



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE COVID-19 PANDEMIC RESPONSE

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Submission Cover Sheet

COVID-19 pandemic response

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Committee Secretary
Select Committee on the COVID-19 pandemic response
ACT Legislative Assembly
Via LACommitteeCOVID19@parliament.act.gov.au

18 May 2020

Dear Committee Secretary,

Submission to Select Committee on COVID-19 pandemic response

1. The ACT Human Rights Commission welcomes the opportunity to contribute to the Select Committee's inquiry into the ACT Government's response to the ongoing COVID-19 public health emergency. We consider that the Committee's work has an essential role to play in providing accountability, transparency and scrutiny of the government's response for the ACT community.
2. Many of the measures implemented by government, in declaring the public health emergency and mitigating its broader social and economic impacts, engage and limit rights protected in the *Human Rights Act 2004* (HR Act). The protection of lives and health – including those of our most vulnerable – is undoubtedly a legitimate reason to limit human rights. Vigilant scrutiny and transparency, however, must be prioritised now more than ever to ensure all elements of the government's response are lawful, necessary and proportionate.
3. Our submission accordingly addresses the government's approach to human rights during the COVID-19 emergency and whether appropriate precautions have been taken to ensure that human rights are duly protected during this crisis. Our submission focuses on the following aspects:
 - i) oversight of delegated legislation;
 - ii) implementation of public health directions; and
 - iii) adequacy of safeguards for the use of the COVIDSafe tracing application in the ACT.
4. We also briefly highlight other emerging issues of concern at the conclusion of the submission, regarding which we would be pleased to address to the Committee in a later submission.

(i) Oversight of delegated legislation

5. As the Committee will be aware, the ACT Government has adopted a wide range of legislative measures to respond to the COVID-19 emergency, including the rapid development and passage of new legislation as well as greater reliance on subordinate and delegated laws enacted by the executive.

6. The COVID-19 Emergency Response Bill 2020,¹ and the COVID-19 Emergency Response Legislation Amendment Bill 2020,² which were both passed on the same day that they were introduced in the Legislative Assembly (on 2 April and 7 May respectively), give the executive and statutory officer-holders broad powers to modify existing laws or to extend the operation of emergency measures through delegated legislation.
7. In addition to these new powers, it also appears that there has been an increased reliance on delegated legislation, which, in the context of a public health emergency, should warrant enhanced scrutiny and accountability. Delegated legislation has been employed during this crisis to address matters that would, under normal circumstances, be enacted through primary legislation after considered stakeholder consultation, parliamentary oversight and debate in the Legislative Assembly.
8. As of 11 May 2020, 198 pieces of delegated legislation, comprising 10 regulations, 67 disallowable instruments and 121 notifiable instruments have been made in the 56 days since the public health emergency was first declared on 16 March 2020. Of these, 74 appear to respond to the COVID-19 pandemic.³ COVID-19-related instruments thus account for almost 40% of all the delegated legislation made in this period. Tables 1-3 at [Appendix 1](#) provide a link to each COVID-related instrument or subordinate law notified from 16 March – 11 May 2020.
9. By its nature, emergency legislation, including delegated legislation, being made rapidly in response to the COVID-19 pandemic is likely to engage human rights. A human rights-based approach in a public emergency context requires that such laws and preventative measures be accountable to considered and responsive scrutiny mechanisms. Such oversight plays a vital role in ensuring that any preventative measures are circumscribed to their purpose, feature adequate safeguards, mitigate against unforeseen consequences and, in turn, warrant public confidence. Human rights scrutiny is especially essential where delegated legislation determines the content of obligations that attract fines or potential imprisonment for non-compliance.
10. The ACT Chief Health Officer has, as of 11 May 2020, published 17 emergency directions under ss 120-121 of the *Public Health Act 1997*; with 6 directions remaining in force. Failure by an individual to comply with a direction, without reasonable excuse, is an offence punishable by a fine of \$8,000, or \$1,000 for an infringement notice offence under the *Magistrates Court (Public Health (COVID-19 Infringement Notices) Regulation 2020*. The public health emergency directions made by the CHO, entail significant limitations of human rights including self-isolation for people who have been diagnosed with COVID-19; controls on visiting residential aged care facilities; mandatory quarantine of people returning from overseas; closure of non-essential businesses etc; and limitations on the number of people at indoor and outdoor gatherings, including at residential premises. While the restrictions have been subject to some easing in recent days, they will nevertheless be consistent with the HR Act only insofar as they can be shown to be proportionately alleviating the public health risk to the ACT posed by COVID-19.
11. The Commission of course accepts that quick, decisive and effective action by ministers and specialist statutory officeholders has been necessary to limit the spread of the virus, implement preventative measures and curtail negative economic and social fallout, and that the executive should be duly authorised to take such action. We also recognise the iterative nature of delegated instruments (especially public health directions), which can be quickly revised where circumstances change or issues are identified after they have taken effect. This flexibility does not, however, detract from the argument

