



New South Wales

COVID-19 Legislation Amendment (Emergency Measures) Bill 2020

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the following Acts in response to the COVID-19 pandemic—

- (a) *Child Protection (Working with Children) Act 2012*,
- (b) *Children (Detention Centres) Act 1987*,
- (c) *Civil and Administrative Tribunal Act 2013*,
- (d) *Constitution Act 1902*,
- (e) *Crimes (Administration of Sentences) Act 1999*,
- (f) *Crimes (Domestic and Personal Violence) Act 2007*,
- (g) *Criminal Procedure Act 1986*,
- (h) *Electronic Transactions Act 2000*,
- (i) *Environmental Planning and Assessment Act 1979*,
- (j) *Evidence (Audio and Audio Visual Links) Act 1998*,
- (k) *Health Practitioner Regulation (Adoption of National Law) Act 2009*,
- (l) *Jury Act 1977*,
- (m) *Local Government Act 1993*,
- (n) *Mental Health Act 2007*,
- (o) *Motor Accident Injuries Act 2017*,
- (p) *Private Health Facilities Act 2007*,

- (q) *Public Health Act 2010*,
- (r) *Retail Trading Act 2008*,
- (s) *Subordinate Legislation Act 1989*,
- (t) *Workers Compensation Act 1987*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

Schedule 1[1] amends the *Criminal Procedure Act 1986* to enable criminal trials to be conducted in an appropriate way during the COVID-19 pandemic, by enabling—

- (a) a witness in a trial to give evidence before the trial in a pre-recorded evidence hearing, and
- (b) the original evidence of a witness recorded in a trial to be used in a new trial, and
- (c) a court to order a judge alone trial in certain circumstances.

Regulations may be made under various specified Acts in relation to altered arrangements for criminal trial, pre-trial procedures, apprehended violence order proceedings, bail and sentencing and matters relating to the administration of sentences, for the purposes of responding to the COVID-19 pandemic.

Regulations may only be made if Parliament is not sitting (or is not likely to sit within 2 weeks) and the arrangements provided by the regulations are in accordance with advice of the Minister for Health and Medical Research or the Chief Health Officer. The regulations are repealed after 6 months, unless earlier repealed by Parliament.

The proposed amendments to the *Criminal Procedure Act 1986* are repealed 6 months after they commence, unless the regulations prescribe a later date for the repeal, not being more than 12 months after the amendments commence.

Schedule 1[2] contains transitional provisions.

Schedule 2 Amendment of other Acts

Child Protection (Working with Children) Act 2012 No 51

Schedule 2.1 enables the Children's Guardian to extend the period for which a working with children check clearance is in force. The provision applies for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Children (Detention Centres) Act 1987 No 57

Schedule 2.2 enables the Secretary of the Department of Communities and Justice to prohibit or restrict any person (other than the Ombudsman and the Inspector of Custodial Services) from entering or visiting a detention centre if satisfied that it is reasonably necessary to protect the health of a detainee, any other person or the public from the public health risk posed by the COVID-19 pandemic.

The provision applies for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Civil and Administrative Tribunal Act 2013 No 2

Schedule 2.3 amends the *Civil and Administrative Tribunal Act 2013* as follows—

- (a) to provide for special constitution requirements and practice and procedure in respect of functions of the Tribunal allocated to its Guardianship Division,
- (b) to provide for special constitution requirements in respect of the exercise by the Tribunal of functions under the *Public Health Act 2010*,
- (c) to enable regulations to be made that modify time periods for things done in connection with the Tribunal and the practice and procedure of the Tribunal,
- (d) to enable the Tribunal and certain courts to extend periods for doing things in connection with the Tribunal.

The provision applies for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Constitution Act 1902 No 32

Schedule 2.4 provides that regulations may be made to enable persons required to be present under the *Constitution Act 1902* to be present in other ways other than being physically present and to enable Bills to be assented to without being presented to the Governor in person. The provisions are repealed after 12 months.

Crimes (Administration of Sentences) Act 1999 No 93

Schedule 2.5 amends the *Crimes (Administration of Sentences) Act 1999* as follows—

- (a) to enable the Commissioner of Corrective Services (the **Commissioner**) to prohibit or restrict any person (other than the Ombudsman and the Inspector of Custodial Services) from entering or visiting a correctional centre or other correctional premises if satisfied that it is reasonably necessary to protect the health of an inmate, any other person or the public from the public health risk posed by the COVID-19 pandemic,
- (b) to enable the Commissioner to grant parole to certain inmates belonging to a class prescribed by the regulations if satisfied that releasing the inmate on parole is reasonably necessary because of the risk to public health or to the good order and security of correctional premises arising from the COVID-19 pandemic.

The provisions apply for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Crimes (Domestic and Personal Violence) Act 2007 No 80

Schedule 2.6 provides that the making of a provisional order (being an interim apprehended domestic violence order or an interim apprehended personal violence order) under the *Crimes (Domestic and Personal Violence) Act 2007* is taken to be an application for a final apprehended violence order or an interim court order. The provisional order must direct the defendant to appear at an appropriate court on a specified date for the hearing of the application. This date must be the next date on which the matter can be listed on a domestic violence list at an appropriate court, but must be no more than 28 days after the making of the order.

The proposed amendment temporarily extends that 28-day period to 6 months to take into account that matters may not be listed for an extended period because of the COVID-19 pandemic. If a matter can be listed, the obligation to list the matter on the next available date remains in place.

Electronic Transactions Act 2000 No 8

Schedule 2.7 provides that regulations may be made under various specified Acts in relation to alternative arrangements for signing and witnessing documents for the purposes of responding to the COVID-19 pandemic.

