

**2021**

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

**OPERATIONAL EFFICIENCIES (COVID-19) LEGISLATION AMENDMENT BILL 2021**

**GOVERNMENT AMENDMENTS**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**To be moved by  
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Attorney-General**

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# OPERATIONAL EFFICIENCIES (COVID-19) LEGISLATION AMENDMENT BILL 2021

## GOVERNMENT AMENDMENTS

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# **Operational Efficiencies (COVID-19) Legislation Amendment Bill 2021**

## **Government Amendments**

### **Outline of Government Amendments**

On 16 September 2020, the Operational Efficiencies (COVID-19) Legislation Amendment Bill 2020 was introduced to the Legislative Assembly. The Bill includes provisions to permanently adopt certain legislative measures implemented during the COVID-19 emergency and temporarily extend the expiry of measures put in place to assist the business activities of incorporated associations. These measures were originally introduced through the *COVID-19 Emergency Response Act 2020* and *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The explanatory statement accompanying the Bill provides a detailed account of the provisions contained in the Bill.

The Government amendments to the Bill are to reinstate now expired COVID-19 provisions in section 149 of the *Children and Young People Act 2008*. These COVID-19 provisions allow the director-general to declare that a COVID-19-related emergency exists in relation to the Bimberi Youth Justice Centre (Bimberi) for the duration of the COVID-19 emergency. This measure was originally introduced through the *COVID-19 Emergency Response Act 2020*, and expired on 8 April 2021. Considering the current outbreak in the ACT, this measure has been identified as necessary to support the management of any potential COVID-19 outbreak at Bimberi.

### **Consultation on the Proposed Approach**

The Government amendments were identified as necessary by the Community Services Directorate, following consultation with the management of Bimberi.

### **Consistency with Human Rights**

#### **Rights Engaged**

The Government amendments engage and may promote the right to life (section 9 of the *Human Rights Act 2004*) and the right to the protection of the family and children (section 11 of the Human Rights Act).

The Government amendments engage and may limit the right to liberty and security of person (section 18 of the Human Rights Act) and the right to humane treatment when deprived of liberty (section 19 of the Human Rights Act).

## **Rights Promoted**

The Government amendments engage and may promote the right to the protection of the family and children (section 11 of the Human Rights Act) by enabling the director-general to take the necessary steps to protect the best interests and the health and safety of young detainees. The amendments also potentially engage and promote the right to life (section 9 of the Human Rights Act) having regard to the need to take reasonable steps to protect the health of Bimberi staff, as well as the additional duty of care that authorities have to protect the health and wellbeing of vulnerable young people in detention.

## **Rights Limited**

### Nature of the rights affected and the limitation (s 28 (2) (a) and (c))

The Government amendments engage and may limit the rights to liberty and security of the person (section 18 of the Human Rights Act) and humane treatment when deprived of liberty (section 19 of the Human Rights Act). The right to liberty and security recognises that any further restrictions on detainees must be lawful and not arbitrary, which means decisions are made according to established rules, with reasonable justification and not continuing for an unreasonable time. The right to be treated humanely recognises the inherent dignity of detainees, and ensures that minimum standards of treatment apply whilst in detention. The effect of the declaration enables the director-general to exercise emergency powers under section 150 of the Act involving restrictions on activity, movement, access and communications within Bimberi. Depending on the nature of the emergency measures put in place by the director-general under the COVID-19 emergency declaration, the liberty and security of young detainees within Bimberi may be limited through restrictions in movement and contact with other people.

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

The measure will assist in preventing the spread of COVID-19 within Bimberi and reflects the critical importance of protecting the health and safety of young detainees and ensuring their best interests.

Importantly, the provisions will provide the director-general with emergency powers to seek assistance from other parts of the ACT Government and recall staff from other directorates to exercise functions ordinarily delivered by youth detention officers at Bimberi (e.g. former Bimberi staff).