¹ See, for example, amendments to the *Evidence (Miscellaneous Provisions) Act 1991* (at Part 1.5), the *Prohibited Weapons Act 1996* (at Part 1.17), the *Leases (Commercial and Retail Act 2001* (at Part 1.11) and the *Residential Tenancies Act 1997* (at Part 1.18).

² See for example, s 153B of the *Education Act 2000*, s 19(4) of the *Rates Act 2004*, s 120(4) of the *Associations Incorporation Act 1991* etc.

³ We have counted as a COVID-related instrument any instrument that, among its objects, aims to address COVID-19-related issues or otherwise appears to have been precipitated by COVID-19. This has generally been self-evident from the instrument's title or, where available, its Explanatory Statement.

for consistent and enhanced oversight. On the contrary, ongoing scrutiny of reactive and evolving delegated legislation must be available to ensure that these instruments have appropriately considered and are consistent with relevant human rights.

12. There are some obstacles to enhancing scrutiny within the current system. In performing its legislative scrutiny role, the Standing Committee on Justice and Community Safety is empowered to consider whether legislative instruments that are subject to disallowance or disapproval unduly subordinate rights, liberties or obligations to unreviewable decisions. Its mandate does not, however, extend to notifiable instruments nor does it expressly include specific consideration of whether instruments under its purview are consistent with human rights.
13. Moreover, it is not always clear on the face of a regulation or instrument that agencies have had regard to the potential impact on individuals' human rights during development. Examination of human rights implications is therefore aided by welcome, albeit often cursory, analysis in accompanying explanatory material for regulations and disallowable instruments. Such explanatory material is not, however, required for notifiable instruments, such as the public health directions. Though select amendments in the COVID-19 Emergency Response Bills require that certain notifiable instruments address whether and/or how human rights were considered in their development,⁴ limited public justification of limitations may here delay timely or considered human rights scrutiny. As indicated by Table 3 at Appendix 1, several COVID-19 related notifiable instruments may significantly engage human rights.
14. In view of these considerations, we recommend that where emergency measures are introduced by way of delegated legislation, they should be accompanied by a statement of compatibility with human rights and should, at least for the time being, be subject to oversight by the Committee or the Standing Committee on Justice and Community Safety in its legislative scrutiny role. To these ends, the Committee may elect to:
 - i) Affirm that the human rights scrutiny of delegated legislation during the COVID-19 public health emergency is appropriately situated within its broad remit and, if appropriate, seek the assistance of the Justice and Community Safety Committee (Legislative Scrutiny Role) in exercising such oversight.
 - ii) Recommend the ACT Government direct that all delegated legislation made in response to COVID-19 (including notifiable instruments) include a statement of compatibility outlining whether and how the instrument is compatible with human rights; and
 - iii) to ensure appropriate and adequate oversight by the Legislative Assembly, recommend that delegated legislation made in response to COVID-19 be in the form of disallowable instruments, rather than notifiable instruments.

(ii) Implementation of public health emergency directions

15. As noted above, public health emergency directions are not subject to the usual human rights scrutiny requirements under the HR Act, and as notifiable instruments, nor are they afforded Assembly oversight. We are concerned that their implementation has also been largely lacking in transparency.
16. We commend the measured approach that ACT Policing has taken in enforcing compliance with the public health directions in the ACT, which focuses on educating and providing guidance in the first instance before applying graduated sanctions on repeated non-compliance. As of 12 May 2020, former Chief Police Officer, Ray Johnson AO, confirmed that there have been no infringement notices issued, and only a handful of formal cautions given (largely in the context of private gatherings).⁵ We are pleased

⁴ See, for example, new s 19(5) of the *Rates Act 2004* and new s 216G of the *Corrections Management Act 2007*.