Regulations may only be made if Parliament is not sitting (or is not likely to sit within 2 weeks) and the arrangements provided by the regulations are in accordance with the advice of the Minister for Health and Medical Research or the Chief Health Officer. The regulations expire 6 months after they commence, unless earlier resolved by Parliament.

The proposed amendments to the *Electronic Transactions Act 2000* are repealed 6 months after they commence, unless the regulations prescribe a later date for the repeal, not being more than 12 months after the amendments commence.

Environmental Planning and Assessment Act 1979 No 203

Schedule 2.8 permits the Minister for Planning and Public Spaces to make an order that authorises development to be carried out on land without the need for any approval under the Act or consent from any person. The Minister may make the order only if the Minister is reasonably satisfied that the making of the order is necessary to protect the health, safety and welfare of members of the public. **Schedule 2.8** also provides that a requirement to make a document available at a physical location such as an office is satisfied if the document is made available on the NSW planning portal or any other website approved by the Planning Secretary.

The provisions apply for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Evidence (Audio and Audio Visual Links) Act 1998 No 105

Schedule 2.9 applies temporary modifications to the *Evidence (Audio and Audio Visual Links) Act 1998* to facilitate the greater use of audio and audio visual links in relation to trials because of the COVID-19 pandemic.

Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 2.10 enables the Secretary of the Ministry of Health to exempt particular premises used for the storage and distribution of vaccines and medicines from some or all of the provisions of Schedule 5F to the *Health Practitioner Regulation National Law (NSW)*, which are NSW-specific provisions relating to pharmacies, for a specified period.

Jury Act 1977 No 18

Schedule 2.11 enables a sheriff to exempt a person from jury selection if, in the sheriff's opinion, there is good cause for the exemption, including safety and welfare considerations relating to the person or the community at large. The proposed amendment applies for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Local Government Act 1993 No 30

Schedule 2.12[1] and [2] enable the Minister for Local Government to postpone the requirements relating to the holding of ordinary council elections and by-elections if the Minister believes that it is reasonable to do so. The provisions are repealed after 12 months.

Schedule 2.12[3] removes the need for persons to attend council meetings. The meetings may be held remotely by audio visual link or in any other manner approved by the Minister for Local Government. Members of the public are to be given access to the meeting by webcast or in any other manner approved by the Minister. The provision applies for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period. **Schedule 2.12[3]** also contains a power for regulations under the *Local Government Act 1993* to modify the application of that Act for the purposes of responding to the public health emergency caused by the COVID-19 pandemic.

Mental Health Act 2007 No 8

Schedule 2.13 provides that the Mental Health Review Tribunal may conduct a mental health inquiry by telephone, adjourn a mental health inquiry for up to 28 days or extend a community treatment order by up to 3 months if the Tribunal considers that it is necessary to do so because of the COVID-19 pandemic. The provision applies for a minimum period of 6 months and may apply for a total of 12 months if the regulations prescribe a longer period.

Motor Accident Injuries Act 2017 No 10

Schedule 2.14 provides that a second or subsequent certificate of work provided by an injured person to the insurer in relation to the payment of weekly statutory benefits does not have to be given by the treating medical practitioner provided the certificate complies with the Motor Accident Guidelines.

Private Health Facilities Act 2007 No 9

Schedule 2.15 allows the Secretary of the Ministry of Health to exempt a private health facility licensee or class of licensees from certain licence conditions and requirements, if satisfied that it is reasonably necessary because of the COVID-19 pandemic and that patient care and safety are to be properly maintained. The provision is repealed after 12 months.

Public Health Act 2010 No 127

Schedule 2.16[1] and [2] provide that a public health order made by an authorised medical practitioner in respect of a person relating to the COVID-19 pandemic remains in force for the period specified in the order, rather than expiring after 3 business days and then requiring the NSW Civil and Administrative Tribunal to confirm the order.

Schedule 2.16[3] enables a police officer to arrest a person if the police officer suspects on reasonable grounds that the person is contravening a public health order relating to the COVID-19 pandemic.

Schedule 2.16[4] and [5] provide that a police officer is an authorised officer under the *Public Health Act 2010* for the purposes of requiring a person suspected of contravening a provision of the Act to provide the person's name and address and for the purposes of issuing penalty notices.

Schedule 2.16[5] also enables the Minister for Health and Medical Research or the Minister for Mental Health, Regional Youth and Women to impose conditions on the exercise of an authorised officer issuing a penalty notice.

The provisions are repealed after 12 months.

Retail Trading Act 2008 No 49

Schedule 2.17 enables a supermarket to open on Good Friday, Easter Sunday and Anzac Day in 2020, only if the supermarket is staffed only by persons who have freely elected to work on those days.

Subordinate Legislation Act 1989 No 146

Schedule 2.18 keeps a number of regulations in force for a further period of 1 year (or 6 months, in the case of the *Environmental Planning and Assessment Regulation 2000*) after the date on which they would otherwise be repealed by the *Subordinate Legislation Act 1989*. However, any of the regulations may be repealed sooner by other legislation. The proposed amendment is necessary as the regulations have each been postponed on at least 5 occasions and are due to be repealed by the *Subordinate Legislation Act 1989* on 1 September 2020.

Workers Compensation Act 1987 No 70

Schedule 2.19 relates to a certificate of work capacity provided by a worker to the insurer in relation to the payment of weekly income support payments under the *Workers Compensation Act 1987*. Currently a certificate of capacity is required to be given by a medical practitioner in a form approved by the State Insurance Regulatory Authority. The proposed amendment maintains that requirement for the first certificate and requires a second or subsequent certificate to comply with the requirements prescribed by the regulations.