

2021

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

OPERATIONAL EFFICIENCIES (COVID-19) LEGISLATION AMENDMENT BILL 2021

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

**Presented by
Shane Rattenbury MLA
Attorney-General**

OPERATIONAL EFFICIENCIES (COVID-19) LEGISLATION AMENDMENT BILL 2021

Outline

Outline.....	1
OVERVIEW OF THE BILL.....	2
CONSULTATION ON THE PROPOSED APPROACH	3
CONSISTENCY WITH HUMAN RIGHTS	3
Rights Engaged	4
Rights Promoted	4
Rights Limited	6
Amendments with neutral impact on human rights	13
Detail	15
Part 1 – Preliminary	15
Part 2 – Associations Incorporation Act 1991	16
Part 3 – Bail Act 1992	17
Part 4 – Corrections Management Act 2007	17
Part 5 – Crimes Act 1900.....	18
Part 6 – Crimes (Sentencing) Act 2005	18
Part 7 – Drugs of Dependence Act 1989.....	18
Part 8 – Human Rights Commission Act 2005	20
Part 9 – Public Trustee and Guardian Act 1985	20
Part 10 – Retirement Villages Act 2012	20
Part 11 – Taxation Administration Act 1999.....	22

Operational Efficiencies (COVID-19) Legislation Amendment Bill 2021

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*.

OVERVIEW OF THE BILL

The policy objective of the Bill is to permanently adopt certain legislative measures taken during the COVID-19 emergency and to temporarily extend the expiry of measures put in place to assist the business activities of incorporated associations. These measures were originally introduced through the *COVID-19 Emergency Response Act 2020* and *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The Bill will amend the:

- a) *Associations Incorporation Act 1991*, to extend on a temporary basis, the duration of COVID-19 measures that allow incorporated associations to hold general meetings using alternate methods of communication and allow votes by proxy, and the registrar-general to extend periods of time for certain matters due to a COVID-19 emergency;
- b) *Bail Act 1992*, to allow on an ongoing basis, for undertakings to appear in court to be given to the court remotely and recorded by the court;
- c) *Corrections Management Act 2007*, to extend on an ongoing basis, the maximum period for which a local leave permit is granted for long-term medical treatment or palliative care, from seven days to a maximum of three months;
- d) *Crimes Act 1900*, to allow on an ongoing basis, for the application and transmission of sworn warrants to be conducted electronically;
- e) *Crimes (Sentencing) Act 2005*, to allow on an ongoing basis, for undertakings to comply with good behaviour obligations to be given to the court remotely and recorded by the court;
- f) *Drugs of Dependence Act 1989*, to allow on an ongoing basis, for the application and transmission of sworn warrants to be conducted electronically;
- g) *Human Rights Commission Act 2005*, to vest on an ongoing basis, the ACT Human Rights Commission with the power to hear and handle complaints in relation to the treatment of vulnerable people;
- h) *Public Trustee and Guardian Act 1985*, to allow on an ongoing basis, the Public Trustee and Guardian to delegate any of their functions under the Public Trustee and Guardian Act to a member of the Public Trustee and Guardian staff provided they have regard to certain considerations in making the delegation;

- i) *Retirement Villages Act 2012*, to allow on an ongoing basis, participation in meetings of residents, including meetings convened by operators of the village, using alternative methods of communication other than in-person; and
- j) *Taxation Administration Act 1999*, to provide on an ongoing basis, a set of powers across tax types to provide relief for individuals, households and businesses through rebates, exemptions and deferrals.

CONSULTATION ON THE PROPOSED APPROACH

The amendments in the Bill were identified for permanent adoption by ACT Government agencies noting the operational efficiencies effected from these measures. Stakeholders that were consulted and informed in the development of the Bill include:

- ACT Corrective Services
- ACT Courts and Tribunal (including the Magistrates Court and Supreme Court)
- ACT Human Rights Commission
- ACT Law Society
- ACT Policing
- All ACT Government Directorates
- Director of Public Prosecutions
- Disability and Community Services Commissioner
- Retirement Living, Goodwin
- Legal Aid ACT
- Retirement Living Committee of the ACT Property Council
- Public Trustee and Guardian
- Retirement Villagers Association, ACT

The Bill is the result of consultation with and input from the above stakeholders.

