



Australian Capital Territory

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

A2020-27

Contents

	Page	
Part 1	Preliminary	2
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Electoral Act 1992	3
4	Ballot papers Section 114 (5)	3
5	Section 118B heading	3
6	Section 118B (1)	3

J2020-701

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page
7	Section 118B (2) 3
8	Administrative arrangements Section 120 (2) 4
9	Section 120 (3) 4
10	Procedures for voting Section 131 (3) 4
11	Manner of recording vote New section 132 (3) 4
12	New section 136AA 5
13	New section 136BA 5
14	Declaration voting outside ACT on or before polling day Section 136C (1), definition of <i>relevant period</i> , paragraph (a) 6
15	New section 136D 6
16	Record of issue of declaration voting papers Section 137 (1) 8
17	New section 137 (3) 8
18	Assistance to voters Section 156 (2) (a) 8
19	Section 156 (4) (e) 9
20	Scrutiny Section 178 (3) (a) 9
21	Preliminary scrutiny of declaration voting papers etc Section 179 (1) (a) 9
22	Section 179 (5) 9
23	Section 179 (6) 10
24	Formality of ballot papers New section 180 (2A) 10
25	First count—electronic ballot papers Section 183A 10
26	Recount of electronic scrutiny of ballot papers Section 187C (2) 10
27	Validity may be disputed after election Section 256 (2) (d) 11
28	Responses to official questions Section 319 (3) 11

Contents

		Page
29	Dictionary, new definition of <i>approved electronic device</i>	11
30	Dictionary, definition of <i>declaration vote</i> , new paragraph (ca)	11
31	Dictionary, definition of <i>declaration voting papers</i> , paragraph (c)	12
32	Dictionary, definition of <i>declaration voting papers</i> , paragraph (d)	12
33	Dictionary, new definition of <i>electronic vote</i>	12
34	Dictionary, definition of <i>electronic voting</i>	12
35	Dictionary, new definition of <i>overseas electronic vote</i>	13
Part 3	Supreme Court Act 1933	14
36	Trial by judge alone in criminal proceedings—COVID-19 emergency period Section 68BA	14
37	New part 12	14
Schedule 1	Electoral Act 1992—Delayed amendments	16



Australian Capital Territory

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

A2020-27

An Act to amend legislation to provide for emergency measures in response to the COVID-19 emergency, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)*.

2 Commencement

- (1) This Act (other than schedule 1) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Schedule 1 commences 6 months after the day the general election, due to be held in October 2020, happens.

3 Legislation amended

This Act amends the *Electoral Act 1992* and the *Supreme Court Act 1933*.

Note This Act also has delayed amendments to the *Electoral Act 1992* (see sch 1).

Part 2 Electoral Act 1992

4 Ballot papers Section 114 (5)

after

display

insert

or communication

5 Section 118B heading

substitute

118B Security of approved electronic voting devices and computer programs

6 Section 118B (1)

omit

electronic devices and computer programs

substitute

approved electronic devices and approved computer programs

7 Section 118B (2)

omit

at a polling place or scrutiny centre

substitute

by an approved electronic device or approved computer program

8 Administrative arrangements
Section 120 (2)

substitute

- (2) The commissioner may make arrangements for—
- (a) electronic voting at a polling place; or
 - (b) electronic voting by telephone; or
 - (c) overseas electronic voting.

9 Section 120 (3)

omit

at a polling place

10 Procedures for voting
Section 131 (3)

omit

or electronic voting

substitute

or electronic ballot paper

11 Manner of recording vote
New section 132 (3)

insert

- (3) For a vote cast by an elector electronically, ***mark*** means record the elector's vote on an electronic ballot paper by electronic means.

12 New section 136AA

insert

136AA October 2020 election—COVID-19 public health measures

- (1) This section applies to the general election due to be held in October 2020.
- (2) Any elector who is entitled to vote at the election is an *eligible elector* for section 136B.
- (3) The commissioner may declare a stated place to be a place where a person may attend to vote under section 136B.
- (4) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

13 New section 136BA

insert

136BA Telephone voting by certain electors

- (1) In this section:
eligible elector, for an election, means an elector who—
 - (a) is entitled to vote at the election; and
 - (b) has a visual impairment or other physical disability which makes it difficult for the voter to attend a polling place to vote or vote by postal vote.
relevant period means the period—
 - (a) beginning on the 3rd Monday in the ACT before polling day or, if that Monday is a public holiday, the next business day; and
 - (b) ending at 4 pm in the ACT on polling day.