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

This measure is necessary and rationally connected to continuing to achieve the purpose of promoting and protecting the best interests of and providing a safe environment for young detainees in Bimberi. The purpose is achieved by giving the director-general discretion to impose restrictions suitable to maintain a COVID-19 safe environment within a detention place, limiting the number of person-to-person contacts by young detainees, youth workers and other staff. It will also help to ensure good order and security of a detention place during the emergency.

### Proportionality (s 28 (2) (e))

This measure is considered a reasonable limit to human rights because authorities have a special duty to ensure the health and safety of young detainees and a positive obligation to take steps to safeguard detainees from the spread of COVID-19 during a public health emergency.

This measure is the least restrictive approach available in the circumstances because it only applies during a COVID-19 public health emergency, and does not have a disproportionately severe effect on young detainees as the limitation applies only to the extent necessary to prevent the spread of infectious disease within Bimberi.

Safeguards incorporated in the provisions giving effect to this measure are the same as those that were included in the expired provisions. These are:

- a review must be conducted by the director-general at least every 28 days, if the declaration or its extensions are in force for a consecutive period of 28 days or more. The review will consider whether there are reasonable grounds for continuing the declaration.
- as soon as practicable after conducting the review, the director-general must advise the Minister in writing about any measures taken in response to the emergency under the declaration.
- a requirement to include information, in the first annual report prepared by the director-general after an emergency declaration ends, about the measures taken in response to the emergency while the declaration was in force.
- the requirement for the director-general to revoke the declaration if the director-general no longer believes there are reasonable grounds for continuing the declaration.

## Operational Efficiencies (COVID-19) Legislation Amendment Bill 2021

### Government Amendments

#### Detail

##### **Government amendment 1 – Clause 3, page 2, line 15**

This clause inserts the *Children and Young People Act 2008* into the list of legislation amended by the Bill.

##### **Government amendment 2 – Proposed new part 3A, page 4, line 12**

This clause inserts Part 3A into the Bill.

Part 3A inserts subsections (2A), (3A) to (3D), (8) and (9) into section 149 of the Children and Young People Act.

Section 149 (2A) provides for the director-general's power to declare that an emergency related to a COVID-19 emergency exists in relation to a detention place. The director-general is able to make an emergency declaration for the duration of the COVID-19 emergency, which is longer than the standard three days allowed for an emergency declaration that is not related to a COVID-19 emergency under section 149 (2) (a).

Subsections (3A) to (3D) provide safeguards to the emergency declaration by requiring the director-general to:

- conduct a review considering whether there are reasonable grounds for continuing the declaration, at least every 28 days, if the declaration or its extensions are in force for a consecutive period of 28 days or more
- advise the Minister in writing about any measures taken in response to the emergency under the declaration
- include information in the first annual report prepared by the director-general after an emergency declaration ends, about the measures taken in response to the emergency while the declaration was in force
- revoke the declaration if the director-general no longer believes there are reasonable grounds for continuing the declaration.

Section 149 (8) defines a 'COVID-19 emergency', linking it to a state of emergency declared under the *Emergencies Act 2004* or an emergency declared under the *Public Health Act 1997* because of COVID-19.

Section 149 (9) provides an expiry period for sections 149 (2A), (3A) to (3D), (8) and (9). These provisions will expire when the *COVID-19 Emergency Response Act 2020* expires, which is at the end of a 12-month period during which no COVID-19 declaration has been in force. This expiry provision allows the measure to remain in the Act for a period of 12 months after a COVID-19 emergency declaration is no longer in force. During this period, in the event a COVID-19 emergency declaration is made, the measure will become operative while the declaration is in force. The purpose of this rolling expiry arrangement is to ensure that emergency response measures can be available to support operational and service responses.

Although the measure will not expire until 12 months beyond the end of a COVID-19 emergency, the underlying measure can only be used while a COVID-19 emergency declaration is in force.