⁵ ABC Radio Canberra, *Mornings with Adam Shirley: Interview with ACT Chief Police Officer Ray Johnson*, 12/05/2020, available at: <https://www.abc.net.au/radio/canberra/programs/mornings/mornings/12218002> (from 1:34)

that, as a result of this operating philosophy, enforcement of public health directions in the ACT appears to have been relatively restrained compared to reported figures in other Australian jurisdictions.⁶

17. However, despite this careful approach, protection of rights services, like the Commission and ACT Ombudsman, are continuing to field and refer enquiries about what behaviours may be reasonably excused or permitted by the directions. Even as restrictions ease, such enquiries suggest that there is still ongoing confusion in the community about their application, especially in view of differing restrictions in neighbouring New South Wales (e.g. essential travel model).
18. In our view, this uncertainty underscores the need for greater public guidance and reporting about enforcement of the CHO's directions. Publication of clear public guidance and training available to ACT Policing officers would, in our view, provide an important safeguard against arbitrary or uneven application by establishing a clear expectation about their enforcement. Regular reporting of numbers of infringement notices, cautions and compliance checks would further promote accountability and promote public confidence.
19. Use of enforcement powers (e.g. entry, move-on, evacuation powers etc.) under the directions should also be made public in a timely manner and include basic socio-demographic indicators so that any disproportionate impact on marginalised groups, such as people with disability, older people, Aboriginal people, or people who are homeless or are victims of family violence can be assessed and corrected. We believe these safeguards are important for ensuring that the implementation of CHO's directions is consistent, proportionate and otherwise in line with community expectations.
20. Care must also be taken to ensure that emergency measures facilitate monitoring of vulnerable people in private institutional settings, such as aged care, and are only as excessive as strictly necessary. We are aware of reports of certain residential aged care providers in the Territory adopting a conservative approach to implementing the directions. In some cases, residents have been limited to weekly care and support visits by family, contrary to government advice to allow daily visits and exemptions in the relevant public health emergency direction.⁷ For this reason, on 11 May 2020, aged care and consumer advocacy organisations endorsed and implemented an Industry Code for Visiting Residential Aged Care Homes During COVID-19.⁸ In assessing institutions' compliance, there is therefore a need for government to ensure preventative measures do not unjustifiably limit individuals' rights (e.g. to family, association etc.) contrary to public health advice.
21. In view of these considerations, the Commission submits that the Committee:
 - i) Recommend that ACT Policing make public any guidance or directions it has provided to officers to inform their enforcement of public health directions to enable assessment of whether such guidance is sufficient, updated and accurate while also establishing clear community expectations about compliance; and
 - ii) Recommend that ACT Policing, ACT Health and Access Canberra publish weekly de-identified data about compliance activities taken under any public health emergency directions, including the number of infringement notices or formal cautions issued and compliance checks conducted as well as basic socio-demographic indicators of affected individuals or businesses.

⁶ For example, Victoria has reportedly issued 2,894 infringement notices since a state of emergency was declared on March 16, totalling \$4,780,888 (COVIDPolicing Weekly Roundup #5, covidpolicing.org.au [14 May 2020] <<https://covidpolicing.org.au/summary/2020-05-14/covidpolicing-weekly-roundup-5/>>).

⁷ See *Public Health (Residential Aged Care Facilities) Emergency Direction 2020* (repealed), Part 1, para 1(d) <<https://www.legislation.act.gov.au/ni/2020-168/>>

⁸ Industry Code For Visiting Residential Aged Care Homes During Covid-19, Council on the Ageing, 11 May 2020 <<https://www.cota.org.au/wp-content/uploads/2020/05/Industry-Code-RACH-Visits-during-COVID-10-FINAL-as-at-11-May-2020.pdf>>

