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**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**COVID-19 EMERGENCY RESPONSE BILL 2020**

**EXPLANATORY STATEMENT  
and  
Human Rights Compatibility Statement**  
*(Human Rights Act 2004, s 37)*

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# COVID-19 EMERGENCY RESPONSE BILL 2020

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## **COVID-19 EMERGENCY RESPONSE BILL 2020**

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (HRA).

### **Background**

In December 2019, China reported cases of a viral pneumonia caused by a previously unknown pathogen in Wuhan City, in the Hubei Province of China. The pathogen was identified as a novel coronavirus genetically related to the virus that caused the outbreak of Severe Acute Respiratory Syndrome in 2003. The new strain of coronavirus is called SARS-CoV-2 and the disease it causes is called COVID-19. COVID-19 is presently understood to most likely spread from person-to-person contact. The current estimates of the time it takes for symptoms to develop after being exposed to the virus that causes COVID-19 is a range of 2 to 14 days. At this stage, there is no known vaccine or antiviral against COVID-19. On 30 January 2020, the Director-General of the World Health Organisation (WHO) declared the outbreak of COVID-19 a Public Health Emergency of International Concern. On 11 March 2020, the Director-General of the WHO declared COVID-19 a global pandemic. The WHO requested that every country urgently take necessary measures to ready emergency response systems.

On 16 March 2020, the Minister for Health declared a public health emergency under section 119 of the Public Health Act 1997 (the Act) due to the public health risk to the ACT community posed by COVID-19. The public health emergency was declared for the whole of the ACT for a period of five days (the maximum period allowed pursuant to section 119(3)(a)). It is the first time that a public health emergency has been declared under the Act. An emergency declaration can be extended and further extended by notifiable instrument for period of up to two days pursuant to section 119(4). The emergency declaration has already been extended a number of times and it is expected that there will be a continued need for the declaration to be further extended.

As at 30 March 2020, the WHO has reported that there are 693, 224 confirmed cases of COVID-19 worldwide. As at 30 March 2020, there are 3,966 confirmed cases in Australia and 16 confirmed deaths as a result of COVID-19. As at 31 March the ACT has 80 confirmed cases of COVID-19 and one confirmed death.

### **Overview and purpose of the Bill**

The *COVID-19 Emergency Response Bill 2020* will give urgent effect to Commonwealth agreements as well as ensure immediate operational requirements are able to come into effect

to allow the Government to adapt to additional and extraordinary measures implemented as a result of the COVID-19 pandemic.

The policy objective of this bill is to make amendments required to support urgent and immediate operational responses which are necessary to respond to and prevent the further spread of COVID-19.

The Bill is an omnibus bill which amends a range of legislation across the ACT Government Ministerial portfolio. In addition to creating a new standalone COVID-19 Emergency response Bill, this Bill will also amend the:

- *Children and Young People Act 2008;*
- *Corrections Management Act 2007;*
- *Crimes (Sentence Administration) Act 2005;*
- *Crimes (Sentencing) Act 2005;*
- *Evidence (Miscellaneous Provisions) Act 1991;*
- *Family Violence Act 2016;*
- *Financial Management Act 1996;*
- *Firearms Act 1996;*
- *Gaming Machine Act 2004;*
- *Gaming Machine Regulation 2004;*
- *Leases (Commercial and Retail) Act 2001;*
- *Long Service Leave (Portable Schemes) Act 2009;*
- *Long Service Leave Act 1976;*
- *Medicines, Poisons and Therapeutic Goods Regulation 2008;*
- *Official Visitors Act 2012;*
- *Personal Violence Act 2016;*
- *Prohibited Weapons Act 1996;*
- *Residential Tenancies Act 1997;*
- *Supreme Court Act 1933; and*
- *Working with Vulnerable People (Background Checking) Act 2011.*

A number of measures in the Bill also provide a regulation-making power necessary to give effect to the intention of the Bill. Creating a regulation-making power also signals the government's intention to develop such measures, and during the course of the emergency period, put these measures in place in a transparent manner and with an opportunity for the Scrutiny of Bill Committee to consider the regulations and report to the Legislative Assembly.

The amendments in this Bill will end after 12 months, unless otherwise extended by a future bill, with certain provisions also including transitional mechanisms to ensure the effect of a decision or extension can have effect during the relevant period. This approach has been taken to reinforce the emergency and temporary nature of these measures and to underscore the Government's commitment to parliamentary scrutiny of emergency legislative responses during the COVID-19 public health emergency.

### **Consultation on the proposed approach**

Due to the urgent nature of the Bill, consultation with the community and stakeholders was not possible. The amendments in the Bill were subject to consideration of the Security and Emergency Management Committee of Cabinet. The Justice and Community Safety Directorate was also consulted in relation to the amendments.

The ACT Bar Council, including the Director of Public Prosecutions, and the ACT Law Society were consulted in relation to proposed amendments to the *Supreme Court Act 1933*.

In addition, the ACT Health Directorate has had regular contact with the Australian Health Protection Principal Committee (AHPPC) and the National Cabinet about the developing COVID-19 situation and a nationally consistent approach to mitigating the risk.

The ACT Health Directorate has also provided regular updates to the community about COVID-19 and will continue to ensure that the community is informed about confirmed cases in the ACT, measures that are being implemented by the ACT Government and actions that should be taken by the public to limit the spread of COVID-19.

### **Consistency with Human Rights**

#### **Rights Engaged**

Broadly, the Bill engages the following HRA rights:

- Section 8 – Right to recognition and equality before the law
- Section 9 – Right to life
- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement

- Section 14 – Freedom of thought, conscience, religion and belief
- Section 15 – Right to freedom of association
- Section 16 – Freedom of expression
- Section 18 – Right to liberty and security of person
- Section 19 – Right to humane treatment when deprived of liberty
- Section 21 – Right to a fair trial
- Section 22 – Rights in criminal proceedings
- Section 25 – Retrospective criminal laws

The preamble to the HRA notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28(1) of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably be justified in a free and democratic society.

Section 28(2) provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) The nature of the right affected;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;
- d) The relationship between the limitation and its purposes; and
- e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society. An assessment of the Bill’s impact on relevant provisions of the HRA, against all factors in section 28(2), is provided below.

### **Detailed human rights discussion**

#### **Children and Young People Act 2008**

The Bill makes several changes to the Children and Young People Act 2008 (CYP)to:

- declare an emergency at Bimberi Youth Justice Centre to align with the length of time for which a public health emergency for COVID-19 remains in place;

- allow leave to be granted to young detainees to ensure the health and safety of young detainees, other detainees and staff;
- maintain safe and stable care arrangements during a time of emergency;
- ensure all parties can adhere to care and protection orders as far as is reasonable, without being penalised should parties breach an order due to the public health emergency; and
- adapt care and protection work so that critical services can continue, and appropriate safeguards are maintained.

### Declaration powers – section 149

This measure promotes and protects the best interests of young detainees as paramount (the key objective under the CYP Act), while providing the necessary mechanisms to ensure that young detainees are protected from the spread of infectious disease within Bimberi.

### *Rights engaged*

This measure engages and promotes the right to the protection of the child by enabling the Director-General to take the necessary steps to protect the health and safety of young detainees. This measure also engages and limits the right to liberty and security of the person (section 18 HRA) which recognises that the right to security requires reasonable measures to protect a person's physical security.

### *Legitimate objective*

This measure is designed to prevent the spread of infectious disease within Bimberi Youth Justice Centre and acknowledges the critical importance of protecting the health and safety of young detainees and ensuring their best interests.

### *Rational connection*

This measure is necessary to support the Director-General's ability to protect the health of young detainees, youth workers and other staff, and ensure the good order and security of a detention place during the emergency.

### *Proportionality*

This measure is considered a reasonable limit to rights in situations where it is in the public interest to ensure the health and safety of young detainees during a public health emergency. This measure is the least restrictive approach available in the circumstances, because it is lawful in the circumstances of a public health emergency only, and only available to the extent necessary to prevent the spread of infectious disease within Bimberi Youth Justice Centre. Further safeguards have been provided to assist with the proportionality of this measure:

- The need for the declaration will have to be reviewed every 28 days;

- The Director-General will be required to advise to the Minister in writing about any measures adopted under the declaration as soon as practicable after the review under s (3A); and
- The Director-General will be required to include in the first annual report after the end of the declaration a report on the declaration including any emergency measures adopted.

This Bill also extends leave provisions (as part of amendments to section 241) to be available to unsentenced and sentenced young detainees to minimise the risk of exposure to COVID-19, if there is a transmission of infection in Bimberi.