CONSISTENCY WITH HUMAN RIGHTS

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and

punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

The European Court of Human Rights has considered the positive obligation of governments to uphold rights in depth, noting governments must put in place legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement.¹

Rights Engaged

The Bill engages and may promote the following rights under the Human Rights Act and is discussed under Rights Promoted in detail:

- Section 10 – Protection from torture and cruel, inhuman or degrading treatment etc
- Section 16 – Freedom of expression
- Section 18 – Right to liberty and security of person

The Bill engages and may limit the following rights under the Human Rights Act and is discussed under Rights Limited in detail:

- Section 8 – Recognition and equality before the law
- Section 12 – Privacy and reputation
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person
- Section 22 – Rights in criminal proceedings
- Section 27B – Right to work and other work-related rights

Rights Promoted

Associations Incorporation Act 1991

The extension of section 70AA of the Associations Incorporation Act engages and may promote the right to freedom of expression (section 16 of the Human Rights Act) by facilitating incorporated associations' abilities to convene general meetings and allowing their members' opinions to be expressed using alternative methods of communication other

¹ Colvin, M & Cooper, J, 2009 'Human Rights in the Investigation and Prosecution of Crime' Oxford University Press, p.425. For more detail on positive obligations, see generally, Akandji-Kombe, J, 2007 'Positive obligations under the European Convention on Human Rights', Council of Europe.

than in-person during a COVID-19 emergency. By permitting electronic methods of communication to be used, associations will be able to respond flexibly to operational challenges and ensure all members are able to participate and have their opinions heard at a time when the COVID-19 pandemic continues and health measures may constrain the way in which meetings can be conducted.

Corrections Management Act 2007

The amendments to the Corrections Management Act engage and may promote the right to liberty and security of person (section 18 of the Human Rights Act) by allowing the release of detainees from full-time detention to allow for long-term medical treatment or palliative care. The amendments recognise that there may be circumstances where it is appropriate to authorise release for extended periods.

Human Rights Commission Act 2005

The amendments to the Human Rights Commission Act will provide an avenue for vulnerable older people or people with a disability, and their advocates, to seek the assistance of the Human Rights Commission (HRC) in seeking to address situations of abuse, neglect and exploitation on a permanent basis.

Continuing the functions of the HRC to deal with complaints about abuse, neglect or exploitation of vulnerable people constitutes an additional measure to protect vulnerable people including from torture or cruel, inhuman or degrading treatment. As such, the measure promotes the right to be free from torture, cruel, inhuman or degrading treatment (section 10 of the Human Rights Act).

In dealing with a complaint of alleged abuse, neglect or exploitation, existing complaint handling provisions apply and may involve conciliation between the parties. Resolving complaints by way of conciliation is more likely to preserve relationships between family members than an adversarial court process.

Retirement Villages Act 2012

The amendments to the Retirement Villages Act engage and may promote the right to freedom of expression (section 16 of the Human Rights Act) by ensuring that residents and operators can express their opinion and discuss important operational matters impacting retirement villages regardless of their ability and without compromising their health and safety. By permitting alternative methods of communication to be used for meetings, retirements villages can respond flexibly to the needs of residents, while simultaneously facilitating all residents to have their opinions heard and considered.

Taxation Administration Act 1999

The amendment provides for Ministerial powers outside of the COVID-19 emergency period to support the implementation of tax-related measures that provide the ability to provide tax relief for individuals, households and businesses through rebates, exemptions and deferral arrangements when considered necessary.

Any rights promoted will depend on the nature of any determined schemes made in the form of a disallowable instrument under these amendments.

Rights Limited

The preamble to the Human Rights Act 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 Human Rights Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Section 28 of the Human Rights Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R v Oakes*.² A party must show that:

[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”.³

Human Rights Commission Act 2005

The nature of the right affected and the limitation (s 28 (2) (a) and (c))

Privacy

Section 12 of the Human Rights Act provides for the right not to have one’s privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

This amendment engages and may limit the right to privacy and family by providing the HRC jurisdiction to deal with a complaint about allegations of abuse, neglect or exploitation of a vulnerable person, which may have taken place entirely within private settings, including in the home, and between family members.

² [1986] 1 S.C.R. 103.

³ *R v Oakes* [1986] 1 S.C.R. 103.

The amendment also allows HRC commissioners to share information in their official capacity amongst themselves, where necessary to perform their functions. This includes personal and sensitive information that is received as part of their complaint-handling functions.

Right not to incriminate oneself

Section 22 (2) (i) Human Rights Act recognises an individual's right not to be compelled to provide information that may be self-incriminating. The amendments engage and may limit this right, because a person cannot rely on common law privileges against self-incrimination as a reason for not providing information as requested by the HRC.