(iii) COVIDSafe contact tracing application

22. The collection and use of personal information through the recently introduced COVIDSafe contact tracing application will inevitably have consequences for individuals' right to privacy. The Commission therefore welcomes the passage of the *Privacy Amendment (Public Health Contact Information) Act 2020* in the Commonwealth Parliament on 14 May 2020, which seeks to regulate the use of such information. The Act replaces the temporary legislative framework initially introduced by ministerial determination under the *Biosecurity Act 2015* (Cth).⁹
23. The Commonwealth Government's move to enact privacy protections in primary legislation, and not just by executive order, is an important safeguard. We are also pleased to see that the Act contains provisions that seek to strengthen the protections contained in the initial ministerial determination. These include:
- Provisions that enable individuals to make complaints to the federal privacy commissioner for privacy breaches, rather than relying on the government to bring criminal proceedings; and
 - Provisions that require consent from the registered COVIDSafe user (as opposed to anyone with control of the mobile phone) before data can be uploaded to the central data store, if the user tests positive for COVID-19.
24. The Act also confirms that information acquired through the COVIDSafe application will only be used for the purposes of contact tracing by state and territory health authorities, and any use of the information for non-prescribed purposes will be prohibited.
25. While these are important safeguards, some gaps may still remain. As presently defined, restrictions on the use of 'COVID app data'¹⁰ do not appear to extend to information that is derived or transformed from data generated by the application and stored on a mobile device. For example, where encrypted contact data is transmitted from a person's device to the National COVIDSafe Data Store (NCDS) and subsequently decrypted or otherwise transformed, it is uncertain whether it will still satisfy this definition.¹¹ Decrypted contact logs provided to ACT health authorities by the NCDS for the purposes of contact tracing may potentially be used for other purposes without breaching the new offence in s 94D of the *Privacy Act 1988* (Cth).
26. Moreover, s 94D(5)(c) confirms that the Act's protections do not extend to any information collected or received by ACT health authorities in the process of contact tracing, including where that contact tracing has been facilitated by the COVIDSafe application. Where ACT health authorities, in the process of contact tracing, verify and record personal details that were originally received from the NCDS, these same details will be taken to constitute a new record. Information recorded in this way will be protected only by applicable ACT privacy laws, which permit disclosure where authorised by an Australian law or court order.
27. We consider that complementary Territory laws may be necessary or desirable insofar as there is a need to supplement the Commonwealth framework. In this regard, the explanatory statement to the Commonwealth's Privacy Amendment (Public Health Contact Information) Bill 2020 explicitly recognises that:

⁹ *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Public Health Contact Information) Determination 2020* ('Determination'), 25 April 2020, with Explanatory Memorandum <<https://www.legislation.gov.au/Details/F2020L00480/Download>>

¹⁰ Clause 6(3) of the Determination and s 94D(5) of the Act.

¹¹ Cf. The explanatory memorandum to the bill states, at [57], that encryption and decryption should not be material in determining whether data is 'COVID app data'.

“State and Territory health authorities will put in place additional controls and procedures to ensure that only approved employees or personnel may access data in the National COVIDSafe Data Store for the purpose of contact tracing.”¹²

28. Although all States and Territories have now, as of 13 May 2020, signed data agreements containing rules governing their usage of COVID app data to contact tracing, it is unlikely these agreements among Australian Governments will be legally enforceable nor have they been publicly released.
29. On 23 April 2020, the Commission wrote to the ACT Attorney-General and ACT Minister for Health about this issue. It is the Commission’s view that Government should be called to report on whether it believes the Commonwealth framework ensures adequate protection for individuals’ privacy such as to reasonably justify the absence of complementary territory legislation about use of COVID app data in the ACT. Providing express legislative guidance about the potential use and disclosure of contact data by ACT health authorities may valuably serve to reassure Canberrans about installing the application and contribute to a greater uptake that better protects the ACT community.
30. We therefore recommend the Committee enquire into what steps the ACT Government has taken to assess if the Commonwealth framework adequately protects individual privacy and explain whether and why existing ACT privacy laws or any agreement with the Commonwealth provides sufficient protection for any personal information that is or has been obtained by virtue of the COVIDSafe application.

Other issues and observations

31. The Commission is aware of emerging local issues arising from concern about or responses to COVID-19, which include:
 - **Mental health presentations:** A significant increase in the number of mental health-related presentations to Canberra Hospital and a corresponding need for greater information about availability and access to mental health services in easy English.
 - **Access to tribunal:** Difficulties experienced by the Public Advocate in timely and reliable access to mental health hearings through the ACT Civil and Administrative Tribunal by teleconference.
 - **Domestic and family violence:** ACT Courts have reported a decrease in applications for family violence orders and ACT Policing have also reported a significant drop in the reporting of family-violence related offences. Despite this, we are aware of a 27% increase in requests for assistance to the Domestic Violence Crisis Service. Victim Support ACT at the Commission, along with other frontline agencies including the YWCA and Beryl Women’s Refuge, are reporting a small increase in overall demand in addition to an increasing workload attributable to escalating safety concerns for existing clients.
 - **Residential tenancies and occupancy agreements:** We are aware of concerns that the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* does not afford sufficient protections to people on occupancy agreements. In addition, because the measures are focused on prohibiting terminations solely on the grounds of rent arrears, there is a risk that lessors may resort to using other grounds to seek termination under the *Residential Tenancies Act 1997* (eg, no-cause terminations, or on the grounds that the lessor (or a family member) intends to move in, sell, or reconstruct, renovate or make major repairs significant repairs to the property).
 - **Age-appropriate information:** A number of young people have raised concerns about peers who are experiencing vulnerability for the first time as a result of COVID-19 (for example, young people who are newly experiencing homelessness, potentially due to lost employment), stating that there has been little information specifically adapted to help children and young people understand COVID-19, what is required of them and where they can access support if needed. While the direct health risks