#### *Local leave permits – section 241(4)*

The amendment to section 241 of the CYP Act allows conditional release of young detainees to ensure their health and safety, other detainees and staff and allows the Director-General to extend a period of leave in a public health emergency.

#### *Human rights engaged*

This measure engages and promotes the rights of the child (s 11(2)) as it prioritises the health and welfare of young detainees from exposure to infectious disease during a public health emergency. It recognises that young people in detention have the right to protections and safeguards that do not jeopardise their health. The measure also engages and promotes the right to liberty (s 18) of young detainees, but may also engage and limit the right to the security of person (s 18) in relation to victims of sentenced young detainees.

#### *Legitimate objective*

The purpose of these amendments is to appropriately protect young detainees and Bimberi staff against potentially life-threatening infectious disease during the public health emergency.

#### *Rational connection*

Local leave provisions already exist in the CYP Act. This measure aims to provide greater flexibility and discretion for the Director-General during a public health emergency, and to prevent the spread of disease within Bimberi Youth Justice Centre. The measure is necessary to provide immediate protection to the health, safety and welfare of young detainees, staff and the public, and ensure the good order and security of a detention place during the emergency. The Government anticipates that if this power was used, it would be in relation to lower risk or vulnerable young people.

Making this amendment now will ensure that if there is widespread transmission of an infectious disease within Bimberi, that young people will be allowed to be granted leave to prevent further spread amongst other young detainees and staff and support their health and wellbeing.

#### *Proportionality*

The amendment includes reasonable measures to protect security as the Director-General has discretion as to whether to provide a young detainee leave. A new provision also provides that during the public health emergency, the time period covered by the leave permit can be extended up to the length of the emergency, but no longer than 7 days after the cessation of the emergency.

The Director-General may also impose conditions on a young detainee's leave permit, which may include restrictions on contacting, directly or indirectly, any victim. This further reduces the likelihood that a victim will be re-traumatised or otherwise have their personal security threatened.

To avoid any doubt, where there is time remaining on a period of detention by a young detainee and the public health emergency ends, the young detainee will be recalled to serve the remainder of their period of detention. If the young detainee is serving a sentence, then the time spent on a leave permit will count as time served on a sentence. This acknowledges the importance of sentence integrity while ensuring the health and safety of young detainees.

To further mitigate the limitation, where possible, victims on the Youth Justice Victims Register will be provided with relevant information about the young detainee, including the circumstances of their release from detention. This safeguard seeks to maintain and uphold the safety, privacy and dignity of people adversely affected by crime.

#### *Voluntary care agreements - section 400A*

The insertion of section 400A of the CYP Act to allow voluntary care agreements to remain in place during a public health emergency protects and promotes the protection of the family and children in section 11 of the HRA. The measure will ensure that children can remain in safe and secure placements during a public health emergency and not be taken into the care and protection system, unless emergency action is required. To remove any doubt, parents are still able to revoke their approval of a voluntary care agreement.

#### *Care and protection orders – section 423*

The Bill amends section 423 (Offence – contravene care and protection order) 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.

#### *Rights engaged*

This measure engages and may limit the right to the protection of the child and the family, but it is necessary to respond to the extraordinary circumstances created by the COVID-19 public health emergency.

### *Legitimate objective and rational connection*

This amendment has been included in this emergency Bill to urgently support Child and Youth Protection staff to continue to deliver frontline services in a public health emergency if the requirements of care and protection orders cannot be met. Making this amendment now will ensure that staff and parents will not be penalised if it is not possible to comply with all the requirements of a care and protection order because of the circumstances of the public health emergency, for example restrictions placed on facilitating face-to-face contact or attending urinalysis.

### *Proportionality*

This measure only applies to the extent necessary to ensure that there is no negative impact arising from the public health emergency. For example, a birth parent unable to attend urinalysis as required under a court order due to social distancing requirements or a reduction in services available (including transport). In this circumstance, the Director-General would be able to suspend this requirement so that all parties do not breach the care and protection order.

### *Appraisal and assessment orders – sections 384 and 454*

The Bill amends timeframes required under section 384 (Appraisal Orders) to change the timeframe for the length of an order and section 454 (Assessment Orders) to replace the stipulated maximums with ‘a length of time determined by the Childrens Court’. The amendments to section 384 will allow the Childrens Court to determine the most appropriate timeframe for an appraisal order in the circumstances of a public health emergency. The amendment to section 454 will 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.

### *Rights engaged*

This amendment engages and both promotes and limits the right to protection of family and children (section 11 HRA). It also engages and limits the right to a fair hearing (section 21 HRA). The measure promotes the protection of the child by ensuring there is sufficient time to carry out effective appraisal and assessment orders in the context of a public health emergency. The measure also potentially limits the protection of family and children because the separation of the family unit may continue until the appraisal or assessment is completed. However, it will only apply in circumstances where serious concerns are already held about the protection of the child within the family unit and the Director-General has progressed to court-ordered appraisals or assessments.

The HRA also recognises the protection of procedural fairness and natural justice within the right to a fair hearing set out in section 21, and this is engaged and limited through potential delays in the timeliness of decision-making.

### *Legitimate objective and rational connection*

The measure pursues the legitimate objective of promoting the right to the protection of the child. The government considers that the child's right to safety and protection from harm is paramount and is therefore prioritised over the right to the preservation of family. Effectively responding to restrictions imposed during a public health emergency should be prioritised over the timeliness of appraisal and assessment orders. These measures prioritise the health and safety of health professionals, care and protection staff and clients of these services during this period.

For example, it is in the public interest that independent health professionals follow official health directions, which is prioritised over face-to-face contact with clients. Changes to time frames necessarily limit the rights to family and of children to respond and follow official health directions during an emergency.

### *Proportionality*

The limitations on the rights to the protection of the family and children, and to the right to a fair hearing, are proportionate as they are necessary to effectively respond to the public health emergency. To ensure its proportionality, the measure will expire 6 months after the emergency ends, after which the measures will revert back to their original timeframes. This will ensure the rights of parents, carers and children are not adversely affected for a period longer than is necessary.

To further mitigate the limitations, appraisal orders are only pursued where a person with daily care responsibility is not cooperating and taking no action will jeopardise a child's rights to safety and protection. An assessment order can only be made if a care and protection order application is already underway. The Court will act as an independent decision maker to ensure impartiality and ensure decisions about timeframes are reasonable and proportionate given the circumstances.

### *Emergency action – section 410*

The Bill amends section 410 (Emergency action – length of daily care responsibility) that allows the Director-General to maintain daily care responsibility for a child or young person for two (2) working days after emergency action is taken without a court order.

The amendment will permit the Director-General to seek a further two-day extension of the statutory transfer of parental responsibility only in exceptional circumstances. This amendment is sought due to significant restrictions that are likely to be in place on service provision and staffing across all government agencies during a public health emergency. This, in turn, directly impacts the ability of the Director-General's delegates to gather information that is relevant to a child's safety and wellbeing. Practically, the amendment will grant the Director-General additional time to file relevant evidence with the Court when seeking an interim care and protection order following emergency action. The extension may only be granted by the Childrens Court.

This amendment has been included in this emergency Bill to support the continued critical operations of Child and Youth Protection Services and provide the necessary flexibility to extend the statutory transfer of parental responsibility only in exceptional circumstances. Making this amendment now will ensure that any proposed extension of the statutory transfer of parental responsibility will only be granted by the Childrens Court. This amendment will also allow prioritisation of critical frontline operations (e.g. to protect children who are being abused or neglected) if a significant proportion of child protection staff become ill or unable to perform their regular duties because of social isolation/quarantine requirements.

Emergency action is a direct intervention in a child's life under section 406 of the CYP Act to ensure their immediate safety. It involves transferring daily parental responsibility from a parent/s or person/s with long-term or daily care responsibility to the Director-General, Community Services Directorate. Emergency action may include arranging for the child's care and protection by keeping them somewhere that is safe, such as a kinship care or a foster care placement.

#### *Rights engaged*

The measure engages and limits the right to protection of family and children (section 11 HRA), because a child subject to emergency action will be placed in an emergency care arrangement until the matter is heard by the Court. Any further delay will mean that the right to the protection of family may be disrupted for a longer period of time. However, the measure is limited to a maximum period of 4 days, recognising the urgency of emergency action.

#### *Legitimate objective*

This amendment is required to ensure critical Child and Youth Protection Services staff can respond effectively during an emergency, while ensuring the necessary and relevant information can be provided in a timely manner.

