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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

COVID-19 EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
Human Rights Compatibility Statement
(*Human Rights Act 2004, s 37*)**

Presented by
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COVID-19 EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020

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COVID-19 EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020

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* (HRA).

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 (the Act) due to the public health risk to the ACT community posed by COVID-19.

On 2 April 2020, the Legislative Assembly passed the *COVID-19 Emergency Response Act 2020*, which commenced on 8 April 2020.

As at 30 April 2020, the WHO has reported that there are over 3.1 million confirmed cases of COVID-19 worldwide. As at 30 April 2020, there are 6,746 confirmed cases in Australia and 90 confirmed deaths as a result of COVID-19. As at 30 April 2020, the ACT has 106 confirmed cases of COVID-19 and three confirmed deaths.

Overview and purpose of the Bill

The *COVID-19 Emergency Response Legislation Amendment Bill 2020* will give urgent effect to Commonwealth agreements as well as ensure immediate operational requirements are able to come into effect to allow the Government to adapt to additional and extraordinary measures implemented as a result of the COVID-19 pandemic.

The policy objective of this bill is to make amendments required to support urgent and immediate operational responses which are necessary to respond to and prevent the further spread of COVID-19.

The Bill is an omnibus bill which amends a range of legislation across the ACT Government Ministerial portfolio. In addition to creating a new standalone COVID-19 Emergency response Bill, this Bill will also amend the:

- *Associations Incorporations Act 1991*
- *Bail Act 1992*
- *Children and Young People Act 2008*
- *Corrections Management Act 2007*
- *Court Procedures Act 2004*
- *COVID-19 Emergency Response Act 2020*
- *Crimes Act 1900*
- *Crimes (Sentence Administration) Act 2005*
- *Crimes (Sentencing) Act 2005*
- *Drugs of Dependence Act 1989*
- *Education Act 2004*
- *Evidence (Miscellaneous Provisions) Act 1991*
- *Financial Management Act 1996*
- *Firearms Act 1996*
- *Gaming Machine Act 2004*
- *Gaming Machine Regulation 2004*
- *Human Rights Commission Act 2005*
- *Leases (Commercial and Retail) Act 2001*
- *Long Service Leave Act 1976*
- *Long Service Leave (Portable Schemes) Act 2009*
- *Payroll Act 2011*
- *Powers of Attorney Act 2006*
- *Prohibited Weapons Act 1996*
- *Public Health Act 1997*

- *Public Health (Emergencies) Amendment Act 2020*
- *Public Trustee and Guardian Act 1985*
- *Rates Act 2004*
- *Residential Tenancies Act 1997*
- *Retirement Villages Act 2012*
- *Taxation Administration Act 1999*
- *Terrorism (Extraordinary Temporary Powers) Act 2006*
- *University of Canberra Act 1989*
- *Working with Vulnerable People (Background Checking) Act 2011*
- *Working with Vulnerable People (Background Checking) Amendment Act 2019*

The amendments in this Bill will generally end after the COVID-19 public health emergency ends or 12 months after the commencement of the *COVID-19 Emergency Response Act 2020*, unless otherwise extended by a future bill. Certain provisions also include transitional mechanisms to ensure the effect of a decision or extension can have effect during the relevant period. This approach has been taken to reinforce the emergency and temporary nature of these measures and to underscore the Government's commitment to parliamentary scrutiny of emergency legislative responses during the COVID-19 public health emergency.

Consultation on the proposed approach

Due to the urgent nature of the Bill, in-depth consultation with the community and stakeholders was not possible.

Broadly, consultation occurred with key stakeholders in relation to relevant amendments. This included consultation on either part or the whole of the Bill with:

- Access Canberra
- ACT Bar Association
- ACT Courts and Tribunal
- ACT Director of Public Prosecutions
- ACT Human Rights Commission
- ACT Law Society
- ACT Policing

- Association of Independent Schools
- Australian Education Union (AEU)
- Catholic Education Office
- Community and Public Sector Unions
- Legal Aid ACT
- Retirement Living (representing operators)
- Retirement Villages Residents Association (representing residents)
- United Workers Union
- Various incorporated associations

In addition, the ACT Health Directorate has had regular contact with the Australian Health Protection Principal Committee (AHPPC) and the National Cabinet about the developing COVID-19 situation and a nationally consistent approach to mitigating the risk.

The ACT Health Directorate has also provided regular updates to the community about COVID-19 and will continue to ensure that the community is informed about confirmed cases in the ACT, measures that are being implemented by the ACT Government and actions that should be taken by the public to limit the spread of COVID-19.

Expiration of provisions

All amendments in the COVID-19 Bill 2 will have a time limited application, although for some measures there is a need for slight variations to expiry for operational reasons,

A summary of the expiry periods is below:

Expires when the COVID-19 Emergency Response Act 2020 expires on 8 April 2021

The following substantive amendments will expire when the COVID-19 Act expires on 8 April 2021:

- a) *Associations Incorporation Act 1991*;
- b) *Bail Act 1992*;
- c) *Corrections Management Act 2007*;
- d) *Crimes (Sentence Administration) Act 2005*;
- e) *Crimes (Sentencing) Act 2005*;
- f) *Education Act 2004*; and

g) *Retirement Villages Act 2012*.

Expires at the end of the COVID-19 emergency period

The following amendments will expire at the end of the COVID-19 emergency:

- a) *Crimes Act 1900*;
- b) *Drugs of Dependence Act 1989*;
- c) *Powers of Attorney Act 2006*; and
- d) *Public Trustee and Guardian Act 1985*.

Transitional expiry period

The following amendments will continue for specified transitional periods where this was considered necessary for operational and administrative purposes. Where this occurs, justification has been included in the below Human Rights analysis:

- a) *Children and Young People Act 2008* – seven-day period during which no COVID-19 emergency has been in force;
- b) *Corrections Management Act 2007*; 120-day period to deal with possibility that leave is given to an offender on the day before the emergency period ends;
- c) *Court Procedures Act 2004*; one-month period during which no COVID-19 emergency has been in force;
- d) *Gaming Machine Act 2004* – two-year period during which no COVID-19 emergency has been in force. A longer expiry period applies because these amendments change community contribution requirements and are intended to support the community and clubs both during a COVID-19 emergency and in the recovery-phase following the emergency;
- e) *Gaming Machine Regulation 2004* – 12-month period during which no COVID-19 emergency has been in force;
- f) *Human Rights Commission Act 2005* – 12-month period during which no COVID-19 emergency has been in force;
- g) *Act 2004* – 12 months after the day the COVID-19 emergency period ends; and
- h) *Taxation Administration Act 1999* – 24 months after the day the COVID-19 emergency period ends.

Self-limited provisions (self-limited expiry)

The following amendments do not contain an explicit expiry provision because the provisions themselves are constructed in such a way that they expire after a certain point in time:

- a) *Public Health Act 1997* – expires 12 months after the provision commences;
- b) *Terrorism (Extraordinary Temporary Powers) Act 2006* – expires 19 May 2021; and
- c) *University of Canberra Act 1989* – extended for a further 12 months.

Other amendments – exceptional expiry periods

There are two other types of expiry:

- a) *Financial Management Act 1996* amendments do not have a specific expiry provision because the way the provisions are drafted means that the COVID-19 Bill 2 changes only apply for the 2019-20 and 2020-21 financial years; and
- b) *Payroll Tax Act 2011* is drafted to expire two months after the day the prescribed period ends (prescribed period is 31 December 2020 under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cwlth)).

Consistency with Human Rights

Rights Engaged

Broadly, the Bill engages and *promotes* the following HRA rights:

- Section 8 – Recognition and equality before the law
- Section 9 – Right to life
- Section 10 – Protection from torture and cruel, inhuman or degrading treatment
- Section 11 – Protection of family and children
- Section 17 – Taking part in public life
- Section 18 – Right to liberty and security of person
- Section 27A – Right to education

The Bill also engages the following HRA rights:

- Section 10 – Protection from torture and cruel, inhuman or degrading treatment
- Section 11 – Protection of family and children

- Section 21 – Right to a fair trial and a fair hearing

Finally, the Bill engages and *may limit* the following HRA rights:

- Section 8 – Recognition and equality before the law
- Section 12 – Right to privacy and reputation
- Section 15 – Peaceful assembly and freedom of association
- Section 16 – Freedom of expression
- Section 17 – Taking part in public life
- Section 18 – Right to liberty and security of person
- Section 19 – Humane treatment when deprived of liberty
- Section 20 – Children in the criminal process
- Section 22 – Rights in criminal proceedings
- Section 27A – Right to education

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 (1) of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28 (2) provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) The nature of the right affected;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;
- d) The relationship between the limitation and its purposes; and
- e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society. An assessment of the Bill's impact on relevant provisions of the HRA, against all factors in section 28 (2), is provided below.

Detailed human rights discussion

Children and Young People Act 2008

Consequential amendments

The Bill makes consequential amendments to the *Children and Young People Act 2008* (CYP Act). The Bill amends section 245 (1) to include a young detainee who is absent under a COVID-19 leave permit. This amendment will make clear that a young detainee remains in the custody of the director-general while on a period of COVID-19 leave.

Contravention of leave permit as a behaviour breach (amendments to section 287)

These amendments contribute to the effective operation of a COVID-19 leave permit, which was introduced to prioritise the health and welfare of young detainees and lessen the risk of exposure to infectious disease during a public health emergency.

The Bill also amends section 287 (1) to include contravention of a COVID-19 permit as a behaviour breach. This amendment will make clear that actions by a young detainee that contravene a COVID-19 leave permit will constitute a behaviour breach.

These amendments have been included in this emergency Bill as a result of the *COVID-19 Emergency Response Act 2020*.

The amendments expire seven (7) days after the COVID-19 emergency period ends.

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

Amendments to section 287 (1) engage the rights of a child (s 11 HRA), the right to humane treatment when deprived of liberty (s 19 HRA) and the rights of children in criminal process (s 20 HRA). The measure contributes to the effective operation of a COVID-19 leave permit, which was introduced to prioritise the health and welfare of a young detainee from exposure to infectious disease during a public health emergency.

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

The purpose of these amendments is to appropriately supervise and protect young detainees and balance community safety while a young detainee is on a period of leave during the public health emergency.

Contravention of local and interstate leave provisions are ordinarily considered behaviour breaches. This measure aims to ensure the operation of a COVID-19 leave permit aligns with requirements of local and interstate leave permits that already exist in the CYP Act. This measure is necessary to ensure appropriate protections are in place to supervise a young detainee on a period of COVID-19 leave and to maintain good order and security of a detention place during the emergency. The measure contributes to providing immediate protection to the health, safety and welfare of young detainees, staff and the public.

Making this amendment now will ensure that if there is widespread transmission of infectious disease within Bimberi, a young person who is granted a COVID-19 leave permit will be subject to the same requirements as other types of leave.

Proportionality (s 28 (2) (e))

The amendments include reasonable measures to protect community safety and supervise young detainees on COVID-19 leave because the director-general may impose consequences on a young detainee who contravenes a COVID-19 leave permit. The inclusion of behaviour breaches as a consequence of contravening a COVID-19 leave permit effectively balances the right to liberty and rights of the child for a young detainee with the protection of the community and public safety.

To mitigate the limitation of human rights, COVID-19 leave permits are governed by the Local and Interstate Leave Policy and Procedures and behaviour breaches are dealt with in accordance with the Behaviour Management Policy and Procedures. This requires that a young person be managed in a manner appropriate to their age and development, including the requirement that breaches must be managed in the least restrictive manner possible in the circumstances. The Behaviour Management Policy and Procedures also emphasises that the consequences of a behaviour breach should align with a therapeutic and behaviour management plan for a young detainee.

