

2020

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

**COVID-19 EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020
(NO. 2)**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Gordan Ramsay MLA
Attorney-General**

COVID-19 EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020 (NO. 2)

The bill is not 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*.

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* due to the public health risk to the ACT community posed by COVID-19.

As of 9am on 9 June, the ACT had 108 confirmed cases and 3 deaths from COVID-19. As of 9pm on 9 June 2020, the Australian Government reported 7,267 confirmed cases in Australia and 102 deaths as a result of COVID-19. Worldwide, the WHO has reported that there are 7,039,918 confirmed cases of COVID-19 as at 6pm on 9 June 2020.

OVERVIEW OF THE BILL

Amendments to the *Electoral Act 1992*

Under the *Electoral Act 1992* (the Electoral Act) the 2020 ACT Legislative Assembly Election (2020 ACT election) is due to be held on 17 October 2020.

The bill amends the Electoral Act to support the Electoral Commission (the Commission) to conduct a safe, fair and inclusive 2020 ACT election.

In summary, the electoral amendments proposed in the bill would:

- expand the eligibility criteria for pre-poll voters so that any eligible elector of the ACT can cast a vote before polling day, at early voting centres;
- support the Commission's deployment of an overseas electronic voting solution for eligible ACT electors who are abroad;
- clarify that the offence under the Electoral Act for making a false or misleading statement in response to an official question may apply in relation to a person responding to a question about their eligibility to vote using the overseas electronic voting solution; and
- support the Commission's deployment of a telephone voting system for eligible ACT electors who are blind or vision impaired and electors who have a physical disability.

The electoral amendments will only be in place for the 2020 ACT election and will expire following the election.

Amendments to expand the early voting system are based on the Commission's recommendation that increasing opportunities for early voting, together with targeted preventative health measures at polling locations, is the most appropriate and adaptive election delivery model under prevailing conditions posed by the COVID-19 pandemic and assumed continued community restrictions.

This recommendation was made through the Commission's report titled, "Impact of COVID-19 pandemic on the 2020 ACT Legislative Assembly Election" (Special Report), which was developed by the Commission in specific recognition of the need to adapt the delivery of the 2020 ACT election to mitigate expected health risks while ensuring electoral integrity in light of COVID-19.

The Special Report, dated 25 May 2020, was presented to the ACT Legislative Assembly on 4 June 2020, pursuant to section 10A(2) of the Electoral Act. The report notes that the Commission considered a total of six options to deliver the election and the expansion of early voting was deemed to be the most appropriate following an analysis against three identified focus areas:

- a) public health and safety;
- b) health and safety of the electoral staff; and
- c) electoral integrity and operational complexities.

Expansion of the early voting system will mean all eligible ACT electors will have the opportunity to cast a vote at early voting centres in addition to being able to vote at polling places on polling day. This would prevent large crowds of electors gathering on polling day as is normally the case, and thereby reduce the potential for exposure to, and spread of, COVID-19.

Amendments to support the introduction of an electronic voting option for overseas ACT electors will supplement the already available option of postal voting and will help to address the risk of disenfranchisement of overseas voters due to delays associated with international postal services since the emergence of COVID-19.

Amendments to support the deployment of a telephone voting system for eligible ACT electors who are blind or vision impaired, or who have a physical disability, will assist those voters by allowing them to vote from home.

Amendments for overseas electronic voting and telephone voting also relate to recommendations 14 and 15 of the Select Committee on the 2016 ACT Election and the Electoral Act. The Select Committee was established by resolution of the ACT Legislative Assembly on 15 December 2016. Its report was released in November 2017, including 23 recommendations. The Government tabled its response on 10 April 2018 agreeing to six recommendations, agreeing in principle to nine, noting six and not supporting two. In relation to recommendations 14 and 15, the Government provided in-principle agreement, noting that those recommendations are matters for the Electoral Commission.

Amendments to the *Supreme Court Act 1933*

The bill will also repeal section 68BA of the *Supreme Court Act 1933* (SCA), which is a temporary provision introduced by the *COVID-19 Emergency Response Act 2020*.

