moving public health emergency, this analysis has been undertaken and made publicly available. The Government intends to continue this practice, and to assess the engagement of human rights by delegated legislation on a case-by case-basis.

For example, the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* which provides for a 3 month moratorium on evictions for those unable to meet their commitments under a residential tenancy agreement due to the impact of COVID-19, engages the right to protection of family and children and the right to privacy. The Explanatory Statement accompanying that Declaration included a substantive human rights analysis which discussed how the rights engaged were variously promoted or limited by that measure and were compatible with the *Human Rights Act 2004*.

Importantly, while there is currently no legislative requirement that delegated legislation include a statement of compatibility with human rights, the ACT Government is committed to acting compatibly with the *Human Rights Act 2004*. This intention extends to delegated legislation made in response to the COVID-19 public health emergency.

Ensuring delegated legislation complies with human rights is routine and is the way the ACT Government operates. This approach has not changed in the current environment.

Recommendation 2

The Committee recommends that where emergency measures are introduced by way of delegated legislation, they should be accompanied by a statement of compatibility with human rights.

Government Response

Noted

The ACT Government welcomes the Committee's recommendation and refers the Committee to its response in relation to recommendation 1.

The Government will continue to deal with human rights issues that arise in its decision-making on a day to day basis, and it fully intends to ensure that the delegated legislation it makes in response to the COVID-19 public health emergency is compatible with human rights.

Recommendation 3

The Committee recommends that delegated legislation made in response to COVID-19 be in the form of disallowable instruments, rather than notifiable instruments to ensure appropriate and adequate oversight by the Legislative Assembly.

Government Response

Noted

While the ACT Government welcomes public scrutiny of its legislative response to COVID-19, there are reasons in certain cases why delegated legislation should not be subject to parliamentary disallowance procedures. A notifiable instrument is often used for matters that might need to be changed regularly or quickly or are operational, technical or procedural in nature. As such, notifiable instruments may be more appropriate in some cases.

It is important to note that many of the COVID-19 measures are in the form of disallowable instruments, and hence subject to full parliamentary scrutiny. Four disallowable instruments have been made under the various heads of power created by the *COVID-19 Emergency Response Act 2020* and *COVID-19 Emergency Response Legislation Amendment Act 2020*:

- a. *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020* (Disallowable Instrument) made under the *Leases (Commercial and Retail) Act 2001*;
- b. *Long Service Leave (Portable Schemes) COVID-19 Emergency Leave Determination 2020 (No 1)* (Disallowable Instrument) made under the *Long Service Leave (Portable Schemes) Act 2009*;

- c. *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* (Disallowable Instrument) made under the *Residential Tenancies Act 1997*; and
- d. *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020* made under the *Gaming Machine Act 2004*.

Noting the current state of COVID-19 in the ACT, the Government does not envisage the need for additional substantial delegated legislation of the scale seen in the days and weeks directly following the declaration of the public health emergency.

Where delegated legislation is necessary to respond to the COVID-19 public health emergency, the Government will consider the most appropriate and feasible manner to respond, taking into account all information to hand at that time, including the different oversight processes available and required for any subsequent measures. If further heads of power to make delegated legislation are required in response to COVID-19, the Government will give full consideration to the importance of parliamentary scrutiny of delegated legislation, including whether any delegated legislation made under a head of power should be subject to disallowance procedures.

Recommendation 4

The Committee recommends that ACT Policing make public all guidance or directions it has provided to officers to inform their enforcement of public health directions to enable assessment of whether such guidance is sufficient, updated and accurate while also establishing clear community expectations about compliance.

Government Response

Noted

The ACT Government notes this recommendation. The guidance issued to ACT Policing officers is to assist them in executing their duties and is specific to this task. As such, it is not appropriate to share this guidance with the public as it may reveal tradecraft and operational machinations.

More broadly, the ACT Government's compliance approach in regard to COVID-19 public health directions is consistent across ACT Policing, Access Canberra and ACT Health. The Government and each agency have been clear that this approach prioritises education and engagement, including working proactively with businesses and organisations to support them to keep their staff, volunteers and customers safe.

By mid-July 2020, ACT Health will make available on its website a summary of the COVID-19 compliance framework. Consistent with usual practice operational policing protocols and procedures are not available publicly.

Recommendation 5

The Committee recommends that ACT Policing, ACT Health and Access Canberra publish weekly de-identified data about compliance activities taken under any public health emergency directions, including:

- the number of infringement notices or formal cautions issued;
- the number of compliance checks conducted; and
- basic socio-demographic indicators of affected individuals or businesses.