A further safeguard is the requirement that a behaviour breach be discussed with the young detainee. This discussion should provide reasons for the behaviour breach to help the young detainee understand the nature of the breach and should consider strategies for assisting the young detainee to positively change their behaviour.

Corrections Management Act 2007

Leave permit scheme

The Bill creates a new leave permit scheme which is directly connected to the COVID-19 public health emergency. People in closed environments such as prisons and nursing homes are at increased risk from contagious disease because of the nature of those environments. Acknowledging the potential disproportionate effects of the COVID-19 pandemic on detainees, the COVID-19 leave scheme gives the director-general a further tool to prepare for and respond to risks associated with the disease.

The purpose of the proposed COVID-19 leave scheme is to support operational responses at the Alexander Maconochie Centre (AMC) to reduce the likelihood of an outbreak or the spread of the disease. Where other forms of leave are concerned with the circumstances of a particular detainee, the purpose of COVID-19 leave is primarily to support the health and safety of everyone at the AMC.

The scheme will only commence by the Minister on written notice and, even then, leave permits may only be granted when specified criteria are met. The criteria include that the director-general may only grant a permit if they consider it would reduce the likelihood of an

outbreak or spread of COVID-19. Permits are also linked to the time remaining to be served as opposed to applying more generally. In addition, the scheme will be supported by a guideline which will set out the detailed policy to ensure leave permits are only granted in appropriate cases. The guideline will be publicly available as a notified instrument and at the AMC for transparency. The scheme is an additional mechanism for the release of detainees and does not preclude detainees from seeking release under existing mechanisms where appropriate, such as parole or other leave permits.

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

This measure engages and promotes the right to liberty (s 18 HRA) it as allows offenders to be released from detention earlier than they otherwise would have been. It may also engage and limit the right to liberty in the event the leave permit is cancelled for breach of a condition, although any impact on the offender is appropriate noting that they are already serving a sentence of imprisonment imposed by a court.

The amendments may engage and limit the right to security of person (s 18 HRA) in relation to victims of sentenced offenders as offenders may be released back into the community prior to their earliest release date.

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

The purpose of the amendments is to ensure that, if the COVID-19 pandemic situation in the Territory means there is likely to be an outbreak or spread of the virus, arrangements can be made for detainees who are assessed as suitable and who are due for release within the specified timeframe to leave the AMC by way of a permit. The object of the scheme is to support the security and good order of the AMC by providing an appropriate level of discretion to the director-general to issue leave permits in the context of the public health emergency.

Proportionality (s 28 (2) (e))

The need for prompt action to address a health imperative is balanced by safeguards for victims to make the scheme proportionate.

Safeguards included in the legislation ensure that the director-general must consider the likelihood of an offender subjecting a victim or their family to violence or harassment. In making a judgement the director-general can consider an offender's behaviour during their sentence and any available information about the detainee and the victim. If a permit is granted, then reasonable steps must be taken to notify the victim. The supporting guideline, which will be developed before the amendments commence, will provide more detailed guidance on the use of the power. In particular, the guidance will include the need to assess the risk the offender poses to community safety and the safety of victims and their families by re-offending.

The guideline will be prepared by the director-general in consultation with the ACT Human Rights Commission and will be published on the ACT Legislation Register as a notifiable

instrument. The guideline will also be available for review at the Alexander Maconochie Centre.

In addition, the guideline supporting the scheme must include a statement that human rights have been considered in making the guideline. This, together with the obligation in section 40B of the HRA for public authorities to act consistently with human rights, will ensure the guideline is developed and implemented with a human rights focus.

In addition, offenders who are serving a sentence for a serious violent offence, a sexual offence or a family violence offence will not be eligible for this type of leave permit. These exclusions are included to protect the most vulnerable victims and their families as well as the community more generally.

Permits will be subject to conditions, including any conditions the director-general believes are necessary and reasonable. This means that conditions designed to protect victims and their families may be included in the permit such as a condition not to go to a particular place or contact a named person. The permit can be cancelled if a condition is breached, which will result in the offender being returned to detention.

In addition to the direct safeguards, supporting the offender on release will reduce the risk of reoffending. For this reason, the availability of accommodation must be considered when determining whether to give a permit. Offenders will also be offered support through the Extended Throughcare Program, including through the five pillars of support: basic needs; accommodation; employment, training and financial sustainability; community connections and supports; and health (including any alcohol and other drug rehabilitation and treatment needs).

Extension of time in police custody

The amendment to extend the time an adult may be held in police custody from 36 hours to 48 hours engages and potentially limits the right to humane treatment (s 19 HRA).

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

This right requires that people who are deprived of their liberty be treated humanely and with dignity. The nature of the right is not absolute and may be derogated ‘in time of public emergency which threatens the life of the nations and the existence of which is officially proclaimed’ (Article 4, International Covenant on Civil and Political Rights). The right includes an entitlement to a certain minimum level of treatment in terms of accommodation, food, exercise and access to medical services.

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

The amendment is needed in the current public health emergency, for the safety of people in detention, to reduce the number of people with whom they may come into contact during the time they are waiting to appear in court. Transferring people from police cells to a correctional centre significantly increases the range of human contact including through

transportation and processing requirements. Extending the time a person may be held in police custody before transferring to a correctional centre directly addresses this objective.

The amendment also reduces certain negative impacts on people detained in police custody that may result from the need to transfer them into the custody of the director-general.

Proportionality (s 28 (2) (e))

The amendment extends the time a person may be held in police custody by 12 hours and is the least restrictive approach available to achieve the objective of reducing the number of people transferred into the custody of the director-general and reducing the potential for detainees and others to exposure to COVID-19. The time period of 48 hours will ensure that most people who are arrested during the weekend will not need to be transferred to a correctional centre. While police cells may not be equipped for longer term detention, a relatively short increase in the time people can be detained there it will not unduly impact on the treatment of the person in detention and is counter-balanced by the potential health benefits and reduced impacts on detainees from avoided transfer. In addition, measures are being put in place to ensure that people in police custody will be cared for appropriately. This includes the development of an agreement between ACT Policing and the director-general through the Commissioner for ACT Corrective Services. The agreement will ensure that the needs of vulnerable people are assessed, and the person transferred to a correctional centre if that would best address their needs. If necessary, transfers will occur to avoid over-crowding in police custody.

It is important to note that this amendment does not impact on other protective legislative requirements such as the time a person may be detained before charge or requirements relating to the investigation of alleged offences.

Court Procedures Act 2004

The Bill amends sections 74K and 74L to allow for greater flexibility in timeframes regarding the dismissal or adjournment of youth justice matters for care and protection reasons during a public health emergency. The Act already provided under s 74K(2) that the court must give a statement of reasons under section 74K as soon as practicable, within the period the court determines is appropriate in the circumstances. The Bill also amends section 74L to make clear that the director-general will provide its report to the court and public advocate about the action taken or proposed (or that no action is proposed) within the period the court determines is appropriate in the circumstances. These amendments will expire one (1) month after the COVID-19 emergency period ends.

This amendment engages and promotes the right to protection of children (s 11 HRA) by ensuring there is sufficient time to carry out effective supervision to support the dismissal or adjournment of youth justice matters in the context of the public health emergency).

By introducing possible delays, the measure also engages the right to a fair hearing (s 21 HRA), which includes the protection of procedural fairness and natural justice within the

right to a fair hearing set out in section 21, and this is engaged and limited through potential delays in the timeliness of decision-making. However, because any matter must still be resolved as soon as practicable as determined by the court, this measure does not rise to the level of a limitation on the right.

The purpose of these measures is to allow the court and director-general additional time to provide information where other matters may be more urgent (such as emergency action). It is also to account for circumstances where COVID-19 may impact on the director-general's ability to perform the work necessary to produce the required material. The amendments will allow the Childrens Court to determine the most appropriate timeframe in the circumstances of a public health emergency.

The amendments will account for circumstances where a young person in need of care and protection presents at court with flu-like symptoms and needs to be tested for COVID-19. In this circumstance, it is unlikely that results would be available quickly to determine whether it is safe to engage directly with the young person and their family. This situation may affect the director-general's obligations more broadly, including supervision.

The measures will expire one (1) month after the emergency ends, after which the measures will revert to their original timeframes. This will ensure the rights of young people in the criminal justice process are not adversely affected. Making this amendment now will ensure that any proposed extension of time will only be granted by the Childrens Court.

Crimes (Sentence Administration) Act 2005

The Bill amends the Crimes (Sentence Administration) Act 2005 by introducing an administrative sanction scheme for an offender's non-compliance with conditions of good behaviour orders, intensive correction orders and parole. At present, all breaches of these orders must be reported to the sentencing court (good behaviour orders) or the Sentence Administration Board (intensive correction orders and parole). The intent of this scheme is to allow instances of non-compliance which do not warrant commencing the breach process to be resolved internally by ACT Corrective Services while still ensuring, where the administrative scheme is not appropriate, the offender is referred back to the sentencing court or Sentence Administration Board (the board).

The scheme will commence by the Minister on written notice to ensure the necessary guideline is in place before becoming operational.

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

The amendments engage and support the right to liberty (s 18 HRA) as a decision to either take no action and simply record the alleged breach, or issue a warning for an alleged breach will avoid the need for the offender to be reported to either the sentencing court or the board for non-compliance with their order. The amendments may also engage and limit the right to a fair trial (s 21 HRA) and the right to security of person (s18 HRA).

The right to a fair trial is concerned with procedural fairness and although it is an absolute right, many of the principles that characterise a fair trial are not absolute.¹ The issue of non-compliance will be considered outside of court proceedings although it is important to note that the scheme is purely administrative in nature and of itself has no direct and immediate adverse consequences for the offender. As such it does not strictly engage the right to a fair trial. However, the principles of natural justice do apply, and the scheme is designed to ensure fairness to both offenders and any victims.

The right to security of person (s 18 HRA) is engaged due to the potential impact on victims of offenders being dealt with administratively as opposed to the issue of breach being considered by the sentencing court or the board.

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

The purpose of the scheme is to provide flexibility during the public health emergency to ensure that offenders are not reported for an alleged breach of an order in instances where the level of non-compliance does not impact of the effectiveness of the order in terms of achieving the objectives of the sentence, particularly the rehabilitation of the offender and the protection of the community.

Rational connection (s 28 (2) (d))

The scheme allows a limited discretion to corrections officers to resolve instances of alleged non-compliance, which will be supported by a detailed policy to guide the decision-making process. By providing this discretion, low-level instances of non-compliance can be addressed without increasing offender's contact with the court or board. It will also support the ongoing management of the order as offenders will be less likely to dis-engage with ACT Corrective Services pending determination of the breach by the sentencing court or the board.

Proportionality (s 28 (2) (e))

The limited nature of the scheme makes the approach the least restrictive option and contains a number of safeguards for both offenders and victims to ensure rights are protected.

For offenders, there is a clear process which requires transparency by corrections officers in terms of decision-making and a right for offenders to participate and be heard in the process together with the option for an offender to request referral to the sentencing court or board. There is also legislative guidance, which will be supported by a guideline policy document, for corrections officers to ensure that only appropriate matters are found suitable for an administrative sanction.

For victims, clear legislative guidance is given to correction officers to consider any conduct of the offender which increases the likelihood of violence or harassment of the victim.

¹ *Brown v Stott* (2003) 1 AC 681

Correction officers must also consider the need to protect the community from the offender, which includes victims and their families.

A guideline for the scheme will be prepared by the director-general in consultation with the ACT Human Rights Commission and will be published on the ACT Legislation Register as a notifiable instrument. The guideline will also be available for review at the Alexander Maconochie Centre.