The *COVID-19 Emergency Response Act 2020* commenced on 8 April 2020 and introduced a range of legislative responses to the COVID-19 pandemic, including a new section 68BA of the SCA. Section 68BA is a temporary amendment which authorises a judge to order a trial by judge alone for any offence being tried in the Supreme Court, if the criteria for making the order were met. The Explanatory Statement for the *COVID-19 Emergency Response Bill 2020* sets out the purpose and rationale of the amendment.¹

The repeal of section 68BA of the SCA is appropriate given the decision of the Supreme Court to recommence the conduct of jury trials with special measures to ensure that social distancing requirements can be complied with.

¹ See Explanatory Statement to the COVID-19 Emergency Response Bill 2020, pp.3-5.

At the time of the presentation of the bill, orders for a judge alone trial under section 68BA of the SCA are current in relation to seven people affecting five trials which have been listed for hearing. A further eight people have been notified by the Supreme Court that it is considering making an order, affecting two trials.

Section 84(1) of the *Legislation Act 2001* (Saving of operation of repealed and amended laws) states that the repeal of a law does not affect anything done or begun under the law. While this may operate to ensure that any proceedings under section 68BA of the SCA are preserved, transitional provisions have been included in the bill. The transitional provisions make clear the intent that the amendments do not affect any orders made or notices issued about an intention to make an order under section 68BA of the SCA prior to commencement.

CONSULTATION ON THE PROPOSED APPROACH

The proposed electoral amendments are the result of extensive consultation with the ACT Electoral Commission, including through consideration of the Commission's Special Report.

The Commission's recommendation to expand early voting arrangements for the 2020 ACT election will be implemented through this bill.

The Government consulted with criminal justice agencies and the legal profession prior to the presentation of the COVID-19 Emergency Response Bill 2020. The introduction of section 68BA was premised on the need for measures to address the context of COVID-19 at that time.

CONSISTENCY WITH HUMAN RIGHTS

The bill is compatible with the rights set out in the *Human Rights Act 2004* (HRA) and for completeness the analysis below is provided.

Rights which may be engaged

The bill may engage a number of rights under the HRA, directly or indirectly, including:

- for amendments to the *Electoral Act 1992*:
 - section 8 – Equality and non-discrimination;
 - section 9 – Right to life;
 - section 16 – Freedom of expression; and
 - section 17 – Taking part in public life;
 - section 18 – Right to liberty; and
 - section 21 – Right to fair trial.

- for amendments to the *Supreme Court Act 1933*:
 - section 21 – Right to fair trial; and
 - section 22 - Right to be tried without undue delay.

Amendments to the Electoral Act 1992

Rights promoted

The bill promotes the rights to equality and non-discrimination (section 8 HRA), life (section 9 HRA), freedom of expression (section 16 HRA), and taking part in public life (section 17 HRA).

The primary purpose of the electoral amendments in the bill is to help ensure the safe and effective planning and operation of the 2020 ACT election in light of the significant and ongoing health risk of COVID-19 to the ACT community. The purpose supports the right to take part in public life, under section 17 of the HRA, which states, in part, that every citizen has the right, and is to have the opportunity, to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote at periodic elections, that guarantee the free expression of the will of the electors. The proposed amendments aim to support all eligible ACT electors to safely participate in the 2020 ACT election by expanding the operation of the early voting system and supporting the deployment of telephone voting and electronic voting for certain ACT electors.

The primary purpose of the bill also supports the right to freedom of expression under section 16 of the HRA, which states that everyone has the right to hold opinions without interference, and the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders.

The bill also promotes the right to life under section 9 of the HRA, as the measures in the bill aim to uphold the health and safety of the community by preventing the potential spread of COVID-19.

Amendments to support the deployment of telephone voting and electronic overseas voting also promote the right to equality and non-discrimination under section 8 of the HRA by assisting voters who experience certain barriers to participate in the 2020 ACT election. Enabling telephone voting aims to assist blind or visually impaired electors or electors with a physical disability who face barriers to being able to cast a vote at polling venues.