Any such limitations are permissible based on the criteria set out in section 28 of the Human Rights Act as applied further below.

Legitimate purpose (s 28 (2) (b)) and rational connection between the limitation and the purpose (s 28 (2) (d))

The amendment seeks to achieve the overall purpose of addressing the risk of vulnerable people being subject to neglect and abuse, which is an ongoing risk, not limited to the COVID-19 emergency.

The complaints handling jurisdiction facilitates the detection of abuse of vulnerable people, and can lead to a range of responses such as conciliation, referral to ACT Policing and Legal Aid ACT for potential criminal prosecutions, and private legal action.

Expanding the functions of the HRC to deal with complaints about abuse, neglect and exploitation of vulnerable people has proved to be an effective and important avenue to address elder abuse and abuse of people with disability.

The HRC has used the new powers to consider, investigate and resolve issues faced by a number of vulnerable people, including in family situations where ongoing relationships were particularly important and criminal sanctions were not seen as a desirable response.

These measures have enhanced the protection of human rights of Canberrans during the COVID-19 pandemic, but the need for them is not confined to the existence of the public health emergency. As the Australian Law Reform Commission report on Elder Abuse⁴ demonstrated, there is an ongoing risk faced by older people in our community who are vulnerable to abuse and neglect. The National Plan to respond to the Abuse of Older Australians includes as a priority area strengthening safeguards for vulnerable adults.⁵ It

⁴ Australian Law Reform Commission, *Elder Abuse—A National Legal Response* (Report 131, June 2017).

⁵ Council of Attorneys-General, *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*, pp 29–32.

requires States and Territories to take a range of steps to prevent and address elder abuse, including reviewing legislation to identify gaps in safeguarding provisions.

The vulnerable persons complaints handling jurisdiction is an important mechanism for the safeguarding of older people and other vulnerable people. This amendment is required to ensure that these protections will continue to provide protection to vulnerable Canberrans.

Proportionality (s 28 (2) (e))

Any interference with privacy and family resulting from the exercise of these powers is reasonable and justifiable, because the HRC only has access to information that is relevant to its consideration of a complaint, and its intervention into familial and private lives will only occur where it is necessary to protect the rights of vulnerable people from inhuman and degrading treatment.

The HRC must also obtain the consent of the alleged victim, where possible, before conducting an investigation into, or referring the complaint to other entities. Obtaining the vulnerable person's consent, as far as possible, allows the HRC to respect the privacy of the person.

This new complaint handling role will utilise existing legislative powers of the HRC to deal with complaints, and these powers are subject to appropriate constraints and safeguards. In relation to the right not to be forced to incriminate oneself, any information obtained, directly or indirectly, will not be admissible against the provider in a civil or criminal proceeding, with the exception of proceedings for an offence against Part 4 of the Human Rights Commission Act, or an offence in relation to the falsity of the information.

Public Trustee and Guardian Act 1985

The nature of the right affected and the limitation (s 28 (2) (a) and (c))

The amendment engages and potentially limits the right to privacy (section 12 of the Human Rights Act) and may also limit related rights such as the right to work (section 27B of the Human Rights Act), right to freedom of movement (section 13 of the Human Rights Act) and right to liberty and security of person (section 18 of the Human Rights Act).

Section 9A (2) of the Public Trustee and Guardian Act limits the delegation of decision making by the Public Trustee and Guardian in relation to acting as a guardian or manager when appointed by the ACT Civil and Administrative Tribunal (ACAT) or applying to the ACAT for an appointment of a person as guardian or manager. Under this section such decisions are only able to be delegated to the Deputy Public Advocate.

Existing section 9A (3) of the Public Trustee and Guardian Act was introduced in the COVID-19 Emergency Response Legislation Amendment Act to temporarily modify the restrictions

under section 9A (2) to allow the Public Trustee and Guardian to more broadly delegate guardianship and management functions to a staff member during the COVID-19 emergency period. It allows delegation to any staff member, but excludes certain decisions, being decisions regarding medical treatment involving treatment, care or support under the *Mental Health Act 2015*, buying, selling, realising or mortgaging real property, or granting a lease of real property, and borrowing money with or without security.

The current amendments will refine this temporary measure and make it permanent. This will allow the Public Trustee and Guardian to delegate any of their functions under the Public Trustee and Guardian Act to a member of the Public Trustee and Guardian staff, subject to specified matters that must be considered in making the delegation.

As a guardian or manager of a protected person, the Public Trustee and Guardian may be given broad powers by the ACAT to make decisions about the private life of a person who has impaired decision-making ability. Applying for a guardianship or management order may also have human rights impacts.