Government Response

Noted

ACT Health, ACT Policing and Access Canberra currently capture data relating to the number of infringement notices or formal cautions issued, and the number of compliance checks conducted. However, socio-demographic data of businesses and individuals is not recorded by ACT Policing, ACT Health or Access Canberra. Access Canberra continues to enhance its reporting of compliance related matters and will continue to do so for the duration of the public health emergency. This includes identifying the appropriate platform (such as websites) to publicly present the information to further inform business and the community. However, the capture of socio-demographic data is not required for the purpose of checking a business' compliance against the Public Health Direction, nor provided for under relevant legislation and as such cannot be provided.

To date, no fines have been issued to businesses or individuals in the ACT. A small number of warnings have been issued to businesses, while no formal warnings or cautions have been issued to individuals.

Recommendation 6

The Committee recommends that the ACT Government either:

- put in place additional controls and procedures to ensure that only approved employees or personnel may access data in the National COVIDSafe data store and may do so solely for the purpose of contact tracing; or
- if the ACT Government believes that data agreements signed with the Commonwealth containing rules governing their usage of COVID app data are legally enforceable, publicly release those agreements.

Government Response

Noted

In addition to the Commonwealth *Privacy Amendment (Public Health Contact Information) Bill 2020*, the *Information Privacy Act 2014 (ACT) (Information Privacy Act)* and the *Health Records (Privacy and Access) Act 1997 (ACT)* regulate how ACT public sector agencies handle personal information. *The Information Privacy Act* includes a set of Territory Privacy Principles (TPPs) which cover the collection, storage, use and disclosure of personal information, and an individual's access to and correction of that information.

The Territory Privacy Principles (TPPs) set out standards, rights and obligations for the collection, use, disclosure, storage, accessing and correction of personal information (including sensitive information).

Under the existing privacy protection framework applicable in the ACT, ACT Health can only access COVIDSafe app information (including contact information) in the National COVIDSafe Data Store after a COVIDSafe app user consents to it being downloaded in the National COVIDSafe Data Store.

The data agreement signed with the Commonwealth with respect to the COVIDSafe app data is explicitly not legally binding. Nevertheless, the information that is accessed by ACT Health can only be used for contact tracing purposes. ACT Health is not permitted to disclose COVIDSafe app information to any other person or entity for any other purpose other than for contact tracing. Any additional or subsequent information whose collection is facilitated by COVIDSafe app information will be covered by the existing applicable privacy protection framework in the ACT.

Collection and use of both the COVIDSafe app information, and subsequent information whose collection is facilitated by COVIDSafe app information, by ACT Health for contact tracing purposes is authorised under the Territory Privacy Principle 3 and 6 as set out in the *Information Privacy Act*. Information subsequently obtained by ACT authorities through the initial information obtained from the COVIDSafe app will similarly be governed by the existing privacy protection framework.

On this basis, the Government does not consider it necessary to put in place controls and procedures additional to the existing privacy protection framework set out here. The Government will continue to be open and transparent with the ACT community on the use of the COVIDSafe app data for the purposes of contact tracing.

Recommendation 7

The Committee recommends that the ACT Government ensures that information is specifically adapted to help children and young people understand COVID-19, what is required of them and where they can access support if needed.

Government Response

Agreed

The ACT Government has provided information to children and young people to assist their understanding of COVID-19. This includes directly, and for the workers supporting children and young people via practice guides, factsheets, providing linkages to age-appropriate resources and mail outs. The information has been provided in a range of formats.

ACT public schools have provided information to students and their families to support their understanding of the impacts of COVID-19. Teaching staff have adapted their teaching methods to assist with managing student concerns with a strong focus on student wellbeing.

Information specifically targeted at children and young people, their families, and carers, can be found on the [Community Services Directorate \(CSD\) website](#).³ The Public Information Coordinator is continuing to consider how communications can be better targeted to reach young people and address the issues that matter most to them.

A major focus for Children, Youth and Families division in the Community Services Directorate has been to develop practice guidance for staff to equip them with the required information, skills and tips for talking with children and young people about what is happening and how they can access support. It has also developed factsheets for Aboriginal and Torres Strait Islander families about Child and Youth Protection Services operations during COVID-19. The staff practice guidance, including factsheets for Aboriginal and Torres Strait Islander families, is available on the internal knowledge portal.

Bimberi Youth Justice Centre provides all young people in custody with information about COVID-19 including what symptoms to look out for and how to avoid the spread of COVID-19. Information is posted throughout the centre on good hygiene practices and all young people are screened on induction by Justice Health.

The ACT Government is working closely with community sector partners to ensure that children and young people have information about COVID-19 and that partners are appropriately skilled and resourced to access further information, if required.