Rights that may be limited

The amendment to clarify the application of the offence under section 319 of the Electoral Act for making a false or misleading statement in relation to a person using the overseas electronic voting solution does not change the substantive purpose or operation of the offence, and accordingly does not limit the right to fair trial (under

section 21 of the HRA) or rights in criminal proceedings (under section 22 of the HRA). The amendment does not impact on a person's ability to have their matter determined consistently with existing the rules of procedural fairness, criminal procedures and other sentencing laws. As the measure involves an offence provision that may result in a person being sentenced to a term of imprisonment if a person is found guilty, the measure also engages and may limit the right to liberty. However, any limitation in this respect is permissible applying the criteria in section 28 of the HRA. The measure pursues the legitimate purpose of ensuring the integrity of the election. The measure is rationally connected to (that is, effective to achieve) and is proportionate to that purpose noting the targeted scope of criminal offence and its deterrence function.²

Amendments to the Supreme Court Act 1933

The SCA amendments proposed in the bill promote the right to fair trial (section 21 HRA), which provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to fair trial was engaged and may have been limited by the introduction of section 68BA of the SCA, as the provision 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.

The repeal of section 68BA through the bill removes the ability for a judge to order a trial by judge alone and returns the decision of whether to have a jury trial to the accused person. This amendment engages and is compatible with the right to a fair trial. This amendment may also engage but does not limit the right under s 22(2)(c) to be tried without undue delay, given the expected return to jury trials in the ACT and the remaining availability of trial by judge alone.

² 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 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 2)

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 Legislation Amendment Bill 2020 (No 2)**. In my opinion, having regard to the Bill and 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

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This is a technical clause that names the short title of the Electoral Act. Clause 1 provides that the title of the Act will be *the COVID-19 Emergency Response Amendment Act 2020 (No. 2) (The Amendment Act)*.

Clause 2 Commencement

This clause provides that the Amendment Act, other than schedule 1, will commence on the day after its notification day.

Schedule 1 reverses the electoral amendments introduced by the Amendment Act and will commence 6 months after the day of the general election in October 2020. A reversal of all electoral amendments after 6 months post-election has been provided for in the Amendment Act as a precautionary measure, to ensure these temporary amendments can be applied in appropriate circumstances if required to, such as, if the validity of an election is taken to be in dispute pursuant to Division 16.3 of the *Electoral Act 1992* (Electoral Act).

Clause 3 Legislation amended

Clause 3 provides that the Bill amends the Electoral Act and the *Supreme Court Act 1933* (SC Act).

Part 2 Electoral Act 1992

Clause 4 Ballot papers, Section 114 (5)

This clause inserts the words “or communication” to section 114 (5) of the Electoral Act as an amendment consequential to the introduction of telephone voting in new section 136BA (Clause 13). This amendment will provide that the ACT Electoral Commissioner (the Commissioner) may approve changes to the electronic form of the ballot paper that are both necessary to facilitate the display “or communication” of the electronic form.

Clause 5 Section 118 heading

This clause substitutes the heading of section 118B which is consequential to the introduction of the legislative framework to provide for the telephone voting (see new section 136BA, Clause 13) and overseas electronic voting options (see section new 136D, Clause 15) and a new definition for *approved electronic device*.

Clause 6 Section 118B (1)

This clause substitutes the words “electronic devices and computer programs” with “approved electronic devices and approved computer programs” in existing section 118B (1). This amendment is consequential to the introduction of the telephone voting (see new section 136BA, Clause 13) and overseas electronic voting solutions (see section 136D, Clause 15) and a new definition for *approved electronic device*.

The purpose of this substitution is to clarify the Commissioner’s obligations and that the Commissioner is only required to keep approved electronic devices and approved computer programs secure from interference. Section 118B (1) provides that while the Commissioner will need to ensure the approved computer program used to facilitate the overseas electronic voting solution or telephone voting system will be secure from interference, this is not intended to extend to individual electronic devices used by eligible voters.

Clause 7 Section 118B (2)

This clause substitutes the words “at a polling place or scrutiny centre” with “by an approved electronic device or approved computer program” to ensure the Commissioner keeps backup copies of electronic data produced by any approved electronic device or computer program.