The government considers that the child's right to safety and protection from harm is paramount. However, the realities of a public health emergency may create unavoidable delays in carrying out vital services required to effectively promote child protection and this measure is necessary to effectively respond to the public health emergency, and to protect the health, safety and welfare of clients, staff and the public during this period. For example, court services may be delayed and critical workers may be placed under immense pressure due to staff absences and illness during the public health emergency. This requires flexibility in the event that workload exceeds capacity.

#### *Rational connection*

In circumstances where resources are likely to be limited across all government agencies, the option for an additional two-day allowance for the Director-General to hold parental responsibility following emergency action would allow CYPS to obtain and present the best evidence possible for incorporation into the application for interim orders enabling the court to make its decision based on the best evidence available.

### *Proportionality*

In recognising the unprecedented circumstances and increased demand of critical workers, the measure extends the maximum timeframe to four (4) days only when endorsed by the Childrens Court upon being satisfied that the extension is necessary in the circumstances. The granting of an extension is contingent on the Childrens Court forming the view that, but for the public health emergency, compliance with the usual statutory timeframes would have occurred. As a result, this right is necessarily limited because of the changes in circumstances due to the public health emergency.

If this two-day extension is utilised, it will not impact on the ability of parents to have contact with their children. The Director-General will also make arrangements for a child to be placed in an approved care placement and ensure that their daily routine is maintained as much as possible.

Safeguards remain in place to avoid arbitrary use of this provision. For example, where emergency action is taken, all parties involved in taking emergency action, including police officers and the Director-General, must still meet their obligations under the CYP Act, including ensuring all parties are told of the event.

The Director-General will still adopt normal processes regarding making further enquiries about a child's welfare, such as interviews with parents, the child, family members and/or people who are significant in the child's life. An assessment of the broader circumstances that led to the Director-General forming the view that the child is in need of care and protection is also likely to be commenced.

Furthermore, the measure will expire 6 months after the emergency ends, after which the measure will revert back to two days without the option of a further two-day extension. This will ensure the rights of parents, carers and children are not adversely affected for a longer period than is necessary.

These amendments are considered as a reasonable limit to rights in situations where it is in the public interest to ensure critical services can continue to operate effectively.

### *Section 514E (New section 514 EAA)*

This amendment will modify section 514E of the CYP Act by inserting new section 514EAA to allow critical approvals of foster and kinship carers (approved carer approvals) to remain in place during a public health emergency, and for 6 months following the cessation of the public health emergency. This will ensure that children can remain in safe and secure foster and kinship care arrangements during a public health emergency.

### *Rights engaged*

This measure protects and promotes the protection of the family and children (s 11 HRA) by promoting and protecting the best interests of children and young people who are in the care of approved foster and kinship carers, by extending the period that an approval remains in

place during a public health emergency. Approvals must currently be renewed every three years.

This measure will ensure that children placed with carers whose approval expires during a public health emergency can remain in safe and secure placements and not be removed due to their carer's approval expiring.

This measure also engages the right to liberty and security of person (s 18), but does not limit this right because all approved foster or kinship carers have previously been risk assessed and approved to care for children or young people. This amendment does not create any new potential risk of harm to children and young people as it does not change the existing powers that the director-general has under section 514EA of the CYP Act to revoke a carer's approval. The Director-General may still revoke a person's approval if satisfied that the carer is no longer appropriate, has not adequately cared for or protected the child or young person or has failed to comply with a direction in exercising daily care or long-term care responsibility.

### **Corrections Management Act 2007**

The amendments to the *Crimes (Sentence Administration) Act 2005* and the *Corrections Management Act 2007* that relate to the release of detainees and intensive correction orders engage and promote the right to liberty and security of person under section 18 of the HRA. The release provisions will operate to allow detainees to be released from full-time detention into the community in a range of circumstances. The amendments to the intensive correction order provisions will work to allow the Sentence Administration Board not to impose the sanction of suspending an intensive correction order, which results in a return to detention.

### **Crimes (Sentence Administration) Act 2005**

#### *Rights engaged*

People in closed environments such as prisons, nursing homes and cruise ships are at increased risk of infection because of the nature of those environments. By acknowledging and addressing the disproportionate effect of the COVID-19 pandemic on detainees, including social isolation, the amendments to the *Crimes (Sentence Administration) Act 2005* which allow the Sentence Administration Board (the board) to reduce the current notice provisions in the CSA Act, engage and promote the right to recognition and equality before the law (section 8 HRA).

These amendments may also engage and limit the right to a fair hearing (section 21) and the right to liberty and security of the person (section 18).

In particular, although the provisions impact on an offender's rights under section 21 by reducing notice periods, which may impact on the offender's ability to prepare for a hearing, the amendments seek to support offenders' ability to make applications to the board and have those applications heard in a shorter time than would ordinarily be the case. The amendments

seek to balance the benefit of swift proceedings for offenders with the need to ensure applications are properly heard.

Offenders' rights are also impacted by the amendments allowing a single judicial officer of the board to make certain decisions. An offender's rights under section 18 may also be impacted by the amendments as the issue of release on parole may only be considered by one judicial member as opposed to three although there is no evidence that it will be harder for an offender to secure parole in these circumstances. It is important to note the decisions of the board are subject to challenge.

The amendments to permit the board to refuse a parole application without holding a hearing may also engage and limit the offender's right to liberty and fair hearing. In addition, offenders' rights to fair hearing may be engaged and limited by the amendments which permit the board to refuse an application at the inquiry stage without proceeding to a hearing.

#### *Legitimate objective and rational connection*

The amendments are intended to ensure the continued and effective operation of the board. These provisions have the legitimate purpose of seeking to reduce the length of time it takes for the board to hear and decide on matters in the current emergency. These amendments reflect that in the current emergency it may not be practicable to convene three members of the board and that it is important that the board is still able to make decisions to avoid delays.

The purpose of permitting the board to refuse an application at the inquiry stage without proceeding to a hearing is to avoid the board holding a hearing when there is no reasonable prospect of success at that time. An example could be because the offender does not have the services and supports in place that would allow their effective reintegration into society.

#### *Proportionality*

The requirement that it must not be reasonably practicable for three members to convene means that the board will need to explore options for convening through alternative means (such as audio-visual means). The least restrictive approach has been taken by providing that an offender should be involved in this decision.

A further safeguard is the requirement that the board must give reasons for refusing the application and allow an offender to request a hearing after 14 days. This will ensure an opportunity for a hearing remains available and allows the offender to address the concerns of the board.

### **Crimes (Sentencing) Act 2005**

The amendment to allow for good behaviour undertakings to be provided 'before the court' for example through audio-visual links and be recorded by the court, rather than signed and filed at the court, has a neutral impact on human rights.

## **Evidence (Miscellaneous Provisions) Act 1991**

This amendment will allow the Executive to make a regulation for the use of pre-recorded evidence in criminal trials. Currently, the court can create recordings of evidence (including cross-examination) of witnesses in certain proceedings. These recordings can be presented in court later, reducing the need to re-call vulnerable witnesses. This amendment will enable a regulation temporarily allowing the court to create recordings of evidence from all witnesses, including defence witnesses. This evidence may then be presented in court when proceedings resume.

### *Rights engaged*

This amendment engages the right to a fair trial and the right to be tried without unreasonable delay (sections 21(1) and 22(2)(c) HRA).

The right to a fair trial includes all proceedings in a court or tribunal and all stages of proceedings. It is concerned with procedural fairness, that is, the right of all parties in proceedings to be heard and respond to any allegations, and the requirement that the court be unbiased and independent. The use of pre-recorded evidence engages the right to a fair trial as it carries some risk of prejudice to the defendant.

### *Legitimate objective and rational connection*

A significant number of proceedings may need to be adjourned due to the COVID-19 public health emergency. The purpose of this change is to allow evidence to be captured when witnesses' memories are fresh. Recording witness evidence will reduce delay, if the court's only alternative is to adjourn the hearing of evidence. Therefore, this amendment may advance the right to be tried without unreasonable delay.

### *Proportionality*

The potential limitation on the right to a fair trial is the least rights restrictive approach available to ensuring that criminal proceedings are continued without unreasonable delay and that evidence is recorded when witnesses' memories are fresh in the context of a public health emergency. The defendant will be still able to challenge evidence presented in this format, thus protecting the fundamental elements of the right to a fair trial.

## **Family Violence Act 2016 and Personal Violence Act 2016**

The amendments to extend the 12-month limit on interim orders for a further 6 months engages the right to a fair hearing in section 21 of the HRA as it can delay the time before which a final order can be made. The measure seeks the legitimate objective of public safety as it prevents interim measures potentially expiring during the period of the public health emergency. To ensure the measure is proportionate to the objective, a least rights restrictive approach has been adopted. This measure is contained to an extension of 6 months and the court must be satisfied that there are special and exceptional circumstances to support the extension. This measure also seeks to promote other human rights, such as the right to life and right to security of the person.