By removing the exceptions, a wider scope of decisions can be made by any staff member of the Public Trustee and Guardian. As guardianship and management decisions made on behalf of a person with impaired decision making can significantly impact on the privacy and home life of an individual and may also engage other related rights, the change to this safeguard potentially limits these rights.

Any such limitations are permissible based on the criteria set out in section 28 of the Human Rights Act as applied further below.

Legitimate purpose (s 28 (2) (b))

The amendment is intended to provide the Public Trustee and Guardian and his staff with greater flexibility and ability to be timely and responsive in making day-to-day decisions for vulnerable clients subject to guardianship or management orders, and in seeking ACAT orders. This supports the underlying objective of the Public Trustee and Guardian being able to provide timely and appropriate support to clients as required.

The independent Protection of Rights Services Review noted issues arising from decision making only being delegated to Deputies and no other staff:

This can cause delays at times when a decision is required urgently, and decision making is unduly impacted by the availability of just three people. Delegation to other staff would be consistent with other jurisdictions, expedite decision making and reduce vulnerabilities associated with key senior staff being unavailable.⁶

⁶ Insight Consulting, Protection of Rights Services Review 2021, p62-63

The review recommended that the Public Trustee and Guardian Act be updated to enable the delegation of decision making to guardians and financial managers (recommendation 18).

It is necessary for staff members other than the Public Trustee and Guardian and Deputy to have the power to make a wide range of time-sensitive decisions without needing these decisions approved by the Public Trustee and Guardian or Deputy, particularly where the Public Trustee and Guardian and Deputy may be on leave or unavailable. These decisions may include approving medical appointments, entering into contracts for necessities, applying for government benefits or seeking other assistance.

Rational connection between the limitation and the purpose (s 28 (2) (d))

The removal of the exceptions that exist under the current section 9A (2) and the expansion of the Public Trustee and Guardian's power to delegate any of their functions to staff members will be effective to achieve (that is, rationally connected to) the objective of providing timely and appropriate support to clients. This is because it will permit a broader range of staff members to make decisions which will ensure that decisions can be made in a timely way by officers with direct contact with clients and an understanding of the issues involved.

This amendment replaces a decision-based restriction on delegation with a principle-based approach which requires the Public Trustee and Guardian to give appropriate consideration to human rights obligations and to assess the ability of a particular staff member to protect these rights.

In practice, the Public Trustee and Guardian's office makes a wide range of decisions that can have impact on rights. An approach that excludes particular decisions may not provide the best protection for client rights. The replacement of specific exceptions with a principle-based approach is considered to be more effective in allowing flexibility while protecting rights as it allows Public Trustee and Guardian staff to make timely decisions, while requiring the Public Trustee and Guardian to carefully consider relevant factors in delegating any function under the Public Trustee and Guardian Act.

Proportionality (s 28 (2) (e))

This approach is the least restrictive means reasonably available of achieving the objective of the Public Trustee and Guardian being able to provide timely and appropriate support to clients as required.

The amendment allows greater flexibility to facilitate timely day-to-day decision-making for the benefit of protected people. The replacement of the exceptions to the delegation functions with a principle-based approach provides appropriate human rights safeguard as

the amendments to section 9A require the Public Trustee and Guardian to have regard to certain considerations when exercising the delegation function. This is achieved through section 9A (2) which requires the Public Trustee and Guardian, in making a delegation, to be satisfied:

- that the delegated function is a kind that is appropriate to be exercised by the staff member;
- the staff member has the qualifications, knowledge, experience appropriate for the delegated function to be properly exercised;
- the staff member will comply with the obligations outlined under section 4 of the *Guardianship and Management of Property Act 1991* when exercising the functions of the Public Trustee and Guardian under that Act; and
- the staff member will comply with the obligations of the Public Trustee and Guardian under the Human Rights Act.

Existing provisions under the section 234 and 239 of the *Legislation Act 2001* may also be used by the Public Trustee and Guardian in formally delegating his function under the Public Trustee and Guardian Act through an instrument of delegation. In accordance with section 234, the Public Trustee and Guardian may include in an instrument of delegation conditions to limit and constrain the exercise of his delegated functions to ensure that the criteria is satisfied.

These provisions may be used as an additional safeguard to ensure a protected person's right to privacy is not arbitrarily interfered with when delegating a function of the Public Trustee and Guardian and ensuring the rights of vulnerable persons are better protected.