This amendment is consequential to the introduction of the overseas electronic voting and telephone voting options, as electronic data will now be produced at places beyond a polling place or scrutiny centre.

Clause 8 Administrative arrangements, Section 120 (2)

This clause substitutes existing section 120 (2) so that the Commissioner may also make appropriate administrative arrangements for other forms of electronic voting introduced by the Amendment Act i.e. telephone voting and overseas electronic voting.

In practice, telephone voting is intertwined with the Electoral Commission’s Electronic Voting and Counting System (eVACS®) and is a form of electronic voting. An electronic ballot paper is verbally communicated by eVACS without any human interaction to the eligible voter over the telephone; this follows an initial registration process with an officer of the Electoral Commission.

Clause 9 Section 120 (3)

This clause omits the words “at a polling place” to provide that the Commissioner may approve electronic devices for use by electors for electronic voting (not limited to electronic voting at a polling place). This is consequential to the introduction of the telephone voting and overseas electronic voting solution in new sections 136BA and 136D.

Clause 10 Procedures for voting, Section 131 (3)

This clause substitutes the words “or electronic voting” with “or electronic ballot paper” due to the omission of the definition of electronic voting in the Dictionary of the Electoral Act, in clause 34.

Clause 11 Manner of recording vote, New section 132 (3)

This clause inserts a new subsection in section 132 to provide that marking a ballot paper for a vote submitted electronically means recording the elector’s vote on an electronic ballot paper by electronic means.

Clause 12 New section 136AA

This clause creates a new section to expand early voting so that any elector who is entitled to vote at the election is now an eligible elector for early voting pursuant to section 136B.

The clause also specifies that:

- a) new section 136AA will only apply to the October 2020 ACT Legislative Assembly election; and
- b) the Commissioner may declare a location to be a place where a person may attend to vote prior to election day by notifiable instrument – this is similar to the current declaration of polling places on polling day by notifiable instrument.

Clause 13 New section 136BA

This clause inserts a new section, to introduce the legislative framework for a new telephone voting option and clarifies that it is a form of electronic voting.

New section 136BA provides that a person is eligible to vote by telephone voting if the person is an elector who has a vision-impairment or other forms of physical disabilities which make it difficult for them to attend a polling place to vote or vote by postal vote.

The new section provides that to vote by telephone, the eligible elector will need to apply to the Commissioner by telephone in the period between the 3rd Monday in the

ACT prior to polling day (or, if that Monday is a public holiday, the next business day) and 4pm in the ACT on polling day.

As the general cut-off time for voting on polling day is 6pm, new section 136BA also provides that the telephone vote must be received by the Commissioner by 6pm on polling day.

Clause 14 Declaration voting outside ACT on or before polling day, Section 136C (1), definition of relevant period, paragraph (a)

This clause inserts the words “in the ACT” in section 136C (1) to clarify that the relevant period for votes being admitted to the count is based on the relevant time in the ACT (i.e. Australian Eastern Standard Time).

Clause 15 New section 136D

This clause inserts a new section, to introduce the legislative framework for an overseas electronic voting option to allow an eligible overseas voter to submit a vote from a location outside of Australia.

New section 136D provides that a person who is eligible to vote using the overseas electronic voting solution is a person otherwise eligible to vote but is physically outside of Australia during the relevant period.

The “relevant period” is prescribed in the new section as the period beginning on the 3rd Monday in the ACT before polling day (or, if that Monday is a public holiday, the next business day) and ending at 4pm in the ACT on polling day.

New section 136D clarifies:

- a) that an eligible elector located at a *station* in Antarctica is taken to be an elector who is outside of Australia;
- b) an eligible elector will need to apply to the Commissioner to vote using this overseas electronic voting option, during the relevant period;
- c) the elector’s application to the Commissioner will need to include a declaration that the applicant is an eligible elector for the purposes of voting at the election at the time of making an application;
- d) the electronic ballot paper must be received by the Commissioner by 6pm in the ACT on polling day; and
- e) similar to other forms of declaration voting – access to the overseas electronic solution will be given to an elector who claims to be on the ACT electoral roll even if they cannot be located on the roll³.