In addition, the guideline supporting the scheme must include a statement that human rights have been considered in making the guideline. This, together with the obligation in section 40B of the HRA for public authorities to act consistently with human rights, will ensure the guideline is developed and implemented with a human rights focus.

Human Rights Commission Act 2005

These amendments 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.

Expanding 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 from torture, and cruel or degrading treatment.

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.

The definition of vulnerable person in this provision is used for a number of reasons. Selecting the age of 60 years for the purposes of defining a vulnerable older person, recognises that there are some groups that may experience age-related vulnerabilities earlier, while retaining an age that is widely accepted to be appropriate for application to the broad community.

The generally accepted age for an older person is 65 in a range of other contexts (such as for the Australian Bureau of Statistics). However, 65 does not account for the fact that Aboriginal and Torres Strait Islander people have a lower life expectancy than the general population. In relation to the age limit, the Australian Law Reform Commission Report 131 *Elder Abuse— A National Legal Response* (ALRC Report) notes that Aboriginal and Torres Strait Islander people aged 50 and above tend to have poorer health, higher levels of socioeconomic disadvantage and lower life expectancy than the broader Australian population. At the same time, the age of 50 for Aboriginal and Torres Strait Islander people is based on nation-wide aggregated statistics, including regional and remote areas, and is not necessarily representative of every Aboriginal and Torres Strait Islander population.

This measure engages and potentially limits the right to privacy, and the right not to incriminate oneself.

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

Privacy

Section 12 of the HRA provides for the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

This amendment engages and potentially 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;

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) HRA recognises an individual's right not to be compelled to provide information that may be self-incriminating. The amendments engage and potentially 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.

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

The amendment seeks to achieve the overall purpose of addressing the heightened risk of vulnerable people being abused, and of this abuse not being remedied, during the COVID-19 public health emergency.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has pointed out that the reduced oversight mechanisms during the pandemic would result in an increase in the risk of violence, abuse, neglect or exploitation. Current social distancing directions are likely to reduce communication between vulnerable people and their friends and relatives, which reduces opportunities for the detection of abuse.

The amendment constitutes an important interim oversight measure that facilitates the detection of abuse of vulnerable people, which may lead to further responses such as conciliation, referral to ACT Policing and Legal Aid ACT for potential criminal prosecutions, and private legal action.

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 will only be allowed to have 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.

Information-sharing between the commissioners will ensure that complainants can get the assistance they need and do not need to provide the same information to different areas of the HRC. Each commissioner in the HRC is responsible for different aspects of protecting and promoting human rights, and it is not uncommon for a single complaint to fall within the jurisdictions of more than one commissioner. Information will only be used where necessary for commissioners to undertake their functions.

As an additional safeguard, it is an offence for a commissioner, staff member of the HRC, or a person present at conciliation to divulge information obtained while exercising a function under the HRA. All commissioners and staff must also comply with the obligations stipulated in the Information Privacy Act 2014.

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 HRC Act, or an offence in relation to the falsity of the information.

Powers of Attorney Act 2006

Record keeping requirements

These amendments primarily relate to an attorney's obligation to keep and provide records and accounts of transactions and dealings carried out by the attorney for the principal under an enduring power of attorney (EPOA). It also relates to the requirement for the attorney to keep the principal's property separate from the attorney's property.

The provisions currently operate only when the principal has impaired decision-making capacity. The amendments will expand their operation so they will apply whenever an attorney is exercising a power under an EPOA, irrespective of the principal's decision-making capacity. Although victims of the misuse of EPOA include older people, anyone who is a principal in an EPOA will receive greater protection under the amendments.

This promotes the right to equality and non-discrimination because a principal will be protected even when the principal has decision-making capacity. For various reasons, people who have decision-making capacity sometimes face difficulties taking actions to protect themselves. The amendments strengthen the protections afforded to this group of individuals.

The amendments engage and potentially limit a principal and an attorney's right to privacy.

Nature of the right and the limitation (s28(a) and (c))

Section 12 of the HRA provides for the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The term 'unlawful' means that no interference can take place except in cases envisaged by the law. 'Arbitrary interference' refers to interference with privacy and family that, even if provided for by law, is not reasonable in the circumstances.

The amendments potentially limit the right to privacy by broadening the operation of the safeguarding provisions so other attorneys may request records and documents relating to actions taken by an attorney under an EPOA, irrespective of the principal's decision-making capacity. The records and documents relating to transactions carried out under an EPOA may contain personal or sensitive information.

However, for the reasons set out below, any interference with privacy resulting from the amendments is not arbitrary and may, therefore, not reach the threshold of being a limitation of the right to privacy.

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

The amendments seek to achieve the purpose of detecting, reducing and responding to the misuse of the EPOA by an attorney, particularly in circumstances where the principal would otherwise be unable to take actions to recover the loss or damages caused by the misuse.

It is difficult for principals that have impaired decision-making capacity to hold their attorneys accountable for the misuse of powers of attorney. However, empirical evidence also indicates that principals with decision-making capacity may also be victims of financial abuse. A principal, and any person acting for the principal may currently face barriers in gathering sufficient evidence for further legal actions to seek remedies for loss or damage caused by the wrongdoing of an attorney.

Broadly speaking, the amendments will remove the limit placed on the safeguarding provisions to the effect that attorneys under an EPOA will be required to maintain the same level of accountability and transparency, whether or not the principal has impaired decision-making capacity.

Proportionality (s 28 (2) (e))

Attorneys exercising a power of attorney owe a duty to their principal not to misuse powers for their own benefit. Giving an attorney access to the principal's information would allow the attorney to discern the potential misuse of the authority under a EPOA by another

attorney. A principal that has decision-making capacity retains the discretion to limit or remove an attorney's right to information.

The interference with the right to privacy resulting from the amendments is lawful and not arbitrary. To the extent that this right is limited, any limitation is proportionate and goes no further than necessary to achieve the objective of ensuring that financial abuse can be detected and remedied.

Public Trustee and Guardian Act 1985

Section 66 – information sharing

The amendment inserts a provision into section 66 of the Public Trustee and Guardian Act 1985 (PTG Act) to enable the PTG to require an individual to provide it with information or documents relevant to the exercise its functions under the PTG Act or another Territory law. Currently section 66 of the act requires entities (other than individuals) to provide information or documents to the PTG.

The amendment allows the PTG to fulfil its role of examining external managers' accounts under sections 26 and 27 of the *Guardianship and Management of Property Act 1991*. External managers include those appointed by the ACAT to manage the person's property in situations where the person has impaired decision-making ability. Section 26 of the *Guardianship and Management of Property Act 1991* requires a manager to file with the PTG the accounts and other documents relating to the management of the relevant property that are prescribed.

PTG has advised that since section 66 of the PTG Act was originally drafted, the number of accounts that the PTG examines has nearly doubled, and the accounts are becoming increasingly complex. To add to this, there is likely to be additional demand on the PTG's functions due to COVID-19. In the PTG's role as examiner it is required to verify expenditure, income, assets and liabilities as reported by their financial manager. The most efficient way to do this is to check the bank accounts of a protected person, however the PTG often experiences difficulty obtaining these from the manager and does not currently have the legal ability to require this information.

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

Section 12 of the HRA provides for the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The right may be subject to permissible limitations providing that the measures pursue a legitimate purpose, are rationally connected to that purpose and are proportionate.

The amendment engages and potentially limit the right to privacy by authorising the PTG to access third party information from an entity or an individual that may be relevant to the exercise of functions under the PTG Act, or any other Territory law.

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

The amendment serves a legitimate purpose, as it is important for enabling the PTG to enforce the rights of a protected person by compelling managers to provide information relevant to the PTG's functions. The amendment would allow the PTG to fulfil its role of examining external Managers' accounts under sections 26 and 27 of the *Guardianship and Management of Property Act 1991*. External managers include those appointed by the ACAT to manage the person's property in situations where the person has impaired decision-making ability. Section 26 of the *Guardianship and Management of Property Act 1991* requires a manager to file with the PTG the accounts and other documents relating to the management of the relevant property that are prescribed.

The amendment would also help to reduce delay in the enforcement of the protected person's rights, as the PTG has previously had difficulty obtaining information from financial managers to enforce the rights of the protected person, as they cannot require information from an individual.

In practice, the amendment would empower the PTG to require documents to be produced by a person so that the PTG is able to comply with the requirement of its appointment (for example as trustee, as administrator for intestate estates, as executor and also to examine financial accounts). There are also circumstances where a person may seek to claim payment out of funds held by PTG in its capacity as trustee or Manager and PTG will need to require that person to provide supporting documents including receipts or statutory declarations.

Proportionality (s 28 (2) (e))

The amendment is the least restrictive approach to enabling the PTG to access records from individuals, and is therefore a permissible limitation on the right to privacy.

The power to make a notice of request to an entity in s 66 does not provide any power to compel production; it is an authorising law that would provide some comfort to financial institutions by clarifying that there is a lawful authority for release of information they would otherwise be required to keep private under privacy laws.

Additionally, the amendment would not change the requirement for the PTG to only request 'stated information or documents relevant to the exercise of the PTG's functions under this act or another territory law' (s 66). This should reduce the risk of information being collected, or the individual's right to privacy being interfered with arbitrarily.

In terms of further safeguards to ensure that the limitation on the right to privacy is proportionate, section 65A of the PTG Act makes it an offence for the information holder (which includes anyone who exercises or has exercised functions under the *Guardianship and Management of Property Act 1991*) to disclose protected information (that being information obtained by the information holder) because of the exercise of a function under the act by an information holder or someone else.

Section 9A – PTG delegation power

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 (s 12 HRA).

The existing section 9A of the PTG Act prevents the PTG from delegating to anyone, except a Deputy PTG, their functions as a guardian or manager appointed by the ACT Civil and Administrative Tribunal (ACAT), or their capacity to apply to the ACAT to appoint a suitable person to replace the PTG as a guardian or manager.

During the COVID-19 emergency period, the amendment will modify the existing limitations by allowing the PTG to delegate to any PTG staff member any functions of the PTG except the following functions:

- making 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.

As a guardian or manager of a protected person, the PTG is usually given plenary power by the ACAT to make decisions about the private life of a person who has impaired decision-making ability. The existing section 9A provides that guardianship decisions affecting a protected person are made only by the PTG or a Deputy PTG.

By modifying these provisions during the COVID-19 emergency period, more decisions can now be made by any staff member of the PTG. Since any decision of the PTG as a guardian or manager affects the private life of a person with impaired decision-making capacity, this measure engages and potentially limits the right to privacy.

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

The amendment is introduced to provide the PTG and his staff with greater flexibility and ability to be timely and responsive in making day-to-day decisions for their clients. During the COVID-19 emergency period, the capacity of the PTG and any PTG Deputy may be limited as they deal with the impact of COVID-19 which affects staffing. It is expected that many of the PTG's clients may be particularly vulnerable during the emergency, potentially increasing their reliance on the PTG to make daily decisions.

To ensure the well-being and interests of the clients are not affected by delays in decision-making, it is necessary for staff members other than the PTG and the Deputy PTGs to have the power to make time-sensitive decisions such as approving medical appointments, entering into contracts for necessities, applying for government benefits or seeking other assistance.

PTG guardianship staff other than the PTG and Deputy PTGs have more regular direct contact with clients and are well placed to make day to day decisions in urgent situations, which may happen more frequently during the COVID-19 emergency. In particular, this amendment will ensure that guardianship clients are able to access medical treatment in a timely manner.