Taxation Administration Act 1999

Right to equality and non-discrimination

The amendment to the Taxation Administration Act may limit the right to equality and non-discrimination (section 8 of the Human Rights Act). The amendment provides the Minister specific powers outside the COVID-19 emergency period to make determinations of schemes to support the implementation of tax-related measures that provide the ability to provide tax relief for individuals, households and businesses through rebates, deferrals and exemptions to eligible taxpayers under various revenue legislation.

Determination of a scheme and its eligibility criteria will be in the form of a disallowable instrument. This ensures that the Legislative Assembly Standing Committee on Legislative Scrutiny maintains an oversight of an instrument's content and ensures transparency of any scheme and its eligibility criteria. The Minister will also be required to provide a human rights compatibility statement. This acts as an important human rights safeguard to ensure that any scheme made under an instrument in accordance with these provisions is

compatible with the Human Rights Act and that any limitation of the right to equality and non-discrimination is reasonably justified and considered on a case-by-case basis depending on the circumstances of the instrument.

The existing revenue legislation does not provide for a consistent set of powers for the implementation of rebates, deferrals and exemptions (outside of COVID-19 specific provisions). Such actions have had to be implemented by way of legislative amendment, using powers under a specific tax Act (if available) or under the *Financial Management Act 1996*.

The amendments to the Taxation Administration Act aim to uphold the integrity of the taxation system. The amendments achieve this by providing a set of consistent powers across tax types to provide relief for households and businesses through rebates, exemptions and deferrals. The general power for the Minister to determine a scheme also achieves this objective by allowing for flexibility to facilitate any future revenue measures in a timely and efficient manner.

Therefore, the potential limitation of the right to equality and non-discrimination is considered reasonable, necessary and proportionate in achieving the legitimate purpose of facilitating the administration of any future tax relief measures.

Right to privacy

The right to privacy (section 12 of the Human Rights Act) provides that everyone has the right not to have his or her privacy, family, or home or correspondence interfered with unlawfully or arbitrarily. The right is engaged by collection, use or disclosure of personal information under subsections 137D(3)(b) and 137F(3)(c), which will allow the Commissioner for Revenue to request information required (which may include personal information) to decide an application.

The amendments allow the Commissioner for ACT Revenue to request additional information that is required to determine a person's or entity's eligibility to the relevant scheme outside the COVID-19 emergency period. These amendments assist with achieving the overall legitimate objective of the amendments to uphold the integrity of the taxation system by permitting certain information to be requested, which allows for the set of consistent powers across tax types to provide relief for households and businesses through rebates, exemptions and deferrals. The collection, use or disclosure of personal information is clearly provided by law. It is also not arbitrary and is proportionate as the proposal request for additional information is limited to only information that is reasonably necessary to identify the taxpayer and their eligibility for a rebate, deferral or exemption. This is because as the disallowable instrument detailing what information the commissioner may collect will be subject to a human rights compatibility statement, which will ensure that any limitation of the right to privacy through the collection of additional information is

reasonably justified and considered on a case-by-case basis depending on the circumstances of the instrument.

In determining and administering a scheme, the Commissioner for ACT Revenue must comply with the obligations under the strict secrecy provisions of the Taxation Administration Act, the *Information Privacy Act 2014* and the Human Rights Act. This ensures that this provision is proportionate.

Amendments with neutral impact on human rights

Bail Act 1992

The amendment to allow for bail 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.

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.

Crimes Act 1900 and Drugs of Dependence Act 1989

The amendments to allow for electronic application and transmission of sworn warrants do not engage human rights.

Operational Efficiencies (COVID-19) Legislation Amendment Bill 2021

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the Operational Efficiencies (COVID-19) Legislation Amendment Bill 2021. 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*.

.....

Shane Rattenbury MLA
Attorney-General

Operational Efficiencies (COVID-19) Legislation Amendment Bill 2021

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 *Operational Efficiencies (COVID-19) Legislation Amendment Act 2021*.

Clause 2 — Commencement

This clause provides that the Act will commence on the day after it is notified on the ACT Legislation Register – other than section 3 and part 2.

Section 3, which lists the legislation amended by the Bill, and Part 2 which relates to the *Associations Incorporated Act 1991*, will commence, or are taken to have commenced, the earlier of the day after notification or 8 October 2021.

Section 3 must commence at the time the earliest provision of the Bill commences. Under this commencement clause, that will be on the commencement of Part 2 of the Bill or on its notification if the Bill is passed prior to 8 October 2021.