### **Financial Management Act 1996**

The amendment provides for an increase in the limit on Treasurer's Advance and has no identified human rights implications. No provisions in the Bill engage rights under the *Financial Management Act 1996*. The amendment will facilitate greater flexibility in addressing COVID-19 related funding needs and operational impacts.

### **Firearms Act 1996 and Prohibited Weapons Act 1996**

These amendments create a power for the Minister to make a declaration in relation to the sale of firearms and ammunition and place restrictions on the issue of licenses and permits. The amendments respond to COVID-19 public health emergency measures and ensure that in the event that restrictions are put in place, essential firearms users will continue to be supported, and firearms dealers may continue to operate provided they comply with the restrictions that have been put in place.

### **Gaming Machine Act 2004 and Gaming Machine Regulation 2004**

These amendments assist clubs to retain employees who may be or who are at risk of job losses due to closure of club operations under measures to protect public health.

### **Leases (Commercial and Retail) Act 2001**

The amendment to introduce a declaration making power in respect of commercial leases has a neutral impact on human rights.

### **Long Service Leave Act 1976 and Long Service Leave (Portable Schemes) Act 2009**

The amendments to allow for early access to long service leave or payment for portable long service leave entitlements has a neutral impact on human rights.

### **Medicines, Poisons and Therapeutic Goods Regulation 2008**

The amendment to insert hydroxychloroquine in the Medicines, Poisons and Therapeutic Goods Regulation 2008 (the MPTG Regulation) has a positive impact on human rights. There have been cases of hydroxychloroquine poisoning due to the improper use of it following widespread social reporting of its purported effectiveness in treating COVID-19 infections. Adding hydroxychloroquine in the MPTG Regulation promotes the right to life.

### **Official Visitor Act 2012**

The amendment to change the reporting obligations of the Official Visitor Board to its first full financial year, 2020-21, has a neutral impact on human rights.

### **Residential Tenancies Act 1997**

The measures in relation to tenancies and occupancies promote the right to home as an element of the right to privacy, and also promotes the right of family and children. The power to implement measures via disallowable instrument will create the ability to prevent or delay evictions for non-payment of rent for persons affected by job losses and other COVID related

factors in order to sustain tenancies during the emergency measures. It will also create the ability to limit property inspections, tenancy databases listings or non-essential repairs to a property which also promotes the right to privacy.

### **Supreme Court Act 1933**

The amendments to the *Supreme Court Act 1933* (SCA) permit Territory offences which are usually excluded from being heard by a judge alone to be heard in that way at the election of the accused. The amendments will also allow Territory offences to be heard by a judge alone where it is in the interests of justice or at the election of the defendant.

#### *Rights engaged*

These measures may engage the right to a fair trial (section 21), rights in criminal proceedings (section 22) and the prohibition against retrospective criminal laws (section 25).

The right to a fair trial is concerned with procedural fairness. The right is not absolute and article 4 of the International Covenant on Civil and Political Rights (ICCPR) allow for derogation of certain obligations, including the right to a fair trial, ‘in the time of a public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. The amendment in the SCA may engage the right to a fair trial because it provides the court with a discretion to determine that a matter being tried on indictment should be heard by a judge alone as opposed to a jury. This has the effect of a defendant not being tried by a jury. It is important to note that the discretion can only be exercised once the parties to the proceedings have had the opportunity to consider the issue and make any submissions to the court.

Rights in criminal proceedings as set out in section 22 of the HRA provide minimum guarantees but this section does not explicitly provide a right to trial by jury. The right does include the right to have criminal charges decided by a competent, independent and impartial court or tribunal after a fair and public hearing. As noted by Justice Refshauge in *R v Girvan* [2012] ACTSC 142 “the constitution of the tribunal which hears and determines a criminal charges is a matter of significance and importance” (at paragraph 40) but also points out that it is possible for a jury not to provide a human rights compatible trial (at paragraph 39). While the right to trial by jury or judge alone are rights when conferred by law, they are not human rights.

The prohibition against retrospective criminal laws under section 25 of the HRA may be considered to be engaged but this right is restricted to the creation of retrospective criminal offences and heavier penalties. The amendments to the SCA are retrospective in application but do not fall within the scope of this right.

The amendments to the SCA also engage and support rights in criminal proceedings, particularly the guarantee in section 22(2)(c) to be tried without unreasonable delay. Without these amendments, it is anticipated that trials in certain matters will be delayed for up to 12 months in addition to any normal listing timeframes. The amendments may also engage and support the right to a fair trial in section 21 by allowing an accused to be tried by a judge

alone for offences which must usually be heard by a jury. It is important to note that the right to a fair trial can be promoted by either a jury trial or a trial by judge alone.

#### *Legitimate objective and rational connection*

The amendment is required during a time of emergency to allow the effective administration of justice to continue, without placing members of a jury at unnecessary risk. It also means that trials of serious matters will not be delayed until after the emergency.

The objective of the amendment is to ensure that trials being heard on indictment are not seriously delayed. Delays in criminal proceedings have adverse effects and may combine with other factors, such as the loss of evidence, to deny an accused of a fair trial. Victims and witnesses have to wait longer to give evidence and this may cause distress or a reduction in their level of recall of events. Accused people may be remanded in custody waiting for a trial. For that reason, these amendments also support a defendant's rights in criminal proceedings to have their matter heard without delay.

#### *Proportionality*

There is no other less restrictive means of achieving the object of the amendments. The court will only be able to determine that a matter should be heard by a judge alone if it is in the interests of justice. The test will be determined by the court, including by consideration of the state of emergency. This amendment will remain in place for a limited time, until 31 December 2020, which may be extended by regulation. The time period chosen, and ability to extend, reflects the uncertainty of how long the emergency will continue. It also takes into account that, even when the emergency has ended, the court is likely to have a backlog of cases to hear.

### **Working with Vulnerable People (Background Checking) Act 2011**

The Bill adds new sections to the *Working with Vulnerable People (Background Checking) Act 2011* to ensure that ACT registrations held by critical workers remain in force during a public health emergency and for a period of up to 6 months after the cessation of the emergency. The new sections also provide the Commissioner discretion to re-enliven expired Working with Vulnerable People (WWVP) registrations where a registration expired in the previous 12 months.

#### *Rights engaged*

The amendments engage the right to liberty and security of persons to the extent the Commissioner will engage in a higher level of risk to register previous applicants to provide the workforce capacity required to deliver an effective and urgent response to the public health emergency.

#### *Legitimate objective*

The purpose of this measure is to remove any barriers that might prevent health professionals, whose registration has recently expired, from re-engaging with critical frontline work to support the public health emergency.

*Proportionality*

The measure is proportionate as all applicants have previously been risk assessed and determined not to pose an unacceptable risk of harm to vulnerable people. In addition, current reporting obligations remain in relation to all registered individuals.

The amendments make clear that a person may still be deregistered during the period of a public health emergency where they are subsequently assessed as an unacceptable risk of harm to vulnerable people. This reduces the likelihood of preventable harm for vulnerable people and children and seeks to protect vulnerable people by limiting their exposure to people who pose a risk to their safety, welfare and wellbeing.

## COVID-19 EMERGENCY RESPONSE BILL 2020

### Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **COVID-19 Emergency Response Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA  
Attorney-General

## **COVID-19 Emergency Response Bill 2020**

## **COVID-19 Emergency Response Bill 2020**

### **Detail**

#### **Part 1 - Preliminary**

##### **Clause 1 — Name of Act**

This is a technical clause that names the short title of the Act. The name of the Act will be the *COVID-19 Emergency Response Bill 2020*.

##### **Clause 2 — Commencement**

This clause provides that (other than schedule 1, amendment 1.35 (Section 161A (4)) the Act will commence on the day after notification.

Delayed commencement applies to the item listed above so that it commences on the later of the day after notification or the commencement of the *Gaming Machine Amendment Act 2020*, section 11. This commencement provision is required so that the suspension of club payments to the Diversification and Sustainability Support Fund included in this Bill is able to operate as intended.

##### **Clause 3 — Legislation amended**

This notes that the Act also amends the other legislation set out in Schedule 1.

#### **Schedule 1 – Other amendments**

##### **Part 1.1 – Children and Young People Act 2008**

###### **[1.1] –New section 149 (2A)**

This clause inserts a new power for the Director-General to declare an emergency in relation to a detention place for a period of not more than the duration of the COVID-19 emergency.