The Community Services Directorate is working with ACT Health and SBS to translate health advice, information on restrictions and what is required of Canberrans as well as information on support services available to people into 13 languages. The translated resources support young people from multicultural backgrounds with limited English.

Recommendation 8

The Committee recommends that, to enable timely communication when there are exceptional circumstances, the Directorate suspends its usual protocol of not communicating with teachers and school staff out of normal work hours.

³ <https://www.communityservices.act.gov.au/ocvfs/information-for-children-and-young-people>

Government Response

Agreed in principle

The Education Directorate will communicate with teachers and other school staff outside of normal work hours during exceptional circumstances and will work with relevant unions to negotiate the parameters in line with the Teaching Staff Enterprise Agreement. During the COVID-19 pandemic, communication with school leaders such as principals has already occurred outside of normal work hours.

Recommendation 9

The Committee recommends that if there are further restrictions on face to face schooling that the ACT Government prioritise facilitating normal schooling for children with special needs.

Government Response

Agreed in principle

The existing four specialist schools remained available during the remote learning period and special needs transport to these schools continued.

Students who usually attend a Learning Support Centre or Learning Support Unit at a mainstream school were supported to engage in learning by their usual teachers. Where these students were accessing a Safe and Supervised Site, the home school worked with the hub school to ensure the student's needs were met. For example, this often included engagement with their usual Learning Support Assistant, and the creation of "social stories".

The Education Directorate Network Student Engagement Team (NSET) and school psychologists also continued to provide services at Safe and Supervised Sites during the remote learning period, and a new "telehealth" service was provided so students learning from home could continue to access appointments.

Recommendation 10

The Committee recommends that further work be undertaken to support students with special needs, including those in learning support units or with an Individual Learning Plan (ILP), during shut downs.

Government Response

Agreed

The Education Directorate will consider the experiences of students with additional needs during the period of remote learning and use lessons from this time for future planning and in the ongoing response to the COVID-19 pandemic.

Recommendation 11

The Committee recommends that all school systems provide extra support to students who may have been left behind by the changes in education, and in particular those who were struggling before the emergency.

Government Response**Noted**

ACT public school teachers are already equipped to assess the needs of students and make adjustments required to support students at their point of need. This has continued to occur following the return to on-campus learning.

Catholic systemic schools and independent schools are funded by the ACT and Commonwealth governments to meet the educational needs of their students.

Recommendation 12

The Committee recommends that the ACT Government undertake an independent review of the learning from home period so that improvements can be made for similar future situations. The scope should include but not be limited to:

- preparedness for remote learning;
 - resources available for schools and families, including consideration of identification of vulnerable children and additional supports provided;
 - communication with school communities and parents; and
 - comparison of differences with the responses in other jurisdictions.
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Government Response**Agreed in principle**

The Education Directorate is already considering the remote learning period to ensure any lessons are taken into account for future planning, as well as the ongoing response to the current COVID-19 pandemic.

The ACT Government's current priority is the ongoing response to the COVID-19 pandemic. Any future decision to undertake an independent review would be subject to budget consideration.

Recommendation 13

The Committee recommends that the ACT Government undertake an independent longitudinal study to measure the impact of the COVID-19 response on children's education.

Government Response**Noted**

There are already existing methods for the Education Directorate to assess impact. For example, the Education Directorate undertakes annual surveys of students, parents and carers to measure satisfaction and identification with their schools.

ACT schools also participate in the National Assessment Program which measures literacy and numeracy outcomes and is next scheduled to occur in 2021.

Recommendation 14

The Committee recommends that, wherever possible, students have access to their local school during any similar shutdowns.

Government Response**Agreed in principle**

Access to schools during remote learning periods would be determined by circumstances of the time.

During the remote learning period in Term 2 2020, low attendance meant that 13 Safe and Supervised Sites operated across the ACT for public school students who needed to attend a school site.

Recommendation 15

The Committee recommends that the ACT Government publish the scope of the Coordinator-General's role.

Government Response**Agreed**

The scope of the Coordinator-General's role is outlined below.

Role and Responsibilities of the Coordinator General:

The key roles and responsibilities of the Coordinator-General are to:

- a) work closely with the Chief Health Officer (CHO) to ensure the health and non-health responses are well aligned;
- b) maintain sound governance, decision-making and other processes, that are well coordinated and working efficiently;
- c) regularly review, with Director-General Justice and Community Safety Directorate and ACT Government Solicitor, structures and legal authority as the COVID-19 response evolves, and consult with the Attorney-General on advice to Security and Emergency Management Committee of Cabinet if changes are required;
- d) work with Treasury to monitor the implementation of economic support packages;
and
- e) support a more strategic approach on longer term issues, not just the immediate crisis – for example through supporting the work on community resilience during the crisis, and community recovery at the other end.