¹² Explanatory Memorandum, Privacy Amendment (Public Health Contact Information) Bill 2020, [20].

to children and young people appear to be low, they are still at risk of contracting the virus and of transmitting it to others. These risks are exacerbated in situations where they are unable to access or understand information due to their circumstances.

32. We would be happy to provide more detailed information to the Committee on these issues in a further submission should this be considered helpful.

Yours sincerely,



Jodie Griffiths-Cook

A/g President and Human Rights
Commissioner

Public Advocate and Children
and Young People Commissioner



Karen Toohey

Discrimination, Health Services,
and Disability and Community
Services Commissioner



Heidi Yates

Victims of Crime Commissioner

APPENDIX 1 – TABLE 1: Subordinate Laws (16 March – 11 May 2020)

No.	Instrument	Title	Description	Notification	Rights engaged?	ES addresses rights?
1	SL2020-12	Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020	Creates an infringement notice scheme that provides an alternative to prosecution when a person fails to comply with a direction of the Chief Health Officer where it is deemed that an infringement notice imposing a monetary fine is a sufficient penalty. The purpose of the scheme is to encourage compliance with the directions of the Chief Health Officer in relation to the COVID-19 emergency.	2-Apr-20	Fair trial (s 21)	Broadly
2	SL2020-14	Road Transport (Driver Licensing) Amendment Regulation 2020 (No 1)	Makes amendments to the driver licensing system including the periods for which a driver licence or renewal remains in force. The reforms ensure that licence holders are not disadvantaged at this time due to the necessary suspension of Government and other Services.	16-Apr-20	Right to life (s 9) - indirectly	No
3	SL2020-15	Liquor Amendment Regulation 2020 (No 1)	Provides that the Commissioner may waive a fee payable in relation to a licence or permit if an emergency declaration under the Public Health Act 1997, section 119 (Emergency declarations) is in force; or was in force at any time during the preceding 12 months; and the commissioner considers the waiver is appropriate because of the financial impact of the emergency declaration on the business carried on under the licence or permit.	16-Apr-20	Equality and non-discrimination (s 8), Fair hearing (s 21) - potentially	No
4	SL2020-17	Unit Titles (Management) Amendment Regulation 2020 (No 1)	Introduces an exemption for all units plans from conducting face to face meetings during a public health emergency. The regulation will only apply for the duration of the public health emergency, as declared under the Public Health Act 1997.	30-Apr-20	Right to life (s 9)	Yes

5	SL2020-18	Working with Vulnerable People (Background Checking) Amendment Regulation 2020 (No 1)	Exempts Australian Defence Force (ADF) personnel, and public employees of Commonwealth, state or territory entities, from registration under the Working with Vulnerable People (WWVP) scheme, while engaged in 'regulated activities' on behalf of the Territory for the purposes of supporting the COVID-19 emergency. A person will be exempt from registration and can engage in regulated activities until the Regulation expires (12 months from commencement).	5-May-20	Right to liberty (s 18), Rights of children (s 11(2))	Yes
6	SL2020-9	Court Procedures Amendment Rules 2020 (No 2)	Provides for a greater discretion in a Registrar, in consultation with the Heads of Jurisdiction to open or close the registry outside of standard operating times.	20-Mar-20	Fair trial (s 21)	No

APPENDIX 1 – TABLE 2: Disallowable Instruments (16 March – 11 May 2020)

