

2021

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

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON ECONOMY AND
GENDER AND ECONOMIC EQUALITY REPORT 1 - INQUIRY INTO COVID-19
EMERGENCY RESPONSE LEGISLATION AMENDMENT BILL 2020 (NO 3)**

**Presented by
Andrew Barr MLA
Chief Minister**



Andrew Barr MLA

Chief Minister
Treasurer
Minister for Climate Action
Minister for Economic Development
Minister for Tourism

Member for Kurrajong

Ms Nicole Lawder MLA

Chair

Standing Committee on Economy and Gender and Economic Equality

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Ms Lawder

Thank you for considering the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3). I offer the following responses to the Committee's report, *Inquiry into COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3)*.

Recommendation 1

The Committee recommends (to the extent that work is not already taking place) after the COVID-19 pandemic crisis has passed and the ACT has exited from its state of emergency, the ACT Government give consideration to examining and reviewing the emergency measures that were enacted. This should not be limited to the ACT but should also include emerging evidence of good practice from across Australia and the globe.

Agreed

The ACT Government has begun the process of reviewing measures adopted through COVID-19 Emergency Response Legislation during 2020, to consider whether any should be proposed as permanent changes to legislation.

The *COVID-19 Emergency Response Legislation Amendment Act 2020* adopted temporary changes to certain powers and obligations of guardians and attorneys under the *Guardianship and Management*

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of *Property Act 1991* and the *Powers of Attorney Act 2006*. These have already been assessed as meriting permanent adoption and the Justice and Community Safety Bill 2020, currently before the Legislative Assembly, includes provisions which, if passed, will adopt these as permanent measures.

Over the next 12 months, the Government will continue to consider whether other temporary legislative measures that benefit the community should be adopted permanently. Where appropriate and relevant, the government will also look to the experience in other jurisdictions to inform its decisions.

Of course, it is also important to consider whether there are temporary measures in place which should not continue. The Committee has noted that the Bill will repeal two such temporary measures under the *Crimes (Sentence Administration) Act 2005*. It is also relevant to note that the measure under the *Official Visitors Act 2012* lapsed on 8 October 2020 and that certain measures under the *Children and Young People Act 2008* will lapse on 8 April 2021. Further, the expiry dates of several other measures adopted through the COVID-19 Emergency Response legislation, including measures in the *Firearms Act 1996*, *Leases (Commercial and Retail) Act 2001*, *Prohibited Weapons Act 1996*, and *Residential Tenancies Act 1997*, were not extended because there was no indication an extension was needed.

Recommendation 2

The Committee recommends that the ACT Legislative Assembly give consideration to amending clause 5 of the Resolution of Establishment for general-purpose standing committees to provide a reporting timeframe that allows for these committees to consider the views of the Scrutiny of Bills Committee where inquiries are undertaken into referred bills.

Noted

The ACT Government strongly supports robust and transparent parliamentary scrutiny and it is acknowledged that this recommendation is aimed at supporting existing frameworks. The Government will consider the recommendation and provide a further response on the recommendation.

Recommendation 3

The Committee recommends that the ACT Government update the ACT Legislative Assembly [prior to the Assembly proceeding to the next stage of its consideration of the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3)]—why data are unavailable for the seven emergency response legislative measures for which details of their use could not be provided (as per monthly reporting at 30 November 2020).

Agreed

The Committee is referred to the information provided in Attachment A which lists measures listed in the ACT Government *Report on COVID-19 Measures Report No. 8 for the reporting period 1-30 November 2020*, with an explanation of why data is unavailable. The Government has identified eight such measures. These broadly fall into two categories.

The first relates to circumstances where the use of the measure is not able to be captured by existing business management systems, such as the ACT Courts and Tribunal case management system.

Manual collection and reporting of data on the measure has not been undertaken as this would inappropriately divert resources away from court operations, adversely impacting on services and the efficiency of the justice system.

The second category relates to circumstances where the impact of the change made as a result of the measures occurs without involvement of government. Examples are the requirements on guardians and attorneys and certain matters relating to residential tenancy agreements. In these situations, the fact of the measure's use is not something government agencies have direct visibility of, meaning information relating to the activity cannot be collected.

Recommendation 4

The Committee recommends that the ACT Government continue monthly reporting to the ACT Legislative Assembly on emergency response measures provided for under the COVID19 Emergency Response Act 2020 and the COVID-19 Emergency Response Legislation Amendment Act 2020. Monthly reporting should continue until such time as each measure, at a minimum, has 12 months of reported data for each measure.

