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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2023

SUPPLEMENTARY EXPLANATORY STATEMENT

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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2023

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*.

This supplementary explanatory statement relates to government amendments to the *Justice and Community Safety Legislation Amendment Bill 2023* (the Bill). It has been prepared to assist the reader of the government amendments and to help inform debate on the amendments. It does not form part of the Bill or government amendments and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill and government amendments. It is not, and is not meant to be, a comprehensive description of the Bill or government amendments.

OVERVIEW OF THE BILL

The Bill is an omnibus bill which amends a range of legislation, primarily in the Attorney-General's portfolio. The government amendments addressed in this supplementary explanatory statement include amendments to the:

- *Associations Incorporation Act 1991*; and
- *Gaming Machine Act 2004*.

CONSULTATION ON THE PROPOSED APPROACH

ACT Government Directorates were consulted on the government amendments.

SUMMARY OF AMENDMENTS

Associations Incorporation Act 1991

The amendments to the *Associations Incorporation Act 1991* (AIA):

- change the requirements for voting on a special resolution at a general meeting of an incorporated association, so that association members who attend a general meeting virtually (as opposed to in person) will still be able to cast a valid vote; and
- validate any virtual general meetings of incorporated associations that were purportedly held under section 70AA (General meetings – procedures during COVID-19 emergency) of the AIA since the end of the COVID-19 emergency declaration in September 2022, including any decisions taken or votes cast at those meetings.

Section 70AA only applied to general meetings held during a COVID-19 emergency. However, section 70AA expired at the end of a 12 month period in which no

COVID-19 emergency declaration was in force. The validation provision is inserted to the AIA to guard against the risk that associations may have interpreted the continued presence of section 70AA on the ACT statute book as continuing to permit general meetings to be held virtually (notwithstanding the fact that the provision was only operative during the COVID-19 emergency, which has now ended).

The proposed amendment is a validating law, rather than a retrospective law. The distinction is that validating laws commence prospectively but remedy a defect that has already occurred.

Gaming Machine Act 2004

Amendments to the *Gaming Machine Act 2004* (GMA) change the timeframes by which the Minister needs to review the operation of section 162 of the GMA and report back to the Legislative Assembly on the review. These changes will provide sufficient time for procurement, public consultation and the preparation of a detailed report. The reporting date has been changed from 30 November 2023 to 31 March 2024.

The expiry date of the review provision has also been extended from 8 April 2024 to 30 June 2024.

CONSISTENCY WITH HUMAN RIGHTS

The government amendments to the Bill do not have human rights impacts.

CLAUSE NOTES

Amendment 1

Clause 3, proposed new dot point

Page 2, line 10 —

This amendment is consequential to amendment 2 below.

It inserts the *Associations Incorporation Act 1991* (the AIA) to the list of legislation proposed for amendment by the Bill.

Amendment 2

Proposed new part 1A

Page 2, line 16—

Amendment 2 inserts Part 1A into the Bill which includes amendments to the AIA.

Amendment 2 inserts 3 new amending clauses to the Bill: Clauses 3A, 3B and 3C.

Clause 3A Special Resolutions

Section 70 (b)

Section 70 of the AIA relates to special resolutions passed at general meetings of incorporated associations. It currently requires that for a special resolution to be passed at a general meeting it must be voted on in person or by proxy (or if proxies are permitted). To allow incorporated associations to conduct general meetings virtually in future, amendments to section 70 are proposed to clarify that the votes on special resolutions cast by members of the association who are taking part in a meeting virtually will be valid.

To support this clarification, clause 3A omits the words ‘in person’ from section 70 (b) of the AIA and substitutes the word ‘personally’. The amendment in clause 3B, below, then clarifies what is meant by voting ‘personally’.

Clause 3B New section 70 (2)

As noted above in relation to clause 3A, amendments to section 70 of the AIA are intended to support virtual attendance at general meetings of an incorporated association by clarifying that votes in relation to special resolutions cast by virtual attendees are valid. Clause 3A changes the language in section 70 (b) from votes cast ‘in person’ (that is, by being physically present at the meeting) to votes cast ‘personally’.

Clause 3B then inserts new section 70 (2) which clarifies that voting personally includes voting while taking part in a meeting conducted using a method of

communication, or a combination of methods of communication, that allows a member taking part to hear or otherwise know what each other member taking part says without the members being in each other's presence.