This amendment has been included in this emergency Bill to urgently support the continued operations of Bimberi Youth Justice Centre (Bimberi) and protect the health and wellbeing of staff and young detainees during a public health emergency. Making this amendment now will ensure that the director-general can declare an emergency at Bimberi to, if necessary, restrict movements around the centre, restrict contact and enable the director-general to delegate power to public servants and police officers. These amendments will allow the health and safety of young detainees and staff to be prioritised to prevent the spread of infectious disease within Bimberi.

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

This clause ensures an important safeguard to the declaration of emergency introduced by new section 149 (2A) by requiring the director-general to review the declaration to ensure there are reasonable grounds to continue the declaration and requires the director-general to provide advice in writing to the Minister after each 28 day review as soon as practicable.

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

This clause contains definitions for the declaration of emergency introduced by new section 149 (2A) and lists the provisions which expire 12 months after commencement.

**[1.4] – New section 241A**

This clause inserts a new section to allow leave to be granted to young detainees to ensure their health and safety and the health of other detainees and staff. This will apply to young detainees who are either unsentenced or sentenced.

This amendment has been included in this emergency Bill to urgently protect the health and safety of young detainees and staff at Bimberi Youth Justice Centre and to protect against their potential exposure to infectious disease. Making this amendment now will ensure that if there is widespread transmission of an infectious disease within Bimberi, that young people will be allowed to be granted leave to prevent further spread amongst other young detainees and staff and support their health and wellbeing.

**[1.5] – New section 242 (3A)**

This clause amends section 242 to allow leave to be granted to young detainees to ensure their health and safety and the health of other detainees and staff. This will apply to young detainees who are either unsentenced or sentenced.

This amendment has been included in this emergency Bill to urgently protect the health and safety of young detainees and staff at Bimberi Youth Justice Centre and to protect against their potential exposure to infectious disease. Making this amendment now will ensure that if there is widespread transmission of an infectious disease within Bimberi, that young people will be allowed to be granted leave to prevent further spread amongst other young detainees and staff and support their health and wellbeing.

**[1.6] – New section 242 (6A)**

This clause gives the director-general discretion to extend an existing interstate leave permit if it will or is likely to expire during the COVID-19 emergency.

**[1.7] – New section 242 (7A)**

This clause inserts a new section 242 (7A) ensures that subsection 7(a) (which only allows leave on compassionate grounds or for a health service for a young detainee with a high security classification) does not apply during the COVID-19 emergency if the purpose of the leave is related to the COVID-19 emergency.

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

This clause limits the application of subsections (3A), (6A), (7A), (9) and (10) to apply in a COVID-19 emergency period declared by the *Public Health (Emergency) Declaration 2020 (No 1)*.

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

This clause inserts new sections to enable the timeframe for the length of an appraisal order and the length of any temporary parental responsibility to be determined by the Childrens Court during the COVID-19 emergency.

These amendments have been included in this emergency Bill to provide the Childrens Court with discretion to change the timeframes for conducting appraisals or assessments in the event that there is limited or no availability of specialist health professionals during a public health emergency. Making these amendments now will ensure that the Childrens Court will have the discretion to determine the length of time for appraisal and assessment orders. These amendments will allow sufficient time for all necessary information to be gathered as part of an appraisal or assessment, given that in a public health emergency there is likely to be a reduction in the critical staff available to undertake this work.

**[1.10] – New section 400A**

This clause inserts new section 400A to allow voluntary care agreements to be automatically extended for the duration of the COVID-19 emergency, and up to 3 months after the public health emergency ends.

This amendment has been included in this emergency Bill to support the continued critical frontline operations of Child and Youth Protection Services and enable children on voluntary care agreements to remain with kinship carers or in other suitable care arrangements. Making this amendment now will ensure that children and young people can remain in safe and secure care arrangements during a public health emergency. These amendments will also allow prioritisation of critical frontline operations (e.g. to protect children who are being abused or neglected) if a significant proportion of child protection staff become ill or unable to perform their regular duties because of social distancing or isolation requirements.

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

This clause amends section 410 that allows the director-general to maintain daily care responsibility for a child or young person for 2 working days after emergency action is taken without a court order.

The amendment will permit the director-general to seek a further 2 day extension of the statutory transfer of parental responsibility only in exceptional circumstances. This amendment is sought due to significant restrictions that are likely to be in place on service provision and staffing across all government agencies during a public health emergency.

This amendment has been included in this emergency Bill to support the continued critical operations of Child and Youth Protection Services and provide the necessary flexibility to extend the statutory transfer of parental responsibility only in exceptional circumstances. Making this amendment now will ensure that any proposed extension of the statutory transfer of parental responsibility will only be granted by the Childrens Court. This amendment will also allow prioritisation of critical frontline operations (e.g. to protect children who are being abused or neglected) if a significant proportion of child protection staff become ill or unable to perform their regular duties because of social isolation/quarantine requirements.

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

This clause amends section 423 to prevent a person from being subject to the offence provision where it is not reasonably practicable 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.

This amendment has been included in this emergency Bill to urgently support Child and Youth Protection staff to continue to deliver frontline services in a public health emergency if the requirements of care and protection orders cannot be met. Making this amendment now will ensure that staff and parents will not be penalised if it is not possible to comply with all the requirements of a care and protection order because of the circumstances of the public health emergency, for example restrictions placed on facilitating face-to-face contact or attending urinalysis.

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

This clause removes (1)(b) and (2)(a), which both stipulate the maximum length of time the Childrens Court can extend an assessment order, and replace them with ‘a length of time determined by the Childrens Court’.

These amendments have been included in this emergency Bill to provide the Childrens Court with discretion to change the timeframes for conducting appraisals or assessments in the event that there is limited or no availability of specialist health professionals during a public health emergency. Making these amendments now will ensure that the Childrens Court will have the discretion to determine the length of time for appraisal and assessment orders. These amendments will allow sufficient time for all necessary information to be gathered as part of an appraisal or assessment, given that in a public health emergency there is likely to be a reduction in the critical staff available to undertake this work.

**[1.14] – New section 514EAA**

This clause modifies section 514E of the CYP Act by inserting new section 514EAA to allow critical approvals of foster and kinship carers (approved carer approvals) to remain in place during a public health emergency, and for 6 months following the cessation of the public health emergency. This will ensure that children can remain in safe and secure foster and kinship care arrangements during a public health emergency.

This amendment has been included in this emergency Bill to support children and young people to remain in safe and stable care arrangements in the event that the public health emergency leads to a significant reduction in critical Child and Youth Protection Services staff. Making this amendment now will ensure that child protection workers can focus on continued delivery of the most critical frontline services while enabling children and young people who are already in approved, safe and secure care arrangements to remain with their carers during a public health emergency.

## **Part 1.2 – Corrections Management Act 2007**

### **[1.15] – New section 26 (2A)**

This clause amends section 26 of the *Corrections Management Act 2007* (CMA) to allow the director-general to declare that an emergency exists in relation to the correctional centre for the period associated with a COVID-19 Public Health Emergency Declaration.

Where a declaration is in place the director-general may take reasonable and necessary action to address the circumstances of the emergency including restricting access to work or other activities, restricting access to parts of the centre and restricting a detainees access to another person.

This amendment has been included in this emergency Bill to urgently support the continued operations of ACT correctional centres and protect the health and wellbeing of staff and detainees during a public health emergency. Making this amendment now will ensure that the health and safety of detainees and staff to be prioritised to prevent the spread of infectious disease within correctional centres.

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

This clause inserts important safeguards to the declaration of emergency introduced by new section 26 (2A). These safeguards require the director-general to review the declaration to ensure there are reasonable grounds to continue the declaration and requires the director-general to provide advice in writing to the Minister after each 28 day review as soon as practicable.

### **[1.17] – New section 26 (6) and (7)**

This clause contains definitions for the declaration of emergency introduced by new section 26 (2A) and lists the provisions which expire 12 months after commencement

### **[1.18] – New section 205 (2A)**

This clause amends section 205 of the CMA to extend leave permits to no longer than 28 days. The leave permits may be issued for a range of reasons including for compassionate reasons. The director-general may impose any reasonable condition on a person for example that they are not to associate with a particular person. In addition, a leave permit may be granted for up to 3 months for long-term medical treatment or palliative care. The leave may only be granted on the advice of a doctor appointed under section 21 of the CMA.

This amendment has been included in this emergency Bill to support the effective operation of correctional centres and because of the likelihood that detainees may require longer term medical care. Making this amendment now will allow for the appropriate release of detainees on leave permits without the additional administrative burden of renewing the permit every 7 days.

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

This clause legislates the circumstances for when a director-general may cancel a local leave permit. It also limits the duration of the amendments to local leave permits as being 12 months from commencement.