This commencement provision means that sections 70AA and 120 of Associations Incorporated Act will be extended by the Bill from 8 October 2021 when they were due to cease. The extension will apply retrospectively if the Act commences after 8 October 2021. The retrospective effect is necessary to ensure that there is no gap in coverage of sections 70AA and 120. It will operate to remove the expiry date of 8 October 2021 from sections 70AA and 120 before it takes effect, to allow associations to continue to meet via alternate methods to in-person and allow the registrar-general to generally extend time frames prescribed by the Act for the duration of the COVID-19 emergency period.

The retrospective application will not operate to the disadvantage of a person by adversely affecting the person's rights, or imposing liabilities on the person. Rather, the amendment will enable members of an association to actively participate in decision-making relating to the operation of the organisation and will provide flexibility in relation to prescribed timeframes where the registrar-general thinks appropriate during this time.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the:

- *Associations Incorporation Act 1991*

- *Bail Act 1992*
- *Corrections Management Act 2007*
- *Crimes Act 1900*
- *Crimes (Sentencing) Act 2005*
- *Drugs of Dependence Act 1989*
- *Human Rights Commission Act 2005*
- *Public Trustee and Guardian Act 1985*
- *Retirement Villages Act 2012*
- *Taxation Administration Act 1999*

Part 2 – Associations Incorporation Act 1991

Clause 4 – General meetings—procedure during COVID-19 emergency – Section 70AA (7)

This clause substitutes a new section 70AA (7) of the Associations Incorporation Act to amend the expiry of section 70AA to the end of a 12-month period during which no COVID-19 emergency has been in force.

Before the introduction of section 70AA, the rules about the way in which general meetings and special general meetings of an association are to be convened and whether or not members of the association are entitled to vote by proxy were those set out in the relevant association's rules (see schedule 1, item 7 of the Associations Incorporation Act).

Section 70AA provides that during a COVID-19 emergency, the committee of an association may authorise the holding of meetings using methods of communication and proxy arrangements that make allowance for health protection measures such as social distancing and limits on sizes of gatherings. Extending the operation of section 70AA for the duration of the COVID-19 emergency ensures that these arrangements support associations to continue to operate effectively without impacting their members' health and wellbeing.

Clause 5 – Extensions of time for applications etc – Section 120 (6)

This clause substitutes new subsection 120 (6) to provide for the expiry of subsections 120 (3) to (6) of the Associations Incorporation Act at the end of a 12-month period during which no COVID-19 emergency has been in force. The provision was originally due to expire on 7 April 2022.

Extending the operation of subsections 120 (3) to (6) until the end of a 12-month period during which no COVID-19 emergency has been in force ensures that the registrar-general continues to be able to, where appropriate due to a COVID-19 emergency, allow extensions of prescribed periods of time for associations, their officers and members to comply with certain requirements of the Act.

Part 3 – Bail Act 1992

Clause 6 – Undertakings to appear – Section 28 (1)

This clause removes the reference to a written undertaking to reflect that an undertaking will not always be in writing.

Clause 7 – Section 28 (2A)

This clause removes the reference to a COVID-19 emergency from subsection 28 (2A) to allow the provision to operate on a permanent basis.

Clause 8 – Section 28 (6) and (7)

This clause removes subsections 28 (6) and (7) to allow for the ongoing operation of subsection 28 (2A).

Part 4 – Corrections Management Act 2007

Clause 9 – Local leave permits – Section 205 (2A)

This clause re-configures the temporary section 205 (2A) by substituting subsections 205 (2A) and (2B). New subsection 205 (2A) allows the Director-General to grant a permit of up to 3 months duration for the purposes of 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 Corrections Management Act. New subsection 205 (2B) preserves the provision allowing the Director-General to grant a permit for other purposes for up to 28 days, although this is made temporary by clause 8.

Clause 10 – Section 205 (5) (b) and (c)

This clause amends subsection 205 (5) to allow new subsection 205 (2B) to expire on the day the COVID-19 Emergency Response Act expires, while preserving the new permanent provision under subsection 205 (2A). Subsection 205 (5) (c) is retained to preserve the provision in subsection (4) allowing the Director-General to cancel a permit if the detainee breaches a condition of the permit or the leave is no longer needed for the purpose for which the permit was granted.

Part 5 – Crimes Act 1900

Clause 11 – Section 194A heading

This clause replaces the existing heading with ‘Electronic versions of affidavits and warrants’ to better describe the section.

Clause 12 – Section 194A (1), (6) and (7)

This clause omits subsection (1) which limits the application of the section to when a COVID-19 emergency is in force, subsection (6) which defines a ‘COVID-19 emergency’ and subsection (7) which provides for the automatic expiry of the section.

