

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

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

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(As presented)

(Attorney-General)

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

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

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

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

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

12 **3 Legislation amended**

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

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

1	Part 2	Electoral Act 1992
2	4	Ballot papers
3		Section 114 (5)
4		<i>after</i>
5		display
6		<i>insert</i>
7		or communication
8	5	Section 118B heading
9		<i>substitute</i>
10	118B	Security of approved electronic voting devices and
11		computer programs
12	6	Section 118B (1)
13		<i>omit</i>
14		electronic devices and computer programs
15		<i>substitute</i>
16		approved electronic devices and approved computer programs
17	7	Section 118B (2)
18		<i>omit</i>
19		at a polling place or scrutiny centre
20		<i>substitute</i>
21		by an approved electronic device or approved computer program

1 **8 Administrative arrangements**
2 **Section 120 (2)**

3 *substitute*

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

8 **9 Section 120 (3)**

9 *omit*

10 at a polling place

11 **10 Procedures for voting**
12 **Section 131 (3)**

13 *omit*

14 or electronic voting

15 *substitute*

16 or electronic ballot paper

17 **11 Manner of recording vote**
18 **New section 132 (3)**

19 *insert*

- 20 (3) For a vote cast by an elector electronically, *mark* means record the
21 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.

Section 14

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

13 **14 Declaration voting outside ACT on or before polling day**
14 **Section 136C (1), definition of *relevant period*,**
15 **paragraph (a)**

16 *after*
17 3rd Monday
18 *insert*
19 in the ACT

20 **15 New section 136D**

21 *insert*

22 **136D Electronic declaration voting by electors outside**
23 **Australia**

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

- 1 (b) outside Australia during the relevant period.
- 2 **relevant period** means the period—
- 3 (a) beginning on the 3rd Monday in the ACT before polling day or,
4 if that Monday is a public holiday, the next business day; and
- 5 (b) ending at 4 pm in the ACT on polling day.
- 6 **station**—see section 167.
- 7 (2) To remove any doubt, for this section, an Antarctic elector located at
8 a station is taken to be outside Australia.
- 9 (3) An eligible elector for an election may apply to the commissioner to
10 vote electronically for the election.
- 11 *Note* If a form is approved under s 340A (Approved forms) for an application,
12 the form must be used.
- 13 (4) The application must include a declaration that the applicant is an
14 eligible elector for the election.
- 15 (5) The application must be received by the commissioner in the relevant
16 period.
- 17 (6) If the commissioner receives an application in the relevant period
18 from a person claiming to be an eligible elector for an election (the
19 **applicant**), the commissioner must—
- 20 (a) if satisfied that the applicant's name is on the certified list of
21 electors for an electorate—give the applicant an electronic ballot
22 paper for the electorate to enable the applicant to vote
23 electronically; or
- 24 (b) if not so satisfied—give the applicant an electronic ballot paper
25 for the electorate in which the applicant claims to be enrolled to
26 enable the applicant to vote electronically.
- 27 (7) The electronic ballot paper must be received by the commissioner not
28 later than 6 pm in the ACT on polling day.

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

3 *substitute*

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

8 **17 New section 137 (3)**

9 *insert*

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

16 **18 Assistance to voters**
17 **Section 156 (2) (a)**

18 *after*

19 postal voter

20 *insert*

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

1 **19 Section 156 (4) (e)**

2 *before*
3 by folding
4 *insert*
5 for a paper ballot paper—

6 **20 Scrutiny**
7 **Section 178 (3) (a)**

8 *after*
9 postal votes
10 *insert*
11 or electronic votes under section 136BA or section 136D

12 **21 Preliminary scrutiny of declaration voting papers etc**
13 **Section 179 (1) (a)**

14 *after*
15 postal voting
16 *insert*
17 or overseas electronic voting

18 **22 Section 179 (5)**

19 *after*
20 preliminary scrutiny
21 *insert*
22 , other than for overseas electronic voting,

23 Section 179 (6)

1
2 *after*
3 cast
4 *insert*
5 under part 11

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

6
7
8 *insert*
9 (2A) Subsection (2) (d) does not apply in relation to an overseas electronic
10 vote.

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

11
12
13 *omit*
14 preferences from electronic voting
15 *substitute*
16 preferences marked on an electronic ballot paper

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

17
18
19 *omit*
20 at a polling place or scrutiny centre
21 *substitute*
22 by an approved electronic device or approved computer program

1 **27** **Validity may be disputed after election**
2 **Section 256 (2) (d)**

3 *before*

4 an officer

5 *insert*

6 the commissioner or

7 **28** **Responses to official questions**
8 **Section 319 (3)**

9 *substitute*

10 (3) In this section:

11 *official question* means a question—

12 (a) asked by an officer in the exercise of the officer's functions
13 under this Act; or

14 (b) in a form approved under section 340A or otherwise authorised
15 by the commissioner.