- (2) An eligible elector for an election may apply to the commissioner to vote electronically by telephone for the election.
- (3) The application must be received by the commissioner in the relevant period.
- (4) If the commissioner receives an application in the relevant period from a person claiming to be an eligible elector for an election (the *applicant*) and is satisfied that the applicant's name is on the certified list of electors for an electorate, the commissioner must give the applicant an electronic ballot paper for the electorate to enable the applicant to vote electronically by telephone.
- (5) The electronic vote must be received by the commissioner not later than 6 pm in the ACT on polling day.

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

after

3rd Monday

insert

in the ACT

15 New section 136D

insert

**136D Electronic declaration voting by electors outside
Australia**

- (1) In this section:
eligible elector, for an election, means an elector who is—
 - (a) entitled to vote at the election; and

(b) outside Australia during the relevant period.

relevant period means the period—

- (a) beginning on the 3rd Monday in the ACT before polling day or, if that Monday is a public holiday, the next business day; and
- (b) ending at 4 pm in the ACT on polling day.

station—see section 167.

- (2) To remove any doubt, for this section, an Antarctic elector located at a station is taken to be outside Australia.
- (3) An eligible elector for an election may apply to the commissioner to vote electronically for the election.

Note If a form is approved under s 340A (Approved forms) for an application, the form must be used.

- (4) The application must include a declaration that the applicant is an eligible elector for the election.
- (5) The application must be received by the commissioner in the relevant period.
- (6) If the commissioner receives an application in the relevant period from a person claiming to be an eligible elector for an election (the **applicant**), the commissioner must—
 - (a) if satisfied that the applicant's name is on the certified list of electors for an electorate—give the applicant an electronic ballot paper for the electorate to enable the applicant to vote electronically; or
 - (b) if not so satisfied—give the applicant an electronic ballot paper for the electorate in which the applicant claims to be enrolled to enable the applicant to vote electronically.
- (7) The electronic ballot paper must be received by the commissioner not later than 6 pm in the ACT on polling day.

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

substitute

- (1) If the commissioner or an authorised officer gives a ballot paper to a person under a relevant provision, they must—
- (a) make a record of the time and date the ballot paper is given; and
 - (b) for an authorised officer—give the record to the commissioner.

17 New section 137 (3)

insert

- (3) In this section:
- relevant provisions* means the following:
- (a) section 136A;
 - (b) section 136B (17);
 - (c) section 136C;
 - (d) section 136D.

**18 Assistance to voters
Section 156 (2) (a)**

after

postal voter

insert

or an eligible elector under section 136BA (1) or section 136D (1)

19 Section 156 (4) (e)

before

by folding

insert

for a paper ballot paper—

**20 Scrutiny
Section 178 (3) (a)**

after

postal votes

insert

or electronic votes under section 136BA or section 136D

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

after

postal voting

insert

or overseas electronic voting

22 Section 179 (5)

after

preliminary scrutiny

insert

, other than for overseas electronic voting,

23 Section 179 (6)

after

cast

insert

under part 11

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

insert

(2A) Subsection (2) (d) does not apply in relation to an overseas electronic vote.

**25 First count—electronic ballot papers
Section 183A**

omit

preferences from electronic voting

substitute

preferences marked on an electronic ballot paper

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

omit

at a polling place or scrutiny centre

substitute

by an approved electronic device or approved computer program

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

before

an officer

insert

the commissioner or

28 **Responses to official questions**
Section 319 (3)

substitute

(3) In this section:

official question means a question—

- (a) asked by an officer in the exercise of the officer's functions under this Act; or
- (b) in a form approved under section 340A or otherwise authorised by the commissioner.

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

insert

approved electronic device means an electronic device approved under section 120 (3).

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

insert

- (ca) section 136D (Electronic declaration voting by electors outside Australia);

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

after

postal voting

insert

or overseas electronic voting

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

before

an envelope

insert

for declaration voting papers other than for overseas electronic voting—

33 Dictionary, new definition of *electronic vote*

insert

electronic vote means a vote cast using an electronic ballot paper.

