

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mrs Giulia Jones

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety's (the Committee's) comments in Report 41 in relation to the *COVID-19 Emergency Response Act 2020* (the Act).

**Emergency period definition and expiry clauses**

The Committee asked me to respond in relation to the variety of approaches taken to define 'COVID-19 emergency' and expiration of the provisions.

The amendments were drafted so as to be temporary, that is, to operate in response to the COVID-19 emergency.

The COVID-19 measures were constructed with various expiry periods, including, where appropriate, to allow for transition time. The main categories of expiry periods in the COVID-19 Acts are:

- to expire when the COVID-19 Act expires on 8 April 2021;
- to expire a period after the COVID-19 Act commenced or expires;
- to expire at the end of a COVID-19 emergency period;
- to expire a period after the end of a COVID-19 emergency period; or
- to expire at another fixed time.

'COVID 19 emergency' was intended itself to be defined by reference to [states of] emergency declared under the [Emergencies Act 2004](#) or [Public Health Act 1997](#) but, regrettably, this approach was not consistently taken.

Owing to the urgency with which the Bill was prepared and progressed, there were some expiry periods and definitions of 'COVID-19 emergency' that did not align with the approaches outlined above. These inconsistencies were addressed as part of the amendments made in the

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*COVID-19 Emergency Response Legislation Amendment Act 2020*, as set out in the relevant Explanatory Statement presented in the ACT Legislative Assembly on 7 May 2020.

### **Notifiable instruments**

As noted by the Committee, the amendments to the *Residential Tenancies Act 1997*, the *Firearms Act 1996*, the *Prohibited Weapons Act 1996* and the *Leases (Commercial and Retail) Act 2001* create an ability to extend a declaration under those Acts by way of notifiable instrument. The emergency measures provide that the original declaration under each Act is a disallowable instrument. In this way, the content of any declaration, including the ability to extend the declaration, are already subject to the parliamentary scrutiny process and may be disallowed if they are considered objectionable.

The ability to extend a declaration by way of notifiable instrument gives the Minister a limited power to extend the effect of a declaration for a defined period of time noting that the substance of the declaration has already been the subject of parliamentary scrutiny. Further, the ability to extend the declaration is limited to a period of 3 months after the public health emergency declaration end date. This approach is appropriate as the extension is for the purposes of operational continuity until such measures can be appropriately phased out.

### **Emergency action under the *Children and Young People Act 2008***

The Committee has asked me to respond to the questions they raise in relation to the request to extend emergency action under the Children and Young People Act (the CYP Act).

The basis on which the director-general under the CYP Act may seek a two-day extension of the statutory transfer of parental responsibility, responds to significant pressure placed on critical health, justice and community services during the public health emergency – factors outside the control of the director-general.

At the time of presenting to court after emergency action, the director-general is required to provide evidence to the court so that the court can make a determination as to whether the child is in need of care and protection, in order to grant an interim order. During the public health emergency, it may be more difficult to access all necessary information relevant to the child's need for care and protection. If this evidence is not presented, there is a real possibility that a child at risk of harm may be returned to an unsafe environment. The two-day extension, if granted by the court, will allow the director-general additional time to obtain the best evidence possible from essential service providers (such as police, hospitals and medical professionals) for the court's consideration. The director-general will only seek an extension where it is necessary because of the public health emergency and the extension can only be granted by the Children's Court in exceptional circumstances.

Safeguards are in place to avoid arbitrary use of this provision. For example, where emergency action is taken, obligations under the CYP Act must continue to be met, including ensuring all parties are informed about the action. The Public Advocate will also be notified of emergency action being taken and has the option to join the proceeding if they wish to be heard if the two-day extension is applied for by the director-general.

If a two-day extension is granted, it will not impact on the capacity of a birth parent or family to have contact with their child(ren) if that can be arranged during the extension period.

## **Trial by jury (judge alone amendments)**

The Committee has asked me to respond to a number of questions about the amendments to the *Supreme Court Act 1933* which provide that a trial by judge alone may be ordered provided specified criteria are met.

Section 68BA has now been repealed and I refer the committee to the Explanatory Statement for the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 2) which deals with the importance of the section and the appropriateness of its repeal.

Thank you for taking the time to consider and respond to this Bill.

Yours sincerely

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Andrew Barr MLA  
Chief Minister

Gordon Ramsay MLA  
Attorney-General