Not Agreed

The ACT Government does not support the Committee's recommendation to continue monthly reporting to the ACT Legislative Assembly on emergency response measures provided for under the *COVID-19 Emergency Response Act 2020* and the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

The ACT Government acknowledges the Committee's view that times of exceptional or emergency circumstance support extraordinary scrutiny. However, having regard to the substance of the monthly reporting that has occurred so far, and the maturity of the measures, the ACT Government remains of the view that a change to quarterly reporting from the beginning of 2021 is appropriate. The ACT Government considers this move to quarterly reporting will achieve very good ongoing transparency for the Legislative Assembly while supporting the Government's capacity to focus resources where they are most needed.

As the ACT Government works towards recovery from the pandemic, particularly through the planning and preparation for the roll-out of the COVID-19 vaccine, the ACT Public Service must remain agile and hold its focus on the collective impacts of emergency and the needs of the ACT community.

I thank the Committee for considering the Bill.

Yours sincerely



Andrew Barr MLA
Chief Minister

08 FEB 2021

Attachment A

Excerpt:

ACT Government Report on COVID-19 Measures Report No. 8 for the reporting period 1-30 November 2020

Measure	Rationale for unavailable data
Undertakings to appear given in court by audio visual link – <i>Bail Act 1992</i> .	<p>The Court's case management system does not currently collect data on this measure.</p> <p>As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.</p>
Allow timeframes to be decided by the court when adjourning or dismissing a youth justice matter on care and protection grounds – <i>Court Procedures Act 2004</i> .	<p>The Court's case management system does not currently collect data on this measure.</p> <p>As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.</p>
The amendment introduces a mechanism to allow the witnessing of wills, powers of attorney, health directions and affidavits by audiovisual link, as an alternative to in-person witnessing of these documents – <i>COVID-19 Emergency Response Act 2020</i> .	<p>The measure provides an additional pathway for the witnessing of wills, powers of attorney, health directions and affidavits by audiovisual link. As these documents are not necessarily required to be registered or monitored by the ACT Government, it is not possible to directly measure the use of this method of witnessing on a monthly or cumulative basis.</p>
Streamline Intensive Correction Orders assessment reports as part of a Pre-Sentence Report – <i>Crimes (Sentencing) Act 2005</i> .	<p>The Court's case management system does not currently collect data on this measure.</p> <p>As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.</p>
Amend section 13 to require the offender to 'give an undertaking before the court' or sign an undertaking to	<p>The Court's case management system does not currently collect data on this measure.</p>

<p>comply with the offender's good behaviour obligations – <i>Crimes (Sentencing) Act 2005</i>.</p>	<p>As previously indicated, the manual collection and reporting of data on this measure would inappropriately divert resources away from court operations and therefore these details are not reported.</p>
<p>The amendment provides enhanced obligations for attorneys in relation to record keeping and separation of the principal's property from the property of the attorney, which will apply where the principal has capacity to manage their affairs as well as when the principal has lost capacity – <i>Powers of Attorney Act 2006</i>.</p>	<p>The measure imposes additional obligations on attorneys in relation to record keeping and separation of property during COVID-19 emergency and the 12-month period thereafter.</p> <p>The Government does not have visibility of how each attorney complies with their statutory obligations, and therefore it is not possible to directly measure its impact cumulatively or on a monthly basis.</p>
<p>Public Trustee and Guardian requirement to provide information or documents – <i>Public Trustee and Guardian Act 1985</i>.</p>	<p>This section commenced on 11 August 2020. Since that date, the Public Trustee and Guardian has exercised this power to seek documentation in processing unclaimed money claims, in dealing with external financial managers, and estate administration. However, specific data on the use of this measure is not collected by the Public Trustee and Guardian's current record keeping systems and manual collection and reporting of data on this measure would inappropriately divert resources.</p>
<p>The amendment creates a head of power that allows the Minister to respond quickly and flexibly to the impacts of the COVID-19 response on residential tenancies. The head of power allows the Minister to make declarations about things such as a moratorium on evictions or limits on property inspections to support social distancing. The Minister is also able to make a declaration permitting tenants and landlords to re-negotiate the amount of rent payable during the COVID-19 public health emergency.</p>	<p>The ACT Government does not collect data on all of the residential tenancy agreements impacted by this measure.</p>