Part 6 – Crimes (Sentencing) Act 2005

Clause 13 – Good behaviour orders – Section 13 (2)

This clause inserts ‘or give’ into subsection 13 (2) in order to clarify that the court may require an undertaking to either be signed or given.

Clause 14 – Section 13 (2A)

This clause removes the reference to a COVID-19 emergency from subsection 13 (2A) in order to allow the provision to operate on a permanent basis.

Clause 15 – Section 13 (9) and (10)

This clause removes subsections 13 (9) and (10) to allow for the ongoing operation of section 13 (2A).

Clause 16 – Good behaviour—consequences of failure to sign undertaking – Section 105

This clause amends section 105 (1) to add a reference to giving an undertaking to reflect that an undertaking may now be signed or given.

Part 7 – Drugs of Dependence Act 1989

Clause 17 – Section 187A heading

This clause replaces the existing heading with ‘Electronic versions of affidavits and warrants’ to better describe the section.

Clause 18 – Section 187A (1), (4) and (5)

This clause omits subsection (1) which limits the application of the section to when a COVID-19 emergency is in force, subsection (4) which defines a 'COVID-19 emergency' and subsection (5) which provides for the automatic expiry of the section.

Part 8 – Human Rights Commission Act 2005

Clause 19 – Expiry–vulnerable person complaint provisions – Section 105B

This clause omits section 105B of the Human Rights Commission Act and thereby makes permanent the changes introduced as a temporary measure during the COVID-19 emergency that permitted vulnerable older people or people with a disability, and their advocates, to seek the assistance of the Human Rights Commission to address situations of abuse, neglect and exploitation.

Part 9 – Public Trustee and Guardian Act 1985

Clause 20 – Section 9A

This clause substitutes a revised section 9A of the Public Trustee and Guardian Act to continue to expand the ability of the Public Trustee and Guardian to delegate their guardian and financial manager decision-making functions on an ongoing basis. The COVID-19 Emergency Response Legislation Amendment Act initially modified the restrictions under section 9A (2) to allow the Public Trustee and Guardian to delegate most guardianship functions to a staff member, excluding the ability to make a decision in relation to medical treatment involving treatment, care or support under the *Mental Health Act 2015*, buying, selling, realising or mortgaging real property, or granting a lease of real property, and borrowing money with or without security.

This amendment will permanently adopt and expand this measure by allowing the Public Trustee and Guardian to delegate any of their functions under the Public Trustee and Guardian Act to a member of the Public Trustee and Guardian staff, provided they have regard to certain considerations in making the delegation. In making a delegation under the new section 9A, the Public Trustee and Guardian must be satisfied that the delegated function is of a kind that is appropriate to be exercised by the staff member; the staff member has the qualifications, knowledge, experience appropriate for the delegated function to be properly exercised; the staff member will comply with the obligations outlined under section 4 of the *Guardianship and Management of Property Act 1991* when exercising the functions of the Public Trustee and Guardian under that Act; and the staff member will comply with the obligations of the Public Trustee and Guardian under the Human Rights Act.

Part 10 – Retirement Villages Act 2012

Clause 21 – Meetings of residents–methods of communication – Section 112A (1)

This provision was initially introduced in the COVID-19 Emergency Response Legislation Amendment Act as a temporary measure to respond to the impacts of the COVID-19 pandemic by providing residents committees or, where a residents committee does not

exist, the residents of a retirement village, with the power to authorise a meeting be conducted via methods of communication other than in-person.

This clause removes the requirement that the power only be utilised during a COVID-19 emergency and permits residents committees or residents of a retirement village to authorise a meeting be conducted using alternative methods of communication at any time deemed necessary.

The permanent adoption of this measure supports improved operational efficiency and flexibility. It will also ensure that the health and safety of retirement village residents, who represent some of the most vulnerable members of the ACT community in terms of health outcomes, can be maintained as needed while also preserving their right to have their opinion heard and considered.

Clause 22 – Meetings of operators—methods of communication – Section 261A (1)

This provision was initially introduced in the COVID-19 Emergency Response Legislation Amendment Act as a temporary measure to respond to the impacts of the COVID-19 pandemic by providing that when an operator calls for a meeting under the Act, these meetings may be held via methods of communication other than in-person.

This clause removes the restriction that this power may only be used during COVID-19 emergency period and permits operators to conduct meetings using alternative methods of communication at any time deemed necessary. Should this power be enlivened, operators are obliged to ensure each resident has access to appropriate facilities and is able to use the relevant facilities to take part in the meeting.