³ The overseas e-voting option will be subject to a preliminary scrutiny process (to admit or reject

Clause 16 Record of issue of declaration voting papers, Section 137 (1)

This clause substitutes section 137 (1) and introduces the words “relevant provision” as an amendment consequential to the introduction of the overseas electronic voting option. Section 137 (1) is to be read in conjunction with new section 137 (3) which defines “relevant provision.”

Clause 17 New section 137 (3)

This clause sets out what constitutes a ‘relevant provision’ and in so doing provides that the requirement to record the time and date of issue of declaration voting papers extends to the overseas electronic voting option and specifically in relation to when overseas voters are given access to electronic ballot papers.

Clause 18 Assistance to voters, Section 156 (2) (a)

This clause inserts the words “or an eligible elector under section 136BA (1) or section 136D (1)” as an amendment consequential to the introduction of telephone voting and overseas electronic voting. This amendment provides that a person eligible to vote by telephone voting or overseas electronic voting may nominate a person to assist them to vote if the elector would otherwise be unable to vote.

Clause 19 Section 156 (4) (e)

This clause makes a minor correction by inserting the words “for a paper ballot paper” to clarify that only a paper ballot paper will need to be deposited in a ballot box or declaration envelope.

Clause 20 Scrutiny, Section 178 (3) (a)

This clause inserts the words “or electronic votes under section 136BA or section 136D.”

This amendment to section 178 (3) (a) is consequential to the introduction of both the telephone voting and overseas electronic voting options to ensure that documents and data received by the Commissioner from these forms of voting will also be subject to scrutiny in accordance with Part 12 of the Electoral Act.

votes) to be determined by the Commissioner pursuant to section 118A. This process will be made publicly available under open access on the Commission’s website.

Clause 21 Preliminary scrutiny of declaration voting papers etc, Section 179 (1) (a)

This clause inserts the words “or overseas electronic voting” and provides that the Commissioner shall arrange for the conduct of the preliminary scrutinies necessary for all completed declaration voting papers including those completed by overseas electronic voting.

Clause 22 Section 179 (5)

This clause inserts the words “other than for overseas electronic voting” to preclude overseas electronic voting from being subjected to preliminary scrutiny conducted in accordance with schedule 3 of the Electoral Act.

Preliminary scrutiny is performed to determine based on information received about a person’s eligibility as to whether the vote can progress to scrutiny (the admittance of votes for counting). Given current provisions in the Electoral Act in relation to preliminary scrutiny (Schedule 3) deal specifically with physical forms of declaration voting, the overseas e-voting option will be subject to a preliminary scrutiny process to be determined by the Commissioner pursuant to section 118A. This process will be made publicly available under open access on the Commission’s website.

Clause 23 Section 179 (6)

This clause inserts the words “under part 11” to clarify that Schedule 3 of the Electoral Act which relates to the preliminary scrutiny process for physical declaration votes will only apply to postal votes cast by Antarctic electors i.e. preliminary scrutiny for electronic votes cast by Antarctic electors will not be subject to Schedule 3 of the Electoral Act.

Clause 24 Formality of ballot papers, New section 180 (2A)

This clause inserts new section 180 (2A) to clarify that an electronic ballot paper cast by an overseas elector is not an informal ballot paper for the purpose of section 180 of the Electoral Act.

Clause 25 First count – electronic ballot papers, Section 183A

This clause substitutes the words “preferences from electronic voting” with “preferences marked on an electronic ballot paper.”

The amendment made by clause 25 is consequential to the introduction of both the telephone voting and overseas electronic voting options. The amendment clarifies that the Officer in Charge of a scrutiny centre must arrange for preferences marked on an electronic ballot paper to be entered into the approved computer program and for the electronic counting of the votes using the program.

Clause 26 Recount of electronic scrutiny of ballot papers, Section 187C (2)

This clause substitutes the words “at a polling place or scrutiny centre” with “by an approved electronic device or approved computer program”. This amendment is linked to the amendment to section 118B (2) in clause 7 and provides that a recount of electronic scrutiny of ballot papers may be conducted by recounting backup copy of electronic data.