Proportionality (s 28 (2) (e))

The amendment allows greater flexibility to facilitate timely day to day decision making for the benefit of protected people but does not allow delegation of the most significant or high-risk decisions, such as consenting to a mental health order or psychiatric surgery, dealing with a client's real property, and borrowing money in a client's name. These significant decisions will continue to be made by the PTG and the Deputy PTGs.

The amendment will operate only during the COVID-19 emergency period, which ends at the end of a 12-month period when no COVID-19 emergency has been in force.

Other measures that engage human rights

Associations Incorporation Act 1991

The amendments to the Associations Incorporation Act may engage the right to freedom of expression by allowing meetings to be convened and opinions to be expressed in light of COVID-19 social distancing measures and public health directions.

Bail Act 1992

The amendment to allow for undertakings to appear in answer to bail to be provided before the court, for example through an audiovisual link, and be recorded by the court rather than being signed and filed at court, has a neutral impact on human rights.

COVID-19 Emergency Response Act 2020

The amendments to the COVID-19 Emergency Response Act apply the reporting obligations under the Act to the new amendments in this Bill and insert a definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact as they do not expand, create or increase any additional exercise of extraordinary powers.

The COVID-19 Emergency Response Act 2020 is also amended to include provisions modifying the witnessing and attestation of documents during the COVID-19 emergency. The provisions allow for the witnessing and attestation of wills, powers of attorney, written health directions to be validly carried out by audiovisual link during the COVID-19 emergency. The provisions also allow for the swearing or affirming of affidavits to be validly done by audiovisual link.

The provisions allow for those documents to be validly executed by alternative means that do not require witnesses and signatories to be physically present at the same location, thereby

reducing the risk of to the health of witnesses and signatories. Individuals may still have their documents witnessed and attested in person, provided social distancing guidelines are adhered to.

While witnessing of testamentary wills and powers of attorney without being physically present in the same place may make it more difficult to identify undue influence, the risk is reduced by the contemporaneous nature of audiovisual link which allows the witness to ask questions of the signatory, preserving the existing legal avenues for challenging the validity of the documents. The provisions are of a temporary nature which further contains any risk. Accordingly, the provisions have no identified human rights implications.

Crimes Act 1900

The Bill amends the Crimes Act 1900 to provide that information on oath to support an application for a search warrant pursuant to section 194 may be given by an applicant providing an electronic version of an affidavit that that has been signed in accordance with law or by providing an electronic version of an affidavit that has been signed by the person making the affidavit and a statement, under oath by telephone or other electronic audiovisual means, by the person making the affidavit, that every statement in the affidavit is true. The latter alternative is similar to a practice that has been adopted by the Family Court of Australia and the Federal Circuit Court of Australia as a special measure in response to COVID-19, as outlined in the Joint Practice Direction 2 of 2020. The Bill also amends section 194 to allow an issuing officer to issue a warrant by providing an electronic version of the warrant. The process for an urgent warrant application pursuant to section 205 has also been amended to provide that a warrant may be issued by the issuing officer completing and signing an electronic version of the warrant.

The amendments have no implications for human rights. The amendments are necessary to ensure that the physical presence of an applicant is not required at the courts during the COVID-19 emergency. They will support the continued operations of ACT Policing and the courts and protect the health and wellbeing of staff. The amendments will only apply during a COVID-19 emergency.

Crimes (Sentencing) Act 2005

This amendment changes the process for a sentencing courts consideration and imposition of an intensive correction order by shortening the process from a two-stage process to a one-stage process. In doing so it engages and promotes the right to liberty (s 18 HRA) as an intensive correction order allows an offender to serve a sentence of imprisonment in the community.

The purpose of the amendment is to allow the process of preparing a pre-sentence report and an intensive correction assessment to be combined which will reduce time to sentencing by approximately 6 weeks. More importantly, it will also reduce the amount of personal contact, including by way of contact with ACT Corrective Services and court appearances, required of

an offender as part of the sentencing process. This is important during the current public health emergency to reduce the risk of community transmission of the virus.

Combining the process will not disadvantage the offender as all the matters usually addressed in both a pre-sentence report and an intensive correction assessment remain required by legislation.

Drugs of Dependence Act 1989

Similarly to the amendments to the Crimes Act, the Bill amends the Drugs of Dependence Act 1989 to provide that information on oath to support an application for a search warrant pursuant to section 187 may be given by an applicant providing an electronic version of an affidavit that has been signed in accordance with law or by providing an electronic version of an affidavit that has been signed by the person making the affidavit and a statement, under oath by telephone or other electronic audiovisual means, by the person making the affidavit that every statement in the affidavit is true. The latter alternative is similar to a practice that has been adopted by the Family Court of Australia and the Federal Circuit Court of Australia as a special measure in response to COVID-19, as outlined in the Joint Practice Direction 2 of 2020. The Bill also amends section 187 to allow an issuing officer to issue a warrant by providing an electronic version of the warrant.

The amendments have no implications for human rights. The amendments are necessary to ensure that the physical presence of an applicant is not required at the courts during the COVID-19 emergency. They will support the continued operations of ACT Policing and the courts and protect the health and wellbeing of staff. The amendments will only apply during a COVID-19 emergency.

Education Act 2004

The amendments to the Education Act establish a mechanism to make a statutory instrument being an ‘Declaration of a COVID-19 emergency’. This instrument allows a set of interim provisions to be determined in the event of an emergency as it relates to the prescribed obligations under the *Education Act 2004*. This amendment engages and supports the protection of children’s health and supports their right to education (s 27A HRA) within a COVID-19 emergency by allowing children to learn from home to facilitate social distancing.

The rights of children to protection (s11 HRA) is also engaged by the measure due to the fact that school attendance provides an opportunity to identify and support vulnerable children. However, safeguards are already in place to ensure ongoing protection of children, especially vulnerable children. This measure helps ensure all students have access to an education during the COVID-19 pandemic, including students with complex needs and vulnerabilities. Schools are supported to implement attendance and wellbeing procedures for all students who are learning remotely, including regular check-ins. Guidelines for families are also being developed to support learning from home, including guidance for families of students with disabilities. A student wellbeing phone line is being established to enable all students who require additional wellbeing supports to access services over the phone.

The amendments are reasonable in the circumstances and the least restrictive to ensure the ongoing ability of children to learn during the COVID-19 emergency.

Evidence (Miscellaneous Provisions) Act 1991

The amendments to the Evidence (Miscellaneous Provisions) Act are technical amendments to align the definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact.

Financial Management Act 1996

The amendments to the Financial Management Act extend timeframes for audits or financial statements and do not engage human rights.

Firearms Act 1996

The amendments to the Firearms Act are technical amendments to align the definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact.

Gaming Machine Act 2004 and Gaming Machine Regulation 2004

The amendments to the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004* do not engage human rights.

Leases (Commercial and Retail) Act 2001

The amendments to the Leases (Commercial and Retail) Act are technical amendments to align the definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact.

Long Service Leave (Portable Schemes) Act 2009

The amendments to the Long Service Leave (Portable Scheme) Act are technical amendments to align the definition of COVID-19 emergency and expiry of the amendments to ensure consistency across the legislation. These amendments omit and remake amendments, without any substantive changes, adopted in the *COVID-19 Emergency Response Act 2020*. The explanatory material for the original amendments, including the justification for the need for the amendments, can be found at https://www.legislation.act.gov.au/b/db_62003/.

These amendments do not have a significant human rights impact.

Long Service Leave Act 1976

The amendments to the Long Service Leave Act are technical amendments to align the definition of COVID-19 emergency and expiry of the amendments to ensure consistency across the legislation. These amendments omit and remake amendments, without any substantive changes, adopted in the *COVID-19 Emergency Response Act 2020*. The

explanatory material for the original amendments, including the justification for the need for the amendments, can be found at https://www.legislation.act.gov.au/b/db_62003/.

These amendments do not have a significant human rights impact.

Payroll Tax Act 2011

The amendment provides for an exemption from payroll tax for wages subsidised by the Commonwealth Government's JobKeeper wages subsidy program. The amendment includes a strict liability offence at section 2.19B and therefore engages and limits the right to be presumed innocent under section 22(1). The prosecution does not need to prove the fault elements of a strict liability offence, which deviates from the common law principle that the prosecution must prove all elements in an offence beyond reasonable doubt. The maximum penalty imposed under Section 2.19B is 10 penalty units.

The inclusion of strict liability within an offence limits the range of defences that may be available for a person accused of the offence to which it applies; however, a number of defences remain open to the accused, depending on the particular circumstances of each case. Section 23(1) (b) of the *Criminal Code 2002* (the Code) provides a specific defence to strict liability offences of mistake of fact. Section 23(3) of the Code provides that other defences may also be available for strict liability offences, including the defence of intervening conduct or event, as provided by section 39 of the Code.

The amendments to revenue legislation in the Bill are to facilitate the administration of tax relief measures in the COVID-19 economic survival package, as well as to complement the Commonwealth Government's JobKeeper program as part of its COVID-19 response to promote continued employment. Section 2.19B is to address the potential for revocation of an entitlement and its impact on payroll tax assessment. The proposed strict liability offence is aimed to target employers whose entitlement has been revoked but fail to notify the Commissioner for Revenue. This ensures only wages subsidised by JobKeeper program will be exempt from application of payroll tax and to achieve the overarching intent of protecting public revenue.

The creation of a strict liability offence engages and limits the right to be presumed innocent until proved guilty. However, the limitation is considered reasonable and proportionate in achieving the policy objectives of ensuring integrity against fraud and other abuse of the program and protecting public revenue. The amendment will facilitate the operation of the JobKeeper program which is to support Australian businesses to manage cash flow challenges and retain employees.

These provisions are also required to commence retrospectively on 30 March 2020 to coincide with the start date of the Commonwealth JobKeeper wage subsidy program. Retrospective commencement ensures wages subsidised by JobKeeper payments are exempt from payroll tax starting on 30 March 2020, and that employers' payroll tax liabilities are assessed properly.

Prohibited Weapons Act 1996

The amendments to the Prohibited Weapons Act are technical amendments to align the definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact.

Public Health Act 1997

No significant human rights implications.

Public Health (Emergencies) Amendment Act 2020

This amendment inserts a definition for the term ‘COVID-19 declaration’. This does not have human rights implications.

Rates Act 2004

The amendment provides for the period between instalment payments for rates to be determined by the Minister. The amendment has no identified human rights implications. The amendment will allow the operation of the deferred rates notices under the Economic Survival Package to provide cashflow benefits to households and businesses.

The amendment for the Rates Act engages and potentially limits the right to equality and non-discrimination, as well as the right to privacy and home.

As part of the economic survival package, the Government has delayed issuing 2019-20 quarter four residential rates and land tax assessments by four weeks to provide cashflow support and to reduce pressure on household budgets. This will be payable one month after the date of the delayed rates notice. The community will benefit from the initial four-week delay of quarter four rates and land tax assessments.

The amendment provides the Minister the power to determine rates instalment periods that are earlier or later than when they are ordinarily due. The inclusion of the term ‘earlier’ is required to gradually bring the rates instalment payments back on schedule over the following 12 months to minimise the cash flow effect on all households.

Determinations will be made in the form of disallowable instruments. They will require a statement about whether, in the Minister’s opinion, the determination is consistent with human rights. The Minister must also be satisfied that the determination is reasonable and necessary to provide an economic response to COVID-19 emergency. The ACT Revenue Office also undertakes to consult the ACT Human Rights Commission in developing a determination.