16 **29** **Dictionary, new definition of *approved electronic device***

17 *insert*

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

20 **30** **Dictionary, definition of *declaration vote*, new**
21 **paragraph (ca)**

22 *insert*

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

1 **31 Dictionary, definition of *declaration voting papers*,**
2 **paragraph (c)**

3 *after*
4 postal voting
5 *insert*
6 or overseas electronic voting

7 **32 Dictionary, definition of *declaration voting papers*,**
8 **paragraph (d)**

9 *before*
10 an envelope
11 *insert*
12 for declaration voting papers other than for overseas electronic
13 voting—

14 **33 Dictionary, new definition of *electronic vote***

15 *insert*
16 ***electronic vote*** means a vote cast using an electronic ballot paper.

17 *Note* An electronic vote may be made—
18 • at a polling place under s 131 (3)
19 • by telephone under s 136BA
20 • by overseas electors under s 136D.

21 **34 Dictionary, definition of *electronic voting***

22 *omit*

1 **35 Dictionary, new definition of *overseas electronic vote***

2 *insert*

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

1 **Part 3** **Supreme Court Act 1933**

2 **36** **Trial by judge alone in criminal proceedings—COVID-19**
3 **emergency period**
4 **Section 68BA**

5 *omit*

6 **37** **New part 12**

7 *insert*

8 **Part 12** **Transitional—COVID-19**
9 **Emergency Response**
10 **Legislation Amendment**
11 **Act 2020 (No 2)**

12 **115** **Definitions—pt 12**

13 In this part:

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

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

19 **116** **Trial by judge alone under repealed law—order proposed**

20 (1) This section applies if—

21 (a) before the commencement day, the court has given notice under
22 the repealed law, subsection (4) about a proposed order under
23 the law; and

1 (b) immediately before the commencement day, the court has not
2 made a decision about making an order under the repealed law,
3 subsection (3).

4 (2) The court may make an order under the repealed law despite the
5 repeal of the law.

6 **117 Trial by judge alone under repealed law—order made**

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

9 **118 Expiry—pt 12**

10 This part expires 2 years after the commencement day.

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

1 **[1.6] Section 120 (3)**

2 *after*
3 electronic voting
4 *insert*
5 at a polling place

6 **[1.7] Section 131 (3)**

7 *omit*
8 or electronic ballot paper
9 *substitute*
10 or electronic voting

11 **[1.8] Section 132 (3)**

12 *omit*

13 **[1.9] Section 136AA**

14 *omit*

15 **[1.10] Section 136BA**

16 *omit*

17 **[1.11] Section 136C (1), definition of *relevant period*,**
18 **paragraph (a)**

19 *omit*
20 in the ACT

1 **[1.12] Section 136D**

2 *omit*

3 **[1.13] Section 137 (1)**

4 *substitute*

5 (1) An officer who issues a ballot paper under section 136A,
6 section 136B (17) or section 136C must—

7 (a) make a record of the time and date the paper is issued; and

8 (b) if the officer is not the commissioner—give the record to the
9 commissioner.

10 **[1.14] Section 137 (3)**

11 *omit*

12 **[1.15] Section 156 (2) (a)**

13 *omit*

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

15 **[1.16] Section 156 (4) (e)**

16 *omit*

17 for a paper ballot paper—

18 **[1.17] Section 178 (3) (a)**

19 *omit*

20 or electronic votes under section 136BA or section 136D

21 **[1.18] Section 179 (1) (a)**

22 *omit*

23 or overseas electronic voting

1 **[1.19] Section 179 (5)**

2 *omit*

3 , other than for overseas electronic voting,

4 **[1.20] Section 179 (6)**

5 *omit*

6 under part 11

7 **[1.21] Section 180 (2A)**

8 *omit*

9 **[1.22] Section 183A**

10 *omit*

11 preferences marked on an electronic ballot paper

12 *substitute*

13 preferences from electronic voting

14 **[1.23] Section 187C (2)**

15 *omit*

16 by an approved electronic device or approved computer program

17 *substitute*

18 at a polling place or scrutiny centre

19 **[1.24] Section 256 (2) (d)**

20 *omit*

21 the commissioner or

- 1 **[1.25] Section 319 (3)**
- 2 *substitute*
- 3 (3) In this section:
- 4 *official question* means a question asked by an officer in the exercise
- 5 of the officer's functions under this Act.
- 6 **[1.26] Dictionary, definition of *approved electronic device***
- 7 *omit*
- 8 **[1.27] Dictionary, definition of *declaration vote*, paragraph (ca)**
- 9 *omit*
- 10 **[1.28] Dictionary, definition of *declaration voting papers*,**
- 11 **paragraph (c)**
- 12 *omit*
- 13 or overseas electronic voting
- 14 **[1.29] Dictionary, definition of *declaration voting papers*,**
- 15 **paragraph (d)**
- 16 *omit*
- 17 for declaration voting papers other than for overseas electronic
- 18 voting—
- 19 **[1.30] Dictionary, definition of *electronic vote***
- 20 *omit*
- 21 **[1.31] Dictionary, new definition of *electronic voting***
- 22 *insert*
- 23 *electronic voting*—see section 120 (2).

- 1 **[1.32] Dictionary, definition of *overseas electronic vote***
- 2 *omit*
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 18 June 2020.
- 2 **Notification**
Notified under the [Legislation Act](#) on 2020.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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