Clause 27 Validity may be disputed after election, Section 256 (2) (d)

This clause inserts the word “the commissioner or” to clarify that any matter connected with the issue, or scrutiny, of ballot papers by either the commissioner or an officer may be called into question for the purpose of section 256 (2).

Clause 28 Responses to official questions, Section 319

This clause updates the definition of “official question” so that an official question may also be in a form approved under section 340A or otherwise authorised by the Commissioner.

This amendment extends a criminal penalty that would otherwise be associated with providing false or misleading answers to a question asked by an official in person only. This penalty will now be extended to a question that is either asked in an approved form or otherwise authorised by the Commissioner. For example, this may include a question asked on an electronic voting application.

Clause 29 Dictionary, new definition of *approved electronic device*

This clause is a technical and consequential amendment that adds a new definition of “approved electronic device” to the Dictionary of the Electoral Act.

Clause 30 Dictionary, definition of *declaration vote*, new paragraph (ca)

This clause adds to the definition of “declaration vote” to clarify that a vote submitted via the overseas electronic voting solution is a form of declaration vote.

Clause 31 Dictionary, definition of *declaration voting papers*, paragraph (c)

This clause makes clear that if an eligible overseas voter submits an overseas electronic vote, a certificate, in the form approved under section 340A of the Electoral Act does not need to be completed by a witness to the declaration.

Clause 32 Dictionary, definition of *electronic voting papers*, paragraph (d)

This clause clarifies that if an eligible overseas voter submits an overseas electronic vote, an envelope in the form approved under section 340A of the Electoral Act does not need to accompany the declaration completed by the elector.

Clause 33 Dictionary, new definition of *electronic vote*

This clause inserts the definition of “electronic vote” to provide that an electronic vote is a vote cast using an electronic ballot paper and may be made at a polling place under section 131 (3), by telephone under section 136BA or by overseas electors under section 136D.

Clause 34 Dictionary, definition of *electronic voting*

This clause omits the definition of electronic voting as a consequential amendment to the introduction of the new definition ‘electronic vote.’

Clause 35 Dictionary, new definition of *overseas electronic vote*

This clause introduces a new definition of “overseas electronic vote” to the Dictionary of the Electoral Act and provides that an overseas electronic vote is a declaration vote to which new section 136D of the Electoral Act applies.

Part 3 Supreme Court Act 1933

Clause 36 Trial by judge alone in criminal proceedings – COVID-19 emergency period, Section 68BA

This clause omits section 68BA from the Supreme Court Act 1933 on commencement of this Bill.

Section 68BA (Trial by judge alone in criminal proceedings—COVID-19 emergency period) commenced on 8 April 2020. Under section 68BA(5), the application of this temporary measure ends on 31 December 2020 and the section expires 12 months after commencement. The repeal of section 68BA is appropriate given the COVID-19 pandemic is well controlled both in the ACT and in Australia and it is expected that jury trials will recommence in the Supreme Court.

Clause 37 New part 12

This clause inserts a new part 12 Transitional – COVID-19 Emergency Response Amendment Bill 2020 (No 2). The purpose of the transitional provisions is to make it clear that the repeal of section 68BA does not affect any orders made or notices issued about an intention to make an order under section 68BA of the SCA prior to commencement.

Section 115 provides definitions of *commencement day* and *repealed law*.

Section 116 provides that where the court has given notice but has not made a decision about making an order under section 68BA the court may still make an order despite the repeal of section 68BA.

Section 117 provides that an order made under section 68BA will still have effect despite the repeal.

Section 118 provides for the expiry of the transitional provisions in part 12 after 2 years. Expired transitional provisions continue to have effect after expiry.

Schedule 1 Delayed amendments

This schedule is subject to a delayed commencement as per clause 2 of the Amendment Act.

As the amendments to the Electoral Act introduced by the Amendment Act are intended to be in place for the October 2020 election only, this schedule reverses all Electoral Act amendments 6 months after the day of the general election in 2020.