This approach is considered reasonable and justifiable for a number of reasons. As an emergency response to COVID-19, the empowering provisions only operate for a limited time and are subject to expiry. In addition, the determinations are in the form of disallowable instruments, which are subject to review, and can be disallowed or amended by the Legislative Assembly. The empowering provisions will be interpreted in a way that is

compatible with human rights pursuant to section 30 of the HRA. In making a determination, the Minister must also comply with section 40B of the HRA to act in a way that is compatible with human rights and to give proper consideration to human rights in its decision-making.

This will ensure compatibility with the HRA, in particular any limitation of the right to equality and non-discrimination, and the right to privacy and home is reasonably justified. This is to make sure that certain groups in the community, especially low-income and disadvantaged households, would not be disproportionately adversely affected by any instalment periods to be determined.

Hence, the potential limitation of the right to equality and non-discrimination is reasonable, necessary and proportionate to achieve the broader policy of protecting public revenue.

Residential Tenancies Act 1997

The amendments to the Residential Tenancies Act are technical amendments to align the definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact.

Retirement Villages Act 2012

The amendments to the *Retirement Villages Act* may engage the right to freedom of expression by allowing meetings to be convened and opinions to be expressed in light of COVID-19 social distancing measures and public health directions.

Strict liability offences currently apply for a breach of requirements in respect of holding annual management meetings (section 107 (1)) and annual budget meetings (section 159). These strict liability offences are designed to ensure compliance with meeting requirements and operate as a safeguard for residents. The amendments allow for the postponement of both annual management meetings and annual budget meetings to a time reasonably practicable after the prescribed time due to the COVID-19 emergency. To ensure that this temporary measure does not undermine existing safeguards, penalties still apply if these annual meetings are postponed and not held at a reasonably practicable time afterwards. The amendments are designed to ensure good governance and legislative compliance during the COVID-19 emergency while not undermining or frustrating the intention of existing provisions, namely, that these crucial meetings still occur as soon as it is practicable to do so. The effect of applying strict liability to an offence means that no fault element needs to be proven by the prosecution but the defence of mistake of fact is available to the defendant. A fault element in this particular regulatory context may render the provisions less effective. The prosecution will still be required to prove that the conduct in question occurred -that is, that the meeting did not occur at a reasonably practicable time afterwards. The offence in question is within reasonable limits as it takes into account the importance of the objective that is sought to be achieved while still maintaining the defendant's right to a defence.

Taxation Administration Act 1999

The amendment provides for Ministerial powers to support the implementation of Economic Survival Package tax-related measures. Specific powers provide the ability to provide tax relief for individuals, households and businesses through rebates, exemptions and deferral arrangements. No provisions in the Bill engage rights under the *Taxation Administration Act 1999*.

The amendment for the *Taxation Administration Act 1999* potentially limits the right to equality and non-discrimination. The amendment provides the Minister specific powers to make determinations of schemes to provide rebates, deferrals and exemptions to eligible taxpayers under various revenue legislation.

Any determinations of tax rebate, deferral and exemption schemes and respective eligibility will be in the form of disallowable instruments. The fact that a determined scheme is a disallowable instrument ensures that the Legislative Assembly Standing Committee on Legislative Scrutiny maintains an oversight of the scheme's content. The instruments will also require a statement about whether, in the Minister's opinion, the determination is consistent with human rights. The Minister must also be satisfied that the determination is reasonable and necessary to provide an economic response to COVID-19 emergency. In addition, the ACT Revenue Office will consult the ACT Human Rights Commission when developing a scheme.

This approach is considered reasonable and justifiable for a number of reasons. As an emergency response to COVID-19, the empowering provisions only operate for a limited time and are subject to expiry. In addition, the determinations are in the form of disallowable instruments, which are subject to review, and can be disallowed or amended by the Legislative Assembly. The empowering provisions will be interpreted in a way that is compatible with human rights pursuant to section 30 of the *Human Rights Act 2004* (HRA). In making a scheme, the Minister must also comply with section 40B of the HRA to act in a way that is compatible with human rights and to give proper consideration to human rights in its decision-making.

This will ensure compatibility with the HRA, and that in particular any limitation of the right to equality and non-discrimination is reasonably justified. It also ensures consistent implementations of any further COVID-19 tax relief measures and hence facilitates the administration of any future COVID-19 economic survival package.

The existing revenue legislation does not provide for consistent powers for rebates, deferrals and exemptions. The ability to apply rebates, deferrals and waivers have been operationalized using exemptions under the Rates Act, or the Treasurer's waiver and deferral powers under the *Financial Management Act 1996*. Existing measures have not allowed for rebates to be applied consistently across revenue lines. Further, existing deferral powers consider amounts payable but do not provide an ability to affect when a tax return must be lodged.

The amendment to the *Taxation Administration Act 1999* provides 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, and the details within the scheme to provide relief will also be beneficial to allow for flexibility to respond to changes in the COVID-19 situation.

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 COVID-19 tax relief measures.

Potential limitation of the right to privacy

The right to privacy 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 purpose of the amendments is to allow the Commissioner for Revenue to request additional information required to determine their eligibility to the relevant scheme. This is however not a limitation of the right to privacy as the collection, use or disclosure of personal information is clearly provided by law and is not arbitrary. The intention is that only information that is reasonably necessary is collected, used or disclosed. Information proposed to be collected under the deferral and rebate schemes includes but is not limited to: employer name, business type, business trading name, business address, Australian Business Number, Tax File Numbers, Australian Company Number, taxable wages, declarers full name and declarers email address. In determining and administering a scheme, the Commissioner for Revenue must comply with the obligations under the *Information Privacy Act 2014* and the HRA.

Terrorism (Extraordinary Temporary Powers) Act 2006

The Bill amends section 100 which requires the Minister to review the operation and effectiveness of the Terrorism (Extraordinary Temporary Powers) Act 2006 (TETP Act) after 13 years. The amendment extends the time permitted to present a report of the review to the Legislative Assembly if the Minister believes on reasonable grounds that it is not reasonably possible to report by the current deadline of 19 November 2020. The Minister must report as soon as practicable, but not later than 19 May 2021.

This amendment possibly limits human rights, in particular the right to take part in public life (s 17 HRA) which provides that every citizen has the right and is to have the opportunity to take part in the conduct of public affairs. The amendment engages this right because it delays and limits the opportunity to reassess the ongoing need for the provisions in the TETP Act and to consider whether to make any amendments so that it operates in a less rights-restrictive way. As a result, the amendment also limits the rights that are limited by the TETP Act itself including freedom of association (s 15 HRA), freedom of expression (s 16 HRA) and the right to liberty (s 18 HRA). These rights are limited by the TETP Act because in certain circumstances a person can be taken into custody and detained for up to 14 days in the

absence of any criminal finding of guilt. The TETP Act contains a number of extensive safeguards to ensure that the limitations are reasonable and necessary to achieve the objectives of responding to the threat of terrorism and ensuring a nationally consistent counter-terrorism approach. These safeguards include the requirement for a review of the Act and a sunset provision in section 101 which provides that the Act will expire on 19 November 2021. The amendment does not remove these two safeguards.

The extension of time to present the report is necessary to address the operational impacts of the COVID-19 emergency on the ACT Government and the amended Legislative Assembly sitting pattern. The amendment will support the continued operations of the Justice and Community Safety Directorate by allowing the reallocation of resources to address and implement urgent measures in response to the COVID-19 emergency to ensure the public safety of the ACT community. The current public health emergency declaration under the *Public Health Act 1997* is in force until 7 July 2020 but may be extended. Section 100 requires the Minister to review the operation and effectiveness of the Act after it has been in operation for 13 years, that is after 19 November 2019. Efforts will be made to undertake and complete the review of the TETP Act as soon as practicable and to achieve as little delay as possible to the original timeline for presenting the report. However due to the uncertainty about the duration and impact of the public health emergency, the amendment is necessary to ensure that there will be sufficient time for a comprehensive review of the TETP Act and thorough consultation with stakeholders. The review will be completed and the report presented to the Assembly as soon as practicable to ensure that the Assembly has adequate opportunity to consider the report before making the decision whether to extend the TETP Act and, if so, whether to make any amendments. The considerations that arise from the sunset of the Act on 19 November 2021 will be incorporated into the review to ensure that there is sufficient time to prepare amending legislation if that is the outcome of the Government's consideration of the review. This amendment will not expire at the end of the COVID-19 emergency period to ensure that it achieves the purpose of extending the timeframe to no later than 19 May 2021.

University of Canberra Act 1989

The amendments to the University of Canberra Act have no significant human rights implications.

Working with Vulnerable People (Background Checking) Act 2011

The amendments to the Working with Vulnerable People (Background Checking) Act are technical amendments to align the definition of COVID-19 emergency to ensure consistency across the legislation. These amendments do not have a significant human rights impact.

Working with Vulnerable People (Background Checking) Amendment Act 2019

The amendment to the Working with Vulnerable People (Background Checking) Amendment Act is to defer the commencement date by four months. This amendment does not have a significant human rights impact.

COVID-19 EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020

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**. 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*.

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Gordon Ramsay MLA
Attorney-General

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 *COVID-19 Emergency Response Legislation Amendment Act 2020*.

Clause 2 — Commencement

This clause provides that, with the exception of the amendments listed below, the Act will commence on the day after notification.

Delayed commencement applies to the following provisions:

- the amendment to section 7 of the *Bail Act 1992*, which will commence 12 months after the commencement of section 4 of the *COVID-19 Emergency Response Act 2020*. This will omit the temporary definition of ‘undertaking to appear’ in line with the expiry provisions of the *COVID-19 Emergency Response Act 2020*.
- amendments to part 2 and part 12.3 of the *Corrections Management Act 2007* will commence on a day fixed by the Minister by written notice. This is to ensure effective implementation of the changes.
- amendments to the *Crimes (Sentence Administration) Act 2005* will commence on a day fixed by the Minister by written notice. This is to ensure the necessary guideline is in place before becoming operational.

Section 79 of the *Legislation Act 2001* is disapplied to the amendments to the *Corrections Management Act 2007* and the *Crimes (Sentence Administration) Act 2005* so the provisions will only commence on written notice and not by default.

Clause 3 — Legislation amended – sch 1

This notes that the Act also amends the other legislation set out in Schedule 1.

Schedule 1 – COVID-19 emergency response – Amendments

Part 1.1 – Associations Incorporation Act 1991

[1.1] – New section 70AA

This clause allows the committee of an incorporated association to authorise general meetings including annual general meetings to be held via methods of communication (including a combination of methods of communication) other than in person. Examples have been

provided to clarify that these methods of communication may include a phone link, the internet or in writing.

This clause also provides that a member of an association may vote by proxy at the general meeting.

This clause provides that if an association's rules are inconsistent with new section 70AA, that the rules have no effect to the extent of the inconsistency. This is to allow incorporated associations to hold general meetings via these other methods of communication or allow proxy votes to be counted if their respective constitution or rules have specified otherwise.

This clause also includes an expiry clause for this provision.

This amendment is urgent and essential to allow incorporated associations to continue to hold general meetings. This amendment will ensure that associations and its officers and members will not be penalised for contravening particular provisions of the Associations Incorporation Act and ensure associations can continue to operate while adhering to social distancing guidelines and public health directions.

[1.2] – New section 120 (3) to (6)

This clause provides the registrar-general discretion to declare general extensions for a period of time prescribed by the Associations Incorporation Act (including for an annual general meeting under section 69), because of the COVID-19 emergency. This means that a written application by each incorporated association under section 120 (1) will not be required for an extension.

The amendment provides that the declaration is a notifiable instrument. A notifiable instrument rather than a disallowable instrument is appropriate in the circumstances as the amendment introduces a temporary measure that extends the power already entrusted to the registrar-general under existing section 120. This amendment only changes the procedural steps required for an extension to be provided as a response to the COVID-19 emergency.