**Part 1.3 – Crimes (Sentence Administration) Act 2005**

**[1.20] – New section 47 (A)**

This clause modifies the requirement for an offender to perform community service work in accordance with a direction for the work period under section 46 of the *Crimes (Sentence Administration) Act 2005* (CSA Act) during the time of an emergency. The offender is taken to have performed the community service work in accordance with the direction.

A maximum of 8 hours may be counted towards the offender’s community service work obligation. This approach is to acknowledge that, in the circumstances of the COVID-19 public health emergency, an offender should not be disadvantaged with respect to the overall amount of time they would be fulfilling community service work obligations under the Intensive Correction Order (ICO).

**[1.21] – New section 64 (3A)**

This clause temporarily removes the limit in section 64(3) that the board must not give more than 3 warnings in a 12 month period to an offender for a breach of their ICO obligations. This change will only apply during a COVID-19 emergency.

This amendment has been included in this emergency Bill to support greater flexibility in relation to ICOs for the SAB. Making this amendment now will ensure that offenders are not sanctioned by a short term of imprisonment unless it is necessary to do so.

**[1.22] – New section 92 (A)**

This clause modifies the requirement for an offender to perform community service work in accordance with a direction for the work period under section 91 of the CSA Act during the time of an emergency. The offender is taken to have performed the community service work in accordance with the direction.

A maximum of 8 hours may be counted towards the offender’s community service work obligation. This approach is to acknowledge that, in the circumstances of the COVID-19 public health emergency, an offender should not be disadvantaged with respect to the overall

amount of time they would be fulfilling community service work obligations under the Good Behaviour Order.

**[1.23] – New section 126 (2A) and (2B)**

This clause authorises the board to refuse an application for parole without proceeding to a hearing if the board is satisfied the application has no reasonable prospects of success. The board must give written reasons for its decision to the offender and must hold a hearing if the offender requests one at least 14 days after the board's decision.

This amendment has been included in this emergency Bill to support the effective conduct of the board's supervisory functions during the COVID-19 public health emergency. Making this amendment now will ensure hearings are only conducted when necessary.

**[1.24] – New section 127 (2A)**

This clause allows a hearing to be held within a period less than 7 days after the day the offender receives the notice during the COVID-19 emergency. This may only occur if the board thinks it is in the public interest and the board is satisfied the offender understands the shortened notice period.

This amendment has been included in this emergency Bill to support the effective continuation of the board. Making this amendment now will ensure that prompt decisions can be made about parole and intensive correction orders including the release of offenders on parole.

**[1.25] – New section 182 (2A) and (2B)**

This clause modifies the provision relating to the constitution of divisions of the board. The amendment allows the chair of the board to assign a single judicial member only in the exercise of a supervisory function in relation to intensive correction orders or parole if it is not reasonably practicable for more than one member to exercise the function during a COVID-19 emergency. This clause excludes exercising a supervisory function in relation to the cancellation of an intensive correction order for breach of obligations and cancellation of parole.

This amendment has been included in this emergency Bill to support the effective operation of the board. Making this amendment now will ensure the board is able to continue to operate in the event it is unable to convene 3 members.

**[1.26] – New section 185 (1A)**

This clause modifies the provision relating to the quorum at board meetings which currently requires 3 members including at least 1 judicial member to be present. This clause allows one judicial member to exercise the business of the board if it is not reasonably practicable for 3 members to be present or it is a supervisory function during a COVID-19 emergency.

This amendment has been included in this emergency Bill to support the effective operation of the board. Making this amendment now will ensure the board is able to continue to operate in the event it is not able to convene 3 members.

**[1.27] – New section 322A**

This clause provides for the expiry of the emergency provisions.

**[1.28] – Dictionary**

This clause defines what a COVID-19 emergency means.

**Part 1.4 – Crimes (Sentencing) Act 2005**

**[1.29] – New section 13 (2A)**

This clause provides an alternative requirement that an undertaking can be made before the court and that the court must record the giving of the undertaking. It is noted that the acknowledgement can be given to the court remotely in accordance with the *Magistrates Court Act 1933*, section 311 should the court make an order to that effect. The requirement for the undertaking to be recorded by the court may occur by annotating the bench sheet and including the fact of the undertaking in the minute of the proceeding. In the event the offender is to be supervised by the director-general for the Act, evidence of the undertaking will support the director-general to perform their supervisory functions.

This amendment has been included in this emergency Bill to support the continued operations of agreed undertakings under the Act which previously needed to be made in person. Making this amendment now will ensure that undertakings are still able to be made by parties to a proceeding despite COVID-19 restrictions.

**[1.30] – New section 13 (9) and (10)**

This clause defines what a COVID-19 emergency means and provides for the expiry of amendments.

**Part 1.5 – Evidence (Miscellaneous Provisions) Act 1991**

**[1.31] – New part 12**

This clause inserts a new regulation-making power which allows the Executive to make a regulation for the purpose of responding to the public health emergency caused by the COVID-19. Under this section, the Executive may make a regulation in relation to the use of a recording given by a witness as evidence in a proceeding. This regulation-making power ends the day after the *Public Health (Emergency) Declaration 2020 (No 1)* and any extension or further extension ends.

This amendment has been included in this emergency Bill to support the continued operations of ACT's courts.

This amendment is urgent because it may be a significant period of time before normal court functioning, particularly jury trials, resume. ACT's courts need the option of recording evidence while witnesses' memories are fresh. Creating a specific regulation-making power also signals the government's intention to develop such measures, and during the course of the emergency period, put these measures in place in a transparent manner and with an opportunity for the Scrutiny of Bill Committee to consider the regulations and report to the Legislative Assembly.

Making this amendment now will enable regulations to ensure that the courts have additional options to manage cases during the COVID-19 pandemic.

## **Part 1.6 – Family Violence Act 2016**

### **[1.32] – New part 22**

New section 205 defines what a COVID-19 emergency means.

New section 206 allows the court to extend an interim order for a further 6 months during a COVID emergency. This amendment has been included in this emergency Bill because of the likelihood that a significant number of interim protection orders will expire before the end of the COVID-19 emergency period. Making this amendment now will ensure that protections remain in place for applicants until both parties are able to attend a hearing. Currently under the Act there is no ability to extend an interim order other than for non-service of the order.

New section 207 and new section 208 allows for a person to be considered 'present' or give consent at court if they appear by telephone. These are similar to the amendments made to the requirement to attend court in person for other criminal law provisions, and also align with the intention to provide undertakings remotely if the court considers it appropriate.

New section 209 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. This clause also defines what a COVID-19 emergency means and provides for the expiry of amendments. The acknowledgement can be given to the court remotely in accordance with the *Magistrates Court Act 1933*, section 311 should the court make an order to that effect. This amendment has been included in this emergency Bill to support the continued operations of agreed undertakings under the Act which previously needed to be made in person. Making this amendment now will ensure that undertakings are still able to be made by parties to a proceeding despite COVID-19 restrictions.

New section 210 provides for the expiry of amendments.

## **Part 1.7 – Financial Management Act 1996**

### **[1.33] – Section 18 (2)**

This clause provides an increased percentage for the amount appropriated for the Treasurer's advances. This amendment has been included in this emergency Bill because of the likelihood that Government will need to quickly respond to emerging financial pressures.

Making this amendment now will increase the amount of Treasurer’s Advance funding available to respond to emerging pressures during the COVID-19 response. Without this amendment, Government may be constrained in its ability to quickly provide additional funding for activities such as economic, health and social support services.

## **Part 1.8 – Firearms Act 1996**

### **[1.34] – New part 26**

This clause inserts a provision in relation to the operation of the *Firearms Act 1996*.

Section 417 gives the Minister the power to make a declaration in response to the COVID-19 public health emergency.

Section 418 outlines the expiry of the provisions.

These amendments have been included in this emergency Bill to ensure that if required, there is a power for the Minister to make restrictions on the sale of firearms, firearms parts and ammunition, and restrict the issue of permits and licenses for the duration of the covid-19 pandemic. This may be required to maintain social distancing rules during the public health pandemic, and to promote community safety. Making these amendments now will ensure that if the need arises, these restrictions can be imposed whilst also allowing essential firearms users access to firearms, firearms parts and ammunition. The amendments allow for licensed firearms dealers to continue to operate in the event that restrictions are imposed, provided they comply with the restrictions.