Note An electronic vote may be made—

- at a polling place under s 131 (3)
- by telephone under s 136BA
- by overseas electors under s 136D.

34 Dictionary, definition of *electronic voting*

omit

35 Dictionary, new definition of *overseas electronic vote*

insert

overseas electronic vote means an electronic vote to which section 136D (Electronic declaration voting by electors outside Australia) applies.

Part 3 Supreme Court Act 1933

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

omit

37 New part 12

insert

Part 12 Transitional—COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)

115 Definitions—pt 12

In this part:

commencement day means the day the *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)*, section 3 commences.

repealed law means section 68BA, as in force immediately before the commencement day.

116 Trial by judge alone under repealed law—order proposed

- (1) This section applies if—
 - (a) before the commencement day, the court has given notice under the repealed law, subsection (4) about a proposed order under the law; and

- (b) immediately before the commencement day, the court has not made a decision about making an order under the repealed law, subsection (3).
- (2) The court may make an order under the repealed law despite the repeal of the law.

117 Trial by judge alone under repealed law—order made

An order made under the repealed law continues to have effect despite the repeal of the law.

118 Expiry—pt 12

This part expires 2 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Electoral Act 1992—Delayed amendments

(see s 3)

[1.1] Section 114 (5)

omit
or communication

[1.2] Section 118B heading

substitute

118B Security of electronic voting devices and computer programs

[1.3] Section 118B (1)

omit
approved

[1.4] Section 118B (2)

omit
by an approved electronic device or approved computer program
substitute
at a polling place or scrutiny centre

[1.5] Section 120 (2)

substitute
(2) The commissioner may make arrangements at a polling place for electors to vote using an electronic ballot paper (*electronic voting*).

[1.6] Section 120 (3)

after

electronic voting

insert

at a polling place

[1.7] Section 131 (3)

omit

or electronic ballot paper

substitute

or electronic voting

[1.8] Section 132 (3)

omit

[1.9] Section 136AA

omit

[1.10] Section 136BA

omit

[1.11] Section 136C (1), definition of *relevant period*, paragraph (a)

omit

in the ACT

[1.12] Section 136D

omit

[1.13] Section 137 (1)

substitute

- (1) An officer who issues a ballot paper under section 136A, section 136B (17) or section 136C must—
- (a) make a record of the time and date the paper is issued; and
 - (b) if the officer is not the commissioner—give the record to the commissioner.

[1.14] Section 137 (3)

omit

[1.15] Section 156 (2) (a)

omit

or an eligible elector under section 136BA (1) or section 136D (1)

[1.16] Section 156 (4) (e)

omit

for a paper ballot paper—

[1.17] Section 178 (3) (a)

omit

or electronic votes under section 136BA or section 136D

[1.18] Section 179 (1) (a)

omit

or overseas electronic voting

[1.19] Section 179 (5)

omit

, other than for overseas electronic voting,

[1.20] Section 179 (6)

omit

under part 11

[1.21] Section 180 (2A)

omit

[1.22] Section 183A

omit

preferences marked on an electronic ballot paper

substitute

preferences from electronic voting

[1.23] Section 187C (2)

omit

by an approved electronic device or approved computer program

substitute

at a polling place or scrutiny centre

[1.24] Section 256 (2) (d)

omit

the commissioner or

[1.25] Section 319 (3)

substitute

(3) In this section:

official question means a question asked by an officer in the exercise of the officer's functions under this Act.

[1.26] Dictionary, definition of *approved electronic device*

omit

[1.27] Dictionary, definition of *declaration vote*, paragraph (ca)

omit

[1.28] Dictionary, definition of *declaration voting papers*, paragraph (c)

omit

or overseas electronic voting

[1.29] Dictionary, definition of *declaration voting papers*, paragraph (d)

omit

for declaration voting papers other than for overseas electronic voting—

[1.30] Dictionary, definition of *electronic vote*

omit

[1.31] Dictionary, new definition of *electronic voting*

insert

electronic voting—see section 120 (2).

[1.32] Dictionary, definition of *overseas electronic vote*

omit

Endnotes**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 18 June 2020.

2 Notification

Notified under the [Legislation Act](#) on 8 July 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 2), which was passed by the Legislative Assembly on 2 July 2020.

Acting Clerk of the Legislative Assembly

© Australian Capital Territory 2020