This clause also includes an expiry clause for this provision.

This amendment is urgent and essential to provide incorporated associations an ability to postpone annual general meetings. This amendment will ensure that associations and their officers and members will not be penalised for contravening particular provisions of the Associations Incorporation Act and ensure associations can continue to operate while adhering to social distancing guidelines and public health directions.

Part 1.2 – Bail Act 1992

[1.3] – New section 28 (2A)

This section allows bail undertakings to be given through remote means during a COVID-19 emergency period.

This amendment has been included in this emergency Bill to support the continued effective operations of the courts. These amendments will allow courts to receive undertakings via remote means as opposed to requiring an accused to appear in person.

[1.4] – New section 28 (6) and (7)

This clause defines what a COVID-19 emergency means and provides for the expiry of the provisions.

[1.5] – Dictionary, definition of *undertaking to appear*

This clause is a consequential technical amendment to ensure the definition of undertaking to appear aligns with the new amendments.

[1.6] – Dictionary, definition of *undertaking to appear*

This clause omits the definition of undertaking to appear once the temporary provisions have expired.

Part 1.3 – Children and Young People Act 2008

[1.7] – Section 241A (1)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments are described.

[1.8] – Section 241A (6)

This clause is a technical amendment to align the definition of COVID-19 emergency to ensure consistency across the legislation.

[1.9] – Section 241A (7)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.10] – Section 242 (3A)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.11] – Section 242 (6A)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.12] – Section 242 (7A) (a)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.13] – Section 242 (9)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.14] – Section 242 (10)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.15] – New section 245 (1) (ba)

This clause amends section 245 (1) to include a young detainee who is absent under a COVID-19 permit and is a consequential amendment to the *COVID-19 Emergency Response Act 2020*.

This amendment has been included in this emergency Bill as a consequential amendment as a result of the *COVID-19 Emergency Response Act 2020*. Making this amendment now will make clear that young detainees remain in the custody of the director-general while on leave.

[1.16] – New section 245 (5)

This clause includes an expiration for the new clause above.

[1.17] – New section 287 (1) (sa)

This clause amends section 287 (1) to include contravention of a COVID-19 permit as a behaviour breach.

This amendment has been included in this emergency Bill as a consequential amendment as a result of the *COVID-19 Emergency Response Act 2020*. Making this amendment now will make clear that young detainees that contravene a COVID-19 leave permit will constitute a behaviour breach.

[1.18] – New section 287 (3)

This clause includes an expiration for new the new clause above.

[1.19] – Section 384 (3)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.20] – Section 384 (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.21] – Section 384 (5)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.22] – Section 400A (1)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.23] – Section 400A (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.24] – Section 400A (5)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.25] – Section 410 (2) (a) (i) and (ii)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.26] – Section 410 (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.27] – Section 410 (5)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.28] – Section 423 (2) (a) (i) and (ii)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.29] – Section 423 (3)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.30] – Section 423 (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.31] – Section 454 (3)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.32] – Section 454 (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.33] – Section 454 (5)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.34] – Section 514EAA (1) (a) and (b)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.35] – Section 514EAA (3)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.36] – Section 514EAA (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

Part 1.4 – Corrections Management Act 2007

[1.37] – New section 30 (2A)

This clause extends the time a person may be held in police custody in police cells from 36 hours to 48 hours or until the next sitting of the Magistrates Court, whichever is sooner.

This reduces the number of instances where the director-general takes a person into custody in a correctional centre and supports measures to reduce the possible outbreak and spread of COVID-19 at the Alexander Maconochie Centre. The amendment additionally supports the health and well-being of detainees and ACT Corrective Services staff during the COVID-19 crisis. The provision is proposed to commence by Ministerial written notice to ensure ACT Policing and ACT Corrective Services are in a position to implement the new arrangements effectively.

This amendment has been included in this emergency Bill to support the continued operations of ACT Corrective Services. These amendments will reduce the need for detainee transport and reduces the risk of transmission of COVID-19 in the Alexander Maconochie Centre.

[1.38] – New section 30 (6) and (7)

This clause defines what a COVID-19 emergency means and provides for the expiry of amendments.

[1.39] – New part 12.3

This clause inserts a new part in the Corrections Management Act to allow the director-general to grant leave when an offender's sentence is due to end within the specified timeframe. On release, the offender will be supervised by ACT Corrective Services and offered support by the Extended Throughcare Program, including assistance to access to appropriate housing.

The mechanism allows for the release of offenders, in appropriate circumstances, where release on leave will support the security and good order of the Alexander Maconochie Centre and reduce the likelihood of the outbreak or spread of the COVID-19 in the Centre. The permit is subject to conditions and non-compliance can lead to cancellation of the permit, which will result in the offender serving the outstanding period of their sentence in full-time imprisonment (noting time spent in the community on leave will count towards completion of the offender's sentence). The provision will commence by Ministerial notice to ensure the provision is enlivened when deemed necessary and to ensure ACT Corrective Services can implement the new arrangements effectively.

The amendment also requires the director-general to publish a guideline as a notifiable instrument on the ACT Legislation Register. ACT Corrective Services policies and operating procedures are notifiable instruments pursuant to section 14 of the Corrections Management Act because they are not legislative in nature. Notifiable instruments allow for operational continuity while being publicly accessible. The guidelines are akin to other operational policies under the Corrections Management Act and are already subject to public scrutiny as a notifiable instrument.

This amendment includes the definition of COVID-19 emergency and provides for the expiry of amendments.

This amendment has been included in this emergency Bill to support the continued operations of ACT Corrective Services. These amendments will allow for the early release of offenders supporting measures to reduce the risk of the outbreak and spread of COVID-19 at the Alexander Maconochie Centre.

[1.40] – Dictionary, new definitions of COVID-19 emergency and COVID-19 leave permit

This clause includes a consequential amendment to the Dictionary of the Act to ensure the definitions of COVID-19 emergency and COVID-19 leave permit are referenced.

Part 1.5 – Court Procedures Act 2004

[1.41] – New section 74LA

This clause allows timeframes to be decided by the court when adjourning or dismissing a matter on care and protection grounds.

The Court Procedures Act and the Children and Young People Act work together to provide a mechanism to allow criminal charges to be dismissed where the appropriate response is that the young person should be dealt with as in need of care and protection. The Court Procedures Act currently imposes a strict timeframe for reports back to the court and the Public Advocate on steps taken by the Community Services Directorate. This clause amends sections 74K and 74L to enable timeframes to be determined by the Court following a decision to dismiss or adjourn proceedings. Section 74L requires the director-general to report to the Court and the Public Advocate about what actions have been taken, or propose to be taken, in relation to a child or young person.

This amendment has been included in this emergency Bill to support the continued operation of the Childrens Court and Child and Youth Protection Services related legal matters. Making this amendment now will account for circumstances where a young person in need of care and protection presents at court with flu-like symptoms and needs to be tested for COVID-19. In this circumstance, it is unlikely that results would be available quickly to determine whether it is safe to engage directly with the young person and their family. This situation may affect the director-general's obligations more broadly, including supervision.

This clause also includes a definitional clause and an expiry clause for this provision.

Part 1.6 – COVID-19 Emergency Response Act 2020

[1.42] – Section 3 (4), new definition of *COVID-19 declaration*

This clause inserts a definition of COVID-19 declaration. This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.43] – Section 3 (4), definition of *COVID-19 measure*

This clause replaces and updates the definition of a COVID-19 measure to include reference to this Bill.

[1.44] – New sections 4 and 5

This clause allows people to witness documents by way of electronic signature. In the ACT, the signing of a will, a power of attorney, and a health direction must be attested by at least two eligible witnesses in person. The eligible witnesses must be able to see the signing of the documents in person. Similar requirements apply to the swearing or affirming of affidavits, but only one eligible attesting witness is required.

This amendment is important and included in this urgent Bill because measures to reduce the spread of COVID-19 have created significant obstacles for people in having their signatures witnessed in accordance with the current rules. This is particularly problematic for vulnerable people, such as older people and people with pre-existing chronic illnesses, who are at more risk of infection and are more likely to be making, varying or revoking their wills and powers of attorney. This amendment is based on the Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020 (NSW) which came into force in NSW on 22 April 2020.

This clause includes an expiry clause for this Act.

Part 1.7 – Crimes Act 1900

[1.45] – New section 194A

This clause clarifies that, when issuing a search warrant under the Crimes Act, the issuing officer may receive information on oath by electronic means and may issue the warrant to the applicant by electronic means. The clause also clarifies that as an alternative, the issuing officer may transmit the warrant to the applicant by electronic means.

These amendments are necessary to ensure the ongoing operation of the courts and ACT Policing by ensuring that the physical presence of police officers at the court registries is not required for the purpose of obtaining a warrant.

This clause also includes an expiry clause for this provision.

Part 1.8 – Crimes (Sentence Administration) Act 2005

The amendments to the Crimes (Sentence Administration) Act work together to allow delegated Community Corrections Officers (CCO) in ACT Corrective Services to impose an administrative sanction in relation to a minor alleged breach of an obligation in place of a report to the Court or the Sentence Administration Board (SAB). A formal guideline will be developed and implemented to guide the practice including what may be considered a minor alleged breach and establishing an internal administrative approval process. The discretion will apply to Good Behaviour Orders (GBOs), Intensive Correction Orders (ICOs), and Parole Orders. The current legislation does not provide a CCO any discretion when case managing an offender's non-compliance. The amendment allows the CCO to:

- take no further action;
- give, or arrange to be given to the offender, a formal warning that further alleged breaches will result in referral to the Court or the SAB; or
- report the breach to the Court or the SAB.

The provision notes that the director-general may give a reasonable direction to the offender. Where an offender on an ICO or a parolee is issued with a formal warning, the SAB must be

notified. The provision outlines that the SAB is able to conduct an inquiry on its own initiative (under section 62 or section 146).

These amendments have been included in this emergency Bill to allow a CCO to impose administrative sanctions in relation to breaches of community based sentence obligations and to reduce the administrative burden on the Court and the SAB. Making this amendment now will ensure that sentence obligations can be effectively and appropriately supervised and case managed by ACT Corrective Services. The amendments will also allow the Court and the SAB to devote more time and resources towards more serious matters resulting in improved sentence administration outcomes. Adopting these measures will also broadly mirror the existing approach in NSW and Victoria.

All measures include expiry clauses.

[1.46] – New section 59A

This clause outlines the requirements and actions CCOs can take in relation to a breach of an offender’s ICO obligations during a COVID-19 emergency period.

[1.47] – New section 62 (2) (d)

This clause is a consequential amendment as a result of the above clause.

[1.48] – New section 102A

This clause outlines the requirements and actions CCOs can take in relation to a breach of an offender’s good behaviour order obligations during a COVID-19 emergency period.

[1.49] – New section 143A

This clause outlines the requirements and actions CCOs can take in relation to a breach of an offender’s parole obligations during a COVID-19 emergency period.

[1.50] – New section 322AA

This clause prescribes that the director-general must make guidelines in relation to the new provisions and sets out that the guidelines must include a statement that human rights have been considered in making the guideline and how those guidelines should be made available.

The amendment also requires the director-general to publish a guideline as a notifiable instrument on the ACT Legislation Register. The guidelines are akin to operational policies under the Corrections Management Act. As notifiable instruments, the guidelines will be subject to public scrutiny. Notifiable instruments allow for operational continuity while being publicly accessible.

[1.51] – New section 322A (ba) and (bb)

This clause also adds the amendments relating to a breach of ICO to the existing expiry clauses for COVID-19 measures.