## **Part 1.9 – Gaming Machine Act 2004**

These amendments have been included in this emergency Bill because they implement a number of the ACT Government’s relief initiatives for ACT clubs affected by the public health measures that required a range of non-essential businesses, including clubs, to cease operations on 23 March 2020. Without these amendments, clubs will need to continue making payments to the Diversification and Sustainability Support Fund (DSSF) although they currently have no gaming machine revenue, and other community contributions-related relief initiatives will not be able to be delivered.

### **[1.35] – Section 161A (4)**

This clause contains an important definition for the suspension of payments to the DSSF.

### **[1.36] – New section 163H (4A) and (4B)**

This clause suspends the requirement for clubs to make payments to the DSSF for a period of 12 months. The dates in this provision recognise that clubs are not receiving any gaming machine revenue after 23 March 2020 when non-essential businesses were required to close, and that due to different tax period dates for clubs, some clubs may cease their final relevant tax period in the early days of April 2021.

**[1.37] – Section 164, new definition of *emergency declaration***

This clause inserts a new definition of ‘emergency declaration’ for the community contributions part of the Gaming Machine Act, being a state of emergency or public health emergency.

**[1.38] – Section 166 (1) definition of community purpose, new paragraph (ca)**

This clause adds a new community purpose as part of amendments providing for an emergency community purpose contribution declaration.

**[1.39] – Section 166 (1), definition of *community purpose contribution*, paragraph (b)**

This clause is a consequential amendment that adds an ‘emergency community purpose contribution’ to the definition of community purpose contribution.

**[1.40] – Section 166 (2)**

This is a technical and consequential amendment that is part of amendments providing for an emergency community purpose contribution declaration.

**[1.41] – New section 166 (4)**

This clause provides that an ‘emergency community purpose contribution’ is one that has been declared under section 166A.

**[1.42] – New section 166A**

This clause provides that if an emergency declaration is in force or was in force at any time in the previous 12 months, the Minister may declare that a contribution by a club licensee is a community purpose contribution, despite anything else in the Gaming Machine Act or Gaming Machine Regulation. This declaration will be an ‘emergency community purpose contribution declaration’.

The declaration will be a disallowable instrument, will apply for the period stated in the declaration (not necessarily the period of the emergency declaration) and is subject to any conditions set out in the declaration.

**[1.43] – Dictionary, new definition of *emergency declaration***

This clause is a technical and consequential amendment that adds the definition of ‘emergency declaration’ to the Dictionary of the Gaming Machine Act.

**Part 1.10 – Gaming Machine Regulation 2004**

**[1.44] –Section 69 (1) (c), new note**

This clause inserts a note in the Gaming Machine Regulation that certain contributions may be allowed under an emergency community purpose contribution declaration.

### **[1.45] – New section 69DA**

This clause provides an incentive for clubs to make a community purpose contribution to support a charitable cause by providing food to emergency-affected people. As this provision will operate only where an emergency declaration has been made, it is not intended that the requirement for a written arrangement or agreement be onerous. For example, an email evidencing an agreement to provide 100 meals per week for four weeks to ABC Charity would suffice.

### **Part 1.11 – Leases (Commercial and Retail) Act 2001**

#### **[1.46] – New part 17**

This clause inserts a new part to allow the Government to make a COVID-19 declaration to displace existing agreements to, for example, prevent or delay evictions for rent arrears, alter the timeframes for taking certain actions, prohibit the exercise certain rights or exempt parties from the operation of certain provisions.

The new part also ensures important safeguards, including a sunset clause and the continued application of human rights compliance.

This amendment has been included in this emergency Bill because of the likelihood that it will be necessary to introduce measures to sustain commercial and retail tenancies and to reinforce social distancing measures during the COVID-19 response period. Sustaining tenancies serves the dual purpose of supporting public health-related social distancing measures and minimising the economic impact of COVID-19 response measures on businesses. Making this amendment now will ensure that the Minister has the flexibility to introduce specific measures in response to emerging impacts of the COVID-19 response.

### **Part 1.12 – Long Service Leave Act 1976**

#### **[1.47] – Section 6 (3)**

This section amends section 6(3) of the *Long Service Leave Act 1976*. The amendment will apply to leave taken during a state of emergency or public health emergency where the leave is agreed between the employer and employee. The effect of the amendment is to expressly permit employers to give less than 60 days' notice before long service leave is taken during the COVID-19 pandemic. In these circumstances the offence in section 6(2) will not apply.

### **Part 1.13 – Long Service Leave (Portable Schemes) Act 2009**

#### **[1.48] – Schedule 1, new section 1.6 (3) and (4)**

This section amends section 1.6 in schedule 1 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the building and construction industry.

Currently, workers in the building and construction industry are entitled to portable long service leave after 10 years recognised service in the industry under schedule 1, section 1.6. This amendment will apply during the COVID-19 emergency and allow registered workers early access to their portable long service leave. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility and amount of leave that may be used in these circumstances.

**[1.49] – Schedule 1, new section 1.8 (1A) and (1B)**

This section amends section 1.8 in schedule 1 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the building and construction industry.

Currently, subsection (1) allows workers who have permanently left the industry after 7 years to be entitled to a payment instead of leave after 20 weeks have passed since permanently leaving the industry. Also, subsection (2) currently allows workers who have left the industry after 5 years, not by choice (ie where the worker has been incapacitated for work, reached retirement age or died) to be entitled to payment instead of leave.

This amendment inserts a new subsection (1A) which will apply during the COVID-19 emergency and allow registered workers to be entitled to payment instead of leave under this section without having to wait for 20 weeks to pass.

It will also insert a new subsection (1B) which will also apply during the COVID-19 emergency to allow registered workers to be entitled to payment instead of leave under this section if they satisfy the criteria determined by the Minister. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility for applying for leave in these circumstances.

**[1.50] – Schedule 1, section 1.8 (3)**

This section amends section 1.8 in schedule 1 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the building and construction industry.

This amendment is consequential on inserting subsection (1B) in section 1.8 and allows the amount of leave to be determined by the Minister in addition to the criteria for being entitled to payment instead of portable long service leave.

**[1.51] – Schedule 2, new section 2.6 (3) and (4)**

This section amends section 2.6 in schedule 2 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the contract cleaning industry.

Currently, workers in the contract cleaning industry are entitled to portable long service leave after 7 years recognised service in the industry under schedule 2, section 2.6. This amendment will apply during the COVID-19 emergency and allow registered workers early

access to their portable long service leave. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility and amount of leave that may be used in these circumstances.

**[1.52] – Schedule 2, new section 2.8 (1A) and (1B)**

This section amends section 2.8 in schedule 2 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the contract cleaning industry.

Currently, subsection (1) allows workers who have permanently left the industry after 5 years to be entitled to a payment instead of leave after 20 weeks have passed since permanently leaving the industry. Also, subsection (2) currently allows workers who have left the industry after 5 years, not by choice (ie where the worker has been incapacitated for work, reached retirement age or died) to be entitled to payment instead of leave.

This amendment inserts a new subsection (1A) which will apply during the COVID-19 emergency and allow registered workers to be entitled to payment instead of leave under this section without having to wait for 20 weeks to pass.

It will also insert a new subsection (1B) which will also apply during the COVID-19 emergency to allow registered workers to be entitled to payment instead of leave under this section if they satisfy the criteria determined by the Minister. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility for applying for leave in these circumstances.

**[1.53] – Schedule 2, section 2.8 (3)**

This section amends section 2.8 in schedule 2 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the contract cleaning industry.

This amendment is consequential on inserting subsection (1B) in section 2.8 and allows the amount of leave to be determined by the Minister in addition to the criteria for being entitled to payment instead of portable long service leave.

**[1.54] – Schedule 3, new section 3.7 (3) and (4)**

This section amends section 3.7 in schedule 3 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the community sector industry.

Currently, workers in the community sector industry are entitled to portable long service leave after 5 years recognised service in the industry under schedule 3, section 3.7. This amendment will apply during the COVID-19 emergency and allow registered workers early access to their portable long service leave. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility and amount of leave that may be used in these circumstances.

**[1.55] – Schedule 3, new section 3.9 (1A)**

This section amends section 3.9 in schedule 3 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the community sector industry.

Currently, subsection (1) allows workers who have left the industry after 5 years, not by choice (ie where the worker has been incapacitated for work, reached retirement age or died) to be entitled to payment instead of leave.

This amendment inserts a new subsection (1A) which will also apply during the COVID-19 emergency to allow registered workers to be entitled to payment instead of leave under this section if they satisfy the criteria determined by the Minister. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility for applying for leave in these circumstances.

**[1.56] – Schedule 3, section 3.9 (2)**

This section amends section 3.9 in schedule 3 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the community sector industry.

This amendment is consequential on inserting subsection (1A) in section 3.9 and allows the amount of leave to be determined by the Minister in addition to the criteria for being entitled to payment instead of portable long service leave.