The permanent adoption of the measure supports improved operational efficiency and flexibility. It will also ensure that the health and safety of retirement village residents can be maintained as needed while also preserving their right to have their opinion and heard and considered.

Clause 23 – Expiry—COVID-19 Emergency Response Act 2020 amendments – Section 265 (2) (b) and (d)

This clause is consequential to the amendments to section 112A and section 261A in clauses 21 and 22. By making the amendments to section 112A and section 261A of the Retirement Villages Act permanent, this expiry provision is no longer required.

Part 11 – Taxation Administration Act 1999

Clause 24 – Purpose of Act and relationship with other tax laws – Section 6 (3) (k)

This clause includes tax deferral, exemption and rebate schemes in section 6 as miscellaneous matters that are dealt with under the Taxation Administration Act.

Clause 25 – Section 6 (4) to (6)

This clause omits subsections 6 (4) to (6) to remove references to revenue measures in response to the COVID-19 emergency, definition of ‘COVID-19 emergency’ and expiry of these subsections.

Clause 26 – Division 11.5A heading

This clause amends the heading for Division 11.5A to omit reference to ‘COVID-19 emergency’.

Clause 27 – Section 137A

This clause removes references to ‘COVID-19’ from section 137A.

Clause 28 – Application—div 11.5A – Section 137B

This clause removes references to ‘COVID-19’ from section 137B.

Clause 29 – Ministerial considerations for determining a scheme—div 11.5A – Section 137C

This clause omits section 137C on the basis that the reasonableness of any schemes determined is already implied, pursuant to the *Legislation Act 2001*. Given that the schemes would be beneficial for the taxpayers involved, and that the instruments will be disallowable and subject to human rights scrutiny, section 137C is considered unnecessary.

Clause 30 – Section 137D heading

This clause amends the heading for section 137D to omit reference to ‘COVID-19’.

Clause 31 – Section 137D (1) to (7)

This clause omits references to ‘COVID-19’ for deferral schemes in subsections 137D (1) to (7). Section 137D provides that the Minister may determine a deferral scheme, and outlines what must and may be identified as part of a deferral scheme. The Minister may also prescribe information that the commissioner may require to decide an application. This is appropriate as this is consistent with other administrative schemes requiring information to be provided to determine eligibility under a given scheme. A deferral scheme determination is a disallowable instrument to allow for appropriate legislative scrutiny.

Clause 32 – Section 137E heading

This clause amends the heading for section 137E to omit reference to ‘COVID-19’.

Clause 33 – Section 137E (1)

This clause omits the reference to ‘COVID-19’ for exemption schemes. Section 137E provides that the Minister may determine an exemption scheme, and outlines what may be identified as part of an exemption scheme.

Clause 34 – Section 137E (2) and (3)

This clause omits the reference to ‘COVID-19’ for exemption schemes.

Clause 35 – Section 137E (4)

This clause omits the reference to ‘COVID-19’ for exemption schemes.

Clause 36 – Section 137F heading

This clause amends the heading for section 137F to omit reference to ‘COVID-19’.

Clause 37 – Section 137F (1) to (5)

This clause omits references to ‘COVID-19’ for rebate schemes. Section 137F provides that the Minister may determine a rebate scheme, and outlines what must and may be identified as part of a rebate scheme. The Minister may also prescribe information that the Commissioner may require to decide an application. This is appropriate as this is consistent with other administrative schemes requiring information to be provided to determine eligibility under a given scheme. A rebate scheme determination is a disallowable instrument to allow for appropriate legislative scrutiny.

Clause 38 – Expiry—div 11.5A – Section 137G

This clause removes the expiry date for the temporary COVID-19 powers to provide for permanent operation of the powers to determine deferral, exemption and rebate schemes.

Clause 39 – New part 21

This clause provides for a transitional arrangement, to allow for the change from the previous provisions that specifically support schemes that form part of the COVID-19 emergency response to the permanent operation of these powers.

There is one existing exemption scheme that was determined under the previous section 137E, that is the *Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2021 (No 2)* (DI2021-177) (determination). This transition provision ensures

that the determination continues to be in force until it expires on 30 June 2022 or is otherwise revoked. It also clarifies that any exemption made under the determination, but after the commencement date of the amended provision, is taken to be a valid exemption.

Clause 40 – Dictionary, new definitions

This clause provides for consequential amendments to include definitions related to the schemes.