[1.52] – New section 322A (da)

This clause also adds the amendments relating to a breach of GBO to the existing expiry clauses for COVID-19 measures.

[1.53] – New section 322A (fa)

This clause also adds the amendments relating to a breach of parole to the existing expiry clauses for COVID-19 measures.

[1.54] – New section 322A (ha)

This clause also adds the amendments relating to a breach of parole to the existing expiry clauses for COVID-19 measures.

Part 1.9 – Crimes (Sentencing) Act 2005

[1.55] – New section 46C (7) to (9)

This clause allows a court to order an intensive correction (ICO) assessment to form a part of a pre-sentence report (PSR). The ICO assessment report is a separate assessment of an offender's suitability for an ICO. The amendments permit a suitability assessment for an ICO to be conducted as part of the PSR and require that, if a court orders a PSR and orders ICO to also be assessed, the matters under section 46D of the Sentencing Act will need to be addressed in the PSR.

The amendment will streamline the pre-sentence process into a single stage to allow the court to consider the appropriate sentence for an offender.

This amendment has been included in this emergency Bill to support the continued operations of ACT Corrective Services and the courts. Making this amendment now will streamline the process for an ICO which will support fewer court/corrections contacts for offenders and reduce delays in the court's consideration of an alternative to full-time detention. This amendment will reduce the period for sentencing ICO offenders from a minimum of 12 weeks from a finding of guilt to sentencing to approximately six weeks.

This clause also includes an expiry clause for this provision.

[1.56] – New section 78 (1), new note

This clause inserts a note as a consequential amendment to note that an intensive correction assessment ordered during a COVID-19 emergency may form part of a pre-sentence report.

Part 1.10 – Drugs of Dependence Act 1989

[1.57] – New section 187A

This clause clarifies that, when issuing a search warrant under the Drugs of Dependence Act, the issuing officer may receive information on oath by electronic means and may issue the

warrant to the applicant by electronic means. The clause also clarifies that as an alternative, the issuing officer can transmit the warrant to the applicant by electronic means.

These amendments are necessary to ensure the ongoing operation of the courts and ACT Policing, by ensuring that the physical presence of police officers at the court registries is not required for the purpose of obtaining a warrant.

This clause also includes an expiry clause for this provision.

Part 1.11 – Education Act 2004

The amendments to the Education Act have all been included in this emergency Bill to support the continued operations of government. Making these amendments now will provide the Minister with a mechanism to make declarations and flexibility to continue the operations of ACT Public Schools in the event of a COVID-19 emergency.

[1.58] – New section 84A

This clause outlines the circumstances when the Minister may, in writing, extend the period of an in-principle approval for an extraordinary circumstances education declaration.

This clause also includes an expiry clause for this provision.

[1.59] – New section 88AA

This clause outlines the circumstances when the Minister may, in writing, extend the period of a school's registration if an extraordinary circumstances education declaration is in effect.

This clause also includes an expiry clause for this provision.

In addition to the reasons outlined above, making this amendment now will provide some flexibility for non-government school registrations that fall due in 2020 and allow the Minister to extend registration of non-government schools by 12 months if it becomes evident that the school is unable to meet registration obligations under the Education Act 2004 as a result of the COVID-19 emergency.

This clause also includes an expiry clause for this provision.

[1.60] – New section 153B

This section outlines the circumstances when a Minister may declare an extraordinary circumstances education declaration.

Extraordinary circumstances education declarations are a disallowable instrument that can be in effect for no longer than six months.

This clause also includes an expiry clause for this provision.

Part 1.12 – Evidence (Miscellaneous Provisions) Act 1991

[1.61] – New section 164 (1A)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.62] – Section 164 (2) and note

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

Part 1.13 – Financial Management Act 1996

The clauses in the Financial Management Act do not have an expiration clause as they are intentionally drafted in a self-limiting way so that amendments that will only apply for a maximum time up to the 2020-21 Financial Year.

[1.63] – Section 24 (3)

This clause increases the period the auditor-general must give an audit opinion to the Treasurer from three months to four months in accordance with section 24 of the Financial Management Act for the 2019-20 financial year.

This amendment has been included in this emergency Bill because available resources within agencies may be limited. Making this amendment now will ensure that the auditor-general will have sufficient time to conduct an audit of the annual financial statements and provide them to the Treasurer. These amendments take into consideration the election to be held and the current COVID-19 crises.

[1.64] – Section 26 (1)

This clause increases the periodic financial statements reporting from 45 days to 60 days in accordance with section 26 (1) of the Financial Management Act for the 2019-20 and 2020-21 financial years.

This amendment has been included in this emergency Bill because available resources within agencies may be limited. Making this amendment now will ensure that the necessary legislative reporting can be provided to the Legislative Assembly. These amendments will mitigate the risk of systems issues compromising the ability to fulfil financial reporting requirements.

[1.65] – Section 26 (3)

This is a consequential technical amendment.

[1.66] – Section 26 (4)

This clause amends section 26 (4) to increase the period that the Treasurer must give copies of the statements prepared under subsection 26 (1) to each member of the Legislative Assembly from within 45 days to within 60 days for the 2019-20 and 2020-21 financial years.

This amendment has been included in this emergency Bill because available resources within agencies may be limited. Making this amendment now will ensure that the necessary legislative reporting can be provided to the Legislative Assembly. These amendments will mitigate the risk of systems issues compromising the ability to fulfil financial reporting requirements.

Part 1.14 – Firearms Act 1996

[1.67] – Section 417 (3) (a)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.68] – New section 417 (5) and (6)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.69] – Section 418

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

Part 1.15 – Gaming Machine Act 2004

[1.70] – Section 164, new definition of *COVID-19 emergency*

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.71] – Section 164, definition of *emergency declaration*

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.72] – Section 166 (1), definition of *community purpose*, paragraph (d)

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.73] – Section 166 (2)

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.74] – New section 166 (2A)

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.75] – Section 166A (1)

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.76] – Section 172 (2) (i)

This corrects a cross-reference consequential to amendments made in the *COVID-19 Emergency Response Act 2020*.

[1.77] – New section 172 (2A)

This clause is consequential to amendments made in the *COVID-19 Emergency Response Act 2020*. It provides that clubs will need to set out in their annual report the percentage of their net gaming machine revenue that has been made for ‘providing relief or assistance to the community in relation to a COVID-19 emergency’, in line with the reporting requirements for the other community purposes set out in section 166 (1) of the Gaming Machine Act. Since not all clubs report on a standard financial year (July-June) basis, this provision applies to club reporting years that end after 23 March 2020 (after which clubs ceased normal operations due to COVID-19).

[1.78] – New section 172C

This clause sets out the expiry for the COVID-19 emergency amendments.

The amendments will expire at the end of a two-year period during which no COVID-19 emergency has been in force. A longer expiry period applies because these amendments change community contribution requirements, and are intended to support the community and clubs both during a COVID-19 emergency and in the recovery phase following the emergency.

[1.79] – Dictionary, new definition of *COVID-19 emergency*

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.80] – Dictionary, definition of *emergency declaration*

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

Part 1.16 – Gaming Machine Regulation 2004

[1.81] – Section 69DA (2)

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.82] – Section 69DA (2), note

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.83] – Section 69DA (4)

This is a consequential amendment to align the provisions to the existence of a COVID-19 emergency.

[1.84] – New section 69L

This clause sets out the expiry for the COVID-19 emergency amendments.

Noting the focus of the amendments is on the provision of food to emergency-affected persons as a community purpose contribution, the amendments will expire at the end of a 12-month period during which no COVID-19 emergency has been in force.

Part 1.17 – Human Rights Commission Act 2005

[1.85] – New section 21 (1) (c) (iv)

This and the following clauses create a mechanism to give the Human Rights Commission a power to hear and handle complaints about treatment of vulnerable people.

This amendment vests the Human Rights Commission with the functions and powers to consider and take further actions about allegations of abuse, neglect or exploitation of vulnerable people. It is essential to introduce the amendment without delay because the risk of the abuse of vulnerable people (including older Canberrans) being perpetuated during the COVID-19 emergency is higher than that under normal circumstances. This is due to the current restrictions during the emergency that are likely to reduce communication between vulnerable people and their friends and relatives and exacerbate existing vulnerabilities.

[1.86] – New section 41B

This clause sets out the circumstances of when someone may complain to the Human Rights Commission about the treatment of a vulnerable person. A person may complain if they believe on reasonable grounds that the vulnerable person is subject to or at risk of abuse, neglect or exploitation.

This section includes a detailed definition of vulnerable person.

[1.87] – New section 42 (1) (ea)

This clause is a technical amendment to allow vulnerable person complaints to be made under the Human Rights Commission Act.

[1.88] – New section 52B

This clause sets out the obligations of the Human Rights Commission in dealing with vulnerable person complaints.

[1.89] – New section 99A

This clause inserts an information sharing mechanism to allow the Commissioners to share information for the purposes of exercising their functions. This will allow the Commissioners in the ACT Human Rights Commission to share information internally with each other.

During this emergency period, there is potential for the oversight functions of the ACT Human Rights Commission to be in high demand, and this amendment puts beyond doubt the ability of the Commissioners to work collegiately and share information to enable each of them to perform their important functions under the Act.

[1.90] – New section 105B

This clause sets out the expiry for the COVID-19 emergency amendments.

[1.91] – Dictionary, new definition of *vulnerable person complaint*

This clause defines vulnerable person complaint.

Part 1.18 – Leases (Commercial and Retail) Act 2001

[1.92] – Section 177 (3) (a)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.93] – Section 177 (5), new definition of *COVID-19 emergency*

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.94] – New section 177 (6)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.95] – Section 178

This is a consequential amendment.

Part 1.19 – Long Service Leave Act 1976

[1.96] – Section 6 (3)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

This amendment omits and remakes amendments, without any substantive changes, adopted in the *COVID-19 Emergency Response Act 2020*.

Part 1.20 – Long Service Leave (Portable Schemes) Act 2009

These amendments omit and remake amendments, without any substantive changes, adopted in the *COVID-19 Emergency Response Act 2020*.

[1.97] – Schedule 1, section 1.6 (3) and (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.98] – Schedule 1, section 1.8

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.99] – Schedule 2, section 2.6 (3) and (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.100] – Schedule 2, section 2.8

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.101] – Schedule 3, section 3.7 (3) and (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.102] – Schedule 3, section 3.9

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.103] – Schedule 4, section 4.7 (3) and (4)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.104] – Schedule 4, section 4.9

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.105] – Schedule 5, item 22

This clause is a consequential amendment on making the COVID-19 amendments to the Long Service Leave (Portable Schemes) Act and makes decisions of the governing board reviewable.

Part 1.21 – Payroll Tax Act 2011

[1.106] – New section 66BA

This clause notes that JobKeeper payments are exempt wages.

This clause also includes an expiry clause for this provision.

[1.107] – Schedule 2, new part 2.7A

This clause inserts JobKeeper payments into schedule 2 of the Payroll Tax Act to outline the circumstances when wages are considered JobKeeper payments and therefore exempt wages.

This clause also includes an expiry clause for this provision.

[1.108] – Schedule 2, new section 2.19B

This clause inserts a strict liability offence into schedule 2 of the Payroll Tax Act. This amendment creates an obligation for an employer to notify the commissioner that they are not eligible for payment under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth).

Part 1.22 – Powers of Attorney Act 2006

[1.109] – New section 45 (1A)

This clause provides that section 45 applies in relation to an enduring power of attorney whether or not the principal has impaired decision-making capacity during the COVID-19 emergency period.