**[1.57] – Schedule 4, new section 4.7 (3) and (4)**

This section amends section 4.7 in schedule 4 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the security industry.

Currently, workers in the security industry are entitled to portable long service leave after 7 years recognised service in the industry under schedule 4, section 4.7. This amendment will apply during the COVID-19 emergency and allow registered workers early access to their portable long service leave. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility and amount of leave that may be used in these circumstances.

**[1.58] – Schedule 4, new section 4.9 (1A)**

This section amends section 4.9 in schedule 4 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the security industry.

Currently, subsection (1) allows workers who have left the industry after 5 years, not by choice (ie where the worker has been incapacitated for work, reached retirement age or died) to be entitled to payment instead of leave.

This amendment inserts a new subsection (1A) which will also apply during the COVID-19 emergency to allow registered workers to be entitled to payment instead of leave under this

section if they satisfy the criteria determined by the Minister. The criteria for earlier access will be determined by the Minister by disallowable instrument setting out the eligibility for applying for leave in these circumstances.

#### **[1.59] – Schedule 4, section 4.9 (2)**

This section amends section 4.9 in schedule 3 of the *Long Service Leave (Portable Schemes) Act 2009* which deals with workers portable long service leave in the security industry.

This amendment is consequential on inserting subsection (1A) in section 4.9 and allows the amount of leave to be determined by the Minister in addition to the criteria for being entitled to payment instead of portable long service leave.

### **Part 1.14 – Medicines, Poisons and Therapeutic Goods Regulation 2008**

#### **[1.60] – Schedule 3, part 3.2, new items 5 and 6**

This clause inserts hydroxychloroquine as an Appendix D substance. A medicine listed in Appendix D is one with additional controls placed on its possession or supply. Only approved prescribers can prescribe Appendix D medicines.

This amendment best implements a Commonwealth scheduling change in the Poisons Standard made on 24 March 2020 in response to the COVID-19 emergency to limit prescribing of hydroxychloroquine (Plaquenil®) to certain specialists, due to reported off label and self-prescribing by practitioners for prevention and treatment of COVID-19.

The ACT automatically adopts the Appendix D listing in the Medicines, Poisons and Therapeutic Goods Regulation (MPTG Regulation), however prescribers currently need to apply individually for ACT Appendix D approval before prescribing. The insertion of hydroxychloroquine in part 3.2 of the MPTG Regulation will provide a standing approval for certain prescribers (as listed in the Poisons Standard) to prescribe hydroxychloroquine in the ACT.

This amendment has been included in this emergency Bill to support the provision of the medicine hydroxychloroquine to ACT patients. Making this amendment now will restrict who can prescribe hydroxychloroquine whilst also ensuring the medicine may continue to be prescribed for patients that require it for recognised treatments, without additional regulatory burden upon specialist prescribers.

### **Part 1.15 – Official Visitors Act 2012**

#### **[1.61] –New section 23DA (3A) and (3B)**

The clause inserts a new section 23DA (3A) into the Official Visitor Act 2012 to provide that the first annual report for the Official Visitors Board must be given to the Minister within 3 months after the end of the financial year ending on 30 June 2021. This is to ensure that the

Official Visitors Board annual reporting requirements align with the commencement of its next full reporting year.

New section 23DA (3B) is a transitional provision that provides that subsection (3A) and (3B) expire 6 months after the day they commence.

The reason this amendment is urgent is to be able to comply with the timeframes.

## **Part 1.16 – Personal Violence Act 2016**

### **[1.62] – New part 21**

New section 204 defines what a COVID-19 emergency.

New section 205 allows the court to extend an interim order for a further six months during a COVID emergency. This amendment has been included in this emergency Bill because of the likelihood that a significant number of interim protection orders will expire before the end of the COVID-19 emergency period. Making this amendment now will ensure that protections remain in place for applicants until both parties are able to attend a hearing. Currently under the Act there is no ability to extend an interim order other than for non-service of the order.

New section 206 and new section 207 allows for a person to be considered ‘present’ or give consent at court if they appear by telephone. These are similar to the amendments made to the requirement to attend court in person for other criminal law provisions, and also align with the intention to provide undertakings remotely if the court considers it appropriate.

New section 208 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. This clause also defines what a COVID-19 emergency means and provides for the expiry of amendments. It is noted that the acknowledgement can be given to the court remotely in accordance with the *Magistrates Court Act 1933*, section 311 should the court make an order to that effect. This amendment has been included in this emergency Bill to support the continued operations of agreed undertakings under the Act which previously needed to be made in person. Making this amendment now will ensure that undertakings are still able to be made by parties to a proceeding despite COVID-19 restrictions.

New section 209 provides for the expiry of amendments.

## **Part 1.17 – Prohibited Weapons Act 1996**

### **[1.63] – New part 6**

Section 55 gives the Minister the power to make a declaration in response to the COVID-19 pandemic.

Section 56 outlines the expiry of the provisions.

These amendments have been included in this emergency Bill to ensure that if required, there is a power for the Minister to make restrictions on the issue of permits under the *Prohibited Weapons Act 1996* for the duration of the COVID-19 public health emergency. This may be required to maintain social distancing rules during the public health pandemic, and to promote community safety. These are consequential amendments also acknowledge that the sale of prohibited weapons occurs through licensed firearms dealers.

## **Part 1.18 – Residential Tenancies Act 1997**

### **[1.64] – New part 16**

This clause inserts a new part to allow the Government to make a COVID-19 declaration to displace existing agreements to, for example, prevent or delay evictions for rent arrears, alter the timeframes for taking certain actions, prohibit the exercise of certain rights or exempt parties from the operation of certain provisions for identified classes of people.

The new part also ensures important safeguards, including a sunset clause and the continued application of human rights compliance.

This amendment has been included in this emergency Bill because of the likelihood that it will be necessary to introduce measures to sustain residential tenancies and occupancies and to reinforce social distancing measures during the COVID-19 response period. Sustaining tenancies and occupancies serves the purpose of preventing homelessness, supporting public health-related social distancing measures and minimising the economic impact of COVID-19 response measures on households. Making this amendment now will ensure that the Minister has the flexibility to introduce specific measures in response to emerging impacts of the COVID-19 response.

## **Part 1.19 – Supreme Court Act 1933**

### **[1.65] – New section 68B (3A)**

This clause allows an accused person to elect trial by judge alone for an excluded offence during the COVID-19 emergency period.

The reason this amendment is urgent is to ensure that serious criminal matters are not unnecessarily delayed due to COVID-19 distancing measures. This amendment supports a defendant's rights in criminal proceedings by allowing matters to be heard without unnecessary, and unspecified, delay.

### **[1.66] – Section 68B (4), new definition of *COVID-19 emergency period***

This clause defines the meaning of COVID-19 emergency period.

### **[1.67] – Section 68B (5)**

This clause provides for the expiry of provisions.

### **[1.68] – New section 68BA**

This clause allows a court to order that a trial on indictment for a Territory offence will be heard by a judge alone. This applies to all Territory offences being heard on indictment, including those which are ordinarily excluded from being heard by a judge alone due to their inclusion in Schedule 2 of the *Supreme Court Act 1933*. The court must inform the parties and provide an opportunity for submissions to be made prior to the order being made. Due to section 80 of the Constitution, the provisions relating to judge alone trials only apply to Territory offences.

The clause also defines the meaning of COVID-19 emergency period for the purposes of this section and the expiry of provisions.

The reason this amendment is urgent is to ensure that serious criminal matters are not unnecessarily delayed due to COVID-19 distancing measures. This amendment supports a defendant's rights in criminal proceedings by allowing matters to be heard without unnecessary, and unspecified, delay.

### **Part 1.20 – Working with Vulnerable People (Background Checking) Act 2011**

#### **[1.69] – New division 6.6**

This clause allows a person's working with vulnerable people registration to be extended during, and up to 6 months after the cessation of the COVID-19 emergency period.

These amendments also allow the commissioner to renew a registration that expired within the previous 12 months during the COVID-19 emergency. This is to remove barriers to respond to the urgent need for health professionals whose registration has recently expired to re-engage with critical frontline work to support the COVID-19 response.

These amendments have been included in this emergency Bill because of the likelihood that critical workers whose registration has recently expired may be required to re-engage with employment in the health or social services sectors during a public health emergency. Making these amendments now will ensure that if a person's registration has expired within the previous 12 months, their registration can be re-enlivened to allow them to work in critical frontline deliver services. If these amendments are not progressed, there may not be sufficient staff to urgently fill critical frontline staff shortages.