Examples of methods of communication are included in the provision, to clarify that this is intended to capture virtual or electronic participation in meetings. The examples given include video conferencing, instant messaging, telephone conferencing or participation in writing.

Clause 3C New part 12

In response to the COVID-19 emergency, a provision (section 70AA) was inserted into the Act to ensure incorporated associations could, during the COVID-19 emergency period, hold general meetings via other methods of communication other than in person, including a phone link, the internet, or in writing, or allow proxy votes to be counted even if their respective constitution (or own Rules) had specified otherwise. In other words, it permitted general meetings to be held virtually. It also clarified that virtual attendance at a meeting was taken to be presence at the meeting (which enabled virtual voting on a special resolution as though the person was present in person).

Section 70AA was drafted so that it applied during a COVID-19 emergency. It was also drafted so that it expired at the end of a 12-month period during which no COVID-19 emergency had been in force.

This means that 70AA has not been operative since the day after the COVID-19 emergency declaration ended in September 2022, however the provision remained on the ACT statute book for a further 12 months after the operative effect of the provision ended.

There is a concern that some incorporated associations may have interpreted the continued presence of 70AA in the AIA as continuing to permit general meetings to be held virtually.

In the event that an incorporated association purported to hold a virtual meeting under s 70AA of the AIA after the end of the COVID-19 emergency, that meeting may have been invalid, where the association's rules did not provide for virtual attendance or, in any case, where members of associations voted virtually in favour of special resolutions. Specifically:

- unless there were enough members present *in person* (physically present) to constitute a quorum, no items of business could validly be transacted at the meeting, and
- unless there were enough members present *in person* (physically present) or, if the rules allow, voting by proxy, then a special resolution would be invalid.

To guard against the risk of invalidity of general meetings or of special resolutions passed at those meetings where there were virtual attendees at the meeting, new clause 3C inserts a validating provision in the AIA.

Validating laws regularise something that is, or may be, invalid. Their purpose is to remedy a defect that has already occurred. In the case of s 70AA, the purpose of the validating provision is to make valid the virtual meetings of associations (and therefore any special resolutions passed) that have been held since the repeal of the last COVID-19 emergency declaration in September 2022.

Specifically, new clause 3C inserts new part 12 into the AIA. Part 12 contains new section 144 which provides for the validation of general meetings of incorporated associations held after 29 September 2022 and before the commencement of the validating provision. It indicates that if a virtual meeting was held other than in a COVID-19 emergency:

- the meeting is still taken to have been validly held;
- anyone who took part in the meeting by attending virtually was taken to have been present at the meeting; and
- anything done or purported to have been done in relation to the meeting (including votes cast at the meeting), is taken to be and have always been validly done as if section 70AA applied to the meeting.

New section 145 provides for the expiry of the validating provision. This is drafted so that it occurs upon commencement. However, a note to section 145 clarifies that if a law validates something, the validating effect of the law does not end only because of the repeal of the law. It refers the reader to the Legislation Act, s 88 (1)) which provides for the continued effect of a validating provision after its expiry.

A second note to section 146 also clarifies that the expiry of a transitional provision does not end its effect. It also refers the reader to the Legislation Act, s 88 for the source of that statement.

Amendment 3

Proposed new clauses 38A and 38B Page 12, line 17—

Amendment 3 inserts new clauses 38A and 38B to the Bill. These clauses amend section 179A of the *Gaming Machine Act 2004* (GMA). Section 179A of the GMA currently requires the Minister to review the operation of section 162 of the GMA which relates to the Gaming Machine Tax rebate. It requires that the review, and a report back to the Assembly on the review, be completed by 30 November 2023.

Section 179A (2) provides for the expiry of the provision on 8 April 2024.

To provide sufficient time to for procurement to occur and for the preparation of a detailed report, amendment 3 extends the timeframe by which the Minister needs to

review the operation of section 162 of the GMA and report back to the Legislative Assembly on the review.

38A Section 179A (1)

Clause 38A changes the time by which the Minister needs to review and report back to the Legislative Assembly on the operation of section 162 of the GMA from 30 November 2023 to 31 March 2024.

38B Section 179A (2)

Clause 38A changes the expiry date of section 179A from 8 April 2024 to 30 June 2024.