[1.110] – New section 45 (5) and (6)

This clause also defines what a COVID-19 emergency and a COVID-19 emergency period means and provides for the expiry of amendments.

[1.111] – New section 47 (2) to (4)

This clause provides that, during the COVID-19 emergency period, an attorney for a property matter under an enduring power of attorney must, whether or not the principal has impaired

decision-making capacity, keep accurate records and accounts of all dealings and transactions made by the attorney under the power.

This clause expands the operation of this provision in order to increase safeguards around the potential for financial abuse.

This clause also defines what a COVID-19 emergency and a COVID-19 emergency period means and provides for the expiry of amendments.

[1.112] – New section 48 (1A)

This clause provides that, during the COVID-19 emergency period, an attorney for a property matter under an enduring power of attorney must, whether or not the principal has impaired decision-making capacity, keep the attorney's property separate from the principal's property.

This clause expands the operation of this provision in order to increase safeguards around the potential for financial abuse.

[1.113] – New section 48 (3) and (4)

This clause defines what a COVID-19 emergency and a COVID-19 emergency period means and provides for the expiry of amendments.

Part 1.23 – Prohibited Weapons Act 1996

[1.114] – Section 55 (3) (a)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.115] – New section 55 (5) and (6)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.116] – Section 56

This is a consequential amendment.

Part 1.24 – Public Health Act 1997

[1.117] – New section 10A

This clause delays the tabling of the Chief Health Officer's Report on the health status of the ACT population under section 10 of the *Public Health Act 1997* until 2021 due to COVID-19 issues.

Making this amendment now will ensure that the Chief Health Officer's biennial report is published in a timely manner, considering current COVID-19 issues. The report provides an insight into the health status of the ACT population.

The ACT Chief Health Officer is required, under section 10 of the *Public Health Act 1997*, to report biennially on the health status of the ACT population through the Chief Health Officer's Report. The next Report is due to be tabled in the Legislative Assembly in 2020, however this will need to be delayed until 2021 due to COVID-19.

This clause does not have an expiry clause because the clause extends the provision for a defined period.

Part 1.25 – Public Health (Emergencies) Amendment Act 2020

[1.118] – New section 2 (3)

This clause inserts a definition of COVID-19 declaration to clarify the expiry of the amendments to the Public Health (Emergencies) Amendment Act. COVID-19 declaration means a declaration made because of the coronavirus disease 2019 (COVID-19) caused by the novel coronavirus SARS-CoV-2.

The need for this definition was raised by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in *Scrutiny Report 41* which notes that 'it would be preferable to amend the commencement provision to include a definition of COVID-19 declaration' (Footnote 6 at page 6).

Part 1.26 – Public Trustee and Guardian Act 1985

[1.119] – New section 9A (3) to (5)

This clause amends the functions that the Public Trustee and Guardian (PTG) may delegate to a member of PTG's staff during the COVID-19 emergency period.

During this period, subsection (2), which restricts delegations of guardianship functions, will be modified to allow the PTG to delegate most guardianship functions to a staff member. The ability to delegate does not apply to certain functions: making 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. These decisions may only be made by the Public Trustee and Guardian or a Deputy Public Trustee and Guardian.

This clause will increase the capacity of the PTG and its staff to assist clients during a period of potential increased demand and in a situation where the availability of the PTG or a Deputy may be affected by the emergency. The amendment will ensure that day to day decisions can be made in a timely way.

This clause also defines what a COVID-19 emergency and a COVID-19 emergency period means and provides for the expiry of amendments.

[1.120] – New section 66 (1A)

This clause provides that the PTG can require an individual to provide it with information or documents relevant to the exercise of the PTG’s functions under the Public Trustee and Guardian Act 1985 or another Territory law.

This amendment has been included in this emergency Bill to accommodate a likely increase in demand on the PTG’s functions due to COVID-19. It will assist the PTG to enforce the rights of a protected person by requiring external managers to provide information or documents, which helps to reduce delay in the enforcement of the protected person’s rights.

[1.121] – New section 66 (3) and (4)

This clause defines what a COVID-19 emergency and a COVID-19 emergency period means and provides for the expiry of amendments.

Part 1.27 – Rates Act 2004

[1.122] – New section 19 (3) to (9)

This clause amends section 19 of the Rates Act to allow the Minister to determine payment instalment periods of less than three months by disallowable instrument. Allowing the Minister to determine an ‘earlier’ instalment due date under new section 19 (4) will facilitate the transition back to the standard payment due date schedule throughout the application of these amendments.

This amendment has been included in this emergency Bill because of announced economic survival measures to delay rates notices would result in payment instalments being less than 3 months apart. Making this amendment now will ensure that rates notices can be made in compliance with the Rates Act.

This clause also includes an expiry clause for this provision.

Part 1.28 – Residential Tenancies Act 1997

[1.123] – Section 156 (3) (a)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.124] – New section 156 (5) and (6)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.125] – Section 157

This clause is a consequential amendment.

Part 1.29 – Retirement Villages Act 2012

[1.126] – New section 107 (3A)

This clause provides that annual management meetings may be postponed on the condition that the meeting would be required to be convened as soon as reasonably practicable after the public health emergency declaration is no longer in force and having regard to any current advice by the ACT chief health officer.

This amendment is necessary to ensure good governance and legislative compliance without compromising the health and safety of retirement village residents.

[1.127] – New section 112A

This clause provides that a residents committee may authorise that a meeting of residents can be conducted via methods of communication other than in person including a combination of methods. The methods of communication are not prescriptive; however, examples have been provided to clarify that they may include communication via a phone link, the internet or in writing.

Where a retirement village does not have a residents committee, this clause provides an option for residents of the village to make an authorisation.

This amendment is necessary to ensure good governance and legislative compliance without compromising the health and safety of retirement village residents.

[1.128] – New section 117 (1A) and (1B)

This clause amends a current limitation on the number of proxy votes a person is allowed to hold on behalf of a resident. This clause also provides that the retirement village may amend its rules to limit the number of proxy votes a person may hold.

As with other COVID-19 amendments, this amendment is temporary in nature and only in force during the COVID-19 emergency.

This amendment is necessary to ensure good governance and legislative compliance without compromising the health and safety of retirement village residents.

[1.129] – New section 159 (2A) and (2B)

This clause provides that an operator of a retirement village may choose not to provide a proposed annual budget for the 2020-2021 financial year if it is not reasonably practicable for the residents to meet, consider and vote on the proposed annual budget for the 2020-2021 financial year. Where an operator chooses this course of action, the approved annual budget for the 2019-2020 financial year can be relied upon for spending purposes.

However, the proposed annual budget for the 2020-2021 financial year will need to be provided to the residents of the retirement village as soon as reasonably practicable after the

public health emergency declaration is no longer in force and having regard to any current advice by the ACT chief health officer.

The note provided in this clause clarifies that residents of retirement villages would be able to rely on new section 112A to meet to consider the budget should an operator decide to provide a proposed annual budget for the 2020-2021 financial year in accordance with section 159 (1).

[1.130] – New section 261A

This clause provides that where an operator may call for meetings under the Act, these meetings may be held via methods of communication other than in person. Where this course of action is taken, the operator of a retirement village will need to ensure that each resident has access to the facilities that will allow them to take part in these meetings and that each resident can use these facilities.

This amendment is necessary to ensure good governance and legislative compliance without compromising the health and safety of retirement village residents.

[1.131] – New section 265

This clause sets out the expiry for the COVID-19 emergency amendments.

[1.132] – Dictionary, definition of *COVID-19 emergency*

This clause defines COVID-19 emergency.

Part 1.30 – Taxation Administration Act 1999

[1.133] – New section 6 (4) to (6)

This clause inserts an additional purpose to the *Taxation Administration Act 1999* providing an economic response to a COVID-19 emergency. It includes a definition for a COVID-19 emergency and a COVID-19 emergency period and provides for the expiry of these new subsections.

[1.134] – New division 11.5A

This clause inserts a new division to the *Taxation Administration Act 1999* to provide the Minister with powers to determine certain taxation matters.

Section 137A provides for a definition for a COVID-19 emergency and a COVID-19 emergency period.

Section 137B provides that if a COVID-19 scheme is determined under this division, the scheme applies in addition to any other provision in the *Taxation Administration Act 1999* and other tax laws.

Section 137C outlines the conditions in which the Minister must be satisfied in order to determine a COVID-19 scheme.

Section 137D provides that the Minister may determine a COVID-19 deferral scheme, and outlines what must and may be identified as part of a COVID-19 deferral scheme. The Minister may also prescribe under scheme information that the commissioner may require to decide an application. This is appropriate as this simply prescribes the information that may be required and is consistent with other administrative schemes requiring information to be provided to determine eligibility under a given scheme. The deferral scheme determination is a disallowable instrument because of complexity and financial considerations under the scheme.

Section 137E provides that the Minister may determine a COVID-19 exemption scheme, and outlines what may be identified as part of a COVID-19 exemption scheme.

Section 137F provides that the Minister may determine a COVID-19 rebate scheme, and outlines what must and may be identified as part of a COVID-19 rebate scheme. The Minister may also prescribe under scheme information that the commissioner may require to decide an application. This is appropriate as this simply prescribes the information that may be required and is consistent with other administrative schemes requiring information to be provided to determine eligibility under a given scheme. The rebate scheme determination is a disallowable instrument because of complexity and financial considerations under the scheme.

Section 137G provides for the expiry of this division.

This amendment has been included in this emergency Bill because of revenue measures announced as part of the ACT economic survival package. Making this amendment now will ensure that the Minister has clear powers to implement COVID-19 response measures.

Part 1.31 – Terrorism (Extraordinary Temporary Powers) Act 2006

[1.135] – New section 100 (2)

This clause inserts section 100 (2) into the *Terrorism (Extraordinary Temporary Powers) Act 2006* to allow for an extension to presenting the report of the statutory review of that Act to the Legislative Assembly.

This amendment has been included in this emergency Bill to support the continued operations of the Justice and Community Safety Directorate which is responsible for undertaking the statutory review. Making this amendment now will ensure that resources can be properly reprioritised in response to COVID-19 and accounts for the limited sitting pattern of the 9th Assembly. This amendment will allow this to occur by allowing more time for the statutory review and for the tabling of the report.

This clause does not contain an expiry clause because the Terrorism (Extraordinary Temporary Powers) Act has its own expiry provision.

Part 1.32 – University of Canberra Act 1989

[1.136] – Section 43 (3)

This clause extends the period of time within which the legislative review of the University of Canberra Act must occur.

This amendment has been included in this emergency Bill because the requirement in the University of Canberra Act to review and report on that Act cannot be completed in a COVID-19 environment. Making this amendment now is necessary to ensure that a legislative breach does not occur.

This clause does not have an expiry clause because the clause extends the provision for a defined period.

[1.137] – Section 43 (3)

This is a consequential amendment to change all references in this provision relating to the extension of the review requirement.

Part 1.33 – Working with Vulnerable People (Background Checking) Act 2011

[1.138] – Section 60A

This clause is a technical amendment to align the definition of COVID-19 emergency to ensure consistency across the legislation.

[1.139] – Section 60B (1) (a) and (b)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.140] – Section 60C (1)

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

[1.141] – Section 60D

This clause is a technical amendment and aligns the language of how a COVID-19 emergency and expiry of the amendments is described.

Part 1.34 – Working with Vulnerable People (Background Checking) Amendment Act 2019

[1.142] – Section 2

This clause inserts a provision that allows for commencement by written notice of the Minister. The default commencement of the Amendment Act will be 31 March 2021. Deferring the commencement of these provisions will allow responsible directorates to

implement the measures without diverting resources away from responses to the COVID-19 public health emergency.