No.	Instrument	Title	Description	Notification	Rights engaged?	ES addresses rights?
1	DI2020-27	Road Transport (Public Passenger Services) Hire Car Service—Service Standards 2020 (No 1)	Amends Part 1 and Part 5 of the hire care service standards to introduce requirements in relation to the cleaning of vehicles and equipment.	2-Apr-20	Right to life (s 9) - indirectly	No
2	DI2020-29	Road Transport (Public Passenger Services) Rideshare Service—Service Standards 2020 (No 1)	Amends Part 1 of the rideshare service standards to introduce requirements in relation to the cleaning of vehicles.	2-Apr-20	Right to life (s 9) - indirectly	No
3	DI2020-30	Road Transport (Public Passenger Services) Taxi Service —Service Standards 2020 (No 1)	Amends Part 1 of the taxi service service standards to introduce requirements in relation to the cleaning of vehicles.	2-Apr-20	Right to life (s 9) - indirectly	No

4	DI2020-31	Road Transport (Public Passenger Services) Transport Booking Service—Service Standards 2020 (No 1)	Amends Part 2 of the service standards to introduce requirements for a transport booking service to ensure that affiliated drivers and affiliated operators comply with applicable service standards that apply to the regulated service they are affiliated driver for (for example, rideshare services, taxi services)	2-Apr-20	Right to life (s 9) - indirectly	No
5	DI2020-44	Liquor (Public Health Emergency—Permit Fee Waiver) Declaration 2020	Retrospectively, from 23 March, waives fees payable for commercial liquor permits listed at item 507 (1) (c) in the Fees Determination in response to the Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (the closure direction) [NI2020-181].	23-Apr-20	Equality and non-discrimination (s 8), Fair hearing (s 21) - potentially	No
6	DI2020-45	Liquor (Public Health Emergency—Licence Fee Waiver) Declaration 2020	Retrospectively, from 23 March, waives fees payable for the following liquor licences listed in the Fees Determination in response to the Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (the closure direction) [NI2020-181].	23-Apr-20	Equality and non-discrimination (s 8), Fair hearing (s 21) - potentially	No
7	DI2020-46	Residential Tenancies (COVID-19 Emergency Response) Declaration 2020	Introduces a moratorium on rental evictions and/or increases for 3 months and allows for the Minister to extend that period up to a further 3 months. Only applies to those households that have been impacted by COVID-19. Also prohibits tenants from being added to residential tenancy databases due to a breach of residential tenancy agreements for failure to pay rent during the moratorium period, where the tenant is a member of a COVID-19 impacted household.	21-Apr-20	Right to life (s 9), right to home (s 12)	Yes

8	DI2020-55	Health (Fees) Determination 2020 (No 1)	Retrospectively, from 21 January 2020, provides that Medicare non-eligible patients requiring either treatment for COVID-19 or public health services relating to COVID-19 during the COVID-19 period are to be provided this medical care or services including pathology, diagnostic, pharmaceutical and outpatient care in ACT public health services free of charge.	24-Apr-20	Equality and non-discrimination (s 8)	No
9	DI2020-56	Building (General) Emergency Hospital Exemption 2020 (No 1)	Exempts the temporary emergency hospital department being constructed on Block 9, Section 33, Garran from compliance with specific parts of the Building Act for a stated period of not longer than one year. The building work remains subject to all other building laws.	23-Apr-20	No	Yes
10	DI2020-88	Medicines, Poisons and Therapeutic Goods (Vaccinations by Pharmacists) Direction 2020 (No 2)	Instructs that a pharmacist or intern pharmacist may administer a vaccine without prescription if they comply with the Pharmacist Vaccination Standards (Vaccination Standards) imposed by the Chief Health Officer at Schedule 1 of this instrument. Temporarily amends pharmacist training requirements in view of the COVID-19 emergency and in recognition of the additional demand on constrained resources.	4-May-20	Right to life (s 9)	No
11	DI2020-92	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020	Introduces a requirement for good faith negotiations between commercial landlords and tenants with regard to the National Code of Conduct for Small to Medium Enterprises commercial leasing principles during COVID-19.	11-May-20	Equality and non-discrimination (s 8)	Yes

APPENDIX 1 – TABLE 3: Notifiable Instruments (16 March – 11 May 2020)

No.	Instrument	Title	Description	Notification	Rights engaged?	ES addresses rights?
1	NI2020-153	Public Health (Emergency) Declaration 2020 (No 1)	Declares that a public health emergency exists for five days in respect of the public health risk to the whole of the ACT community posed by coronavirus disease 2019 (COVID 19), caused by the novel coronavirus SARS-CoV-2	16-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
2	NI2020-162	Public Health (Indoor Gatherings) Emergency Direction 2020	Directs that, to alleviate the public health emergency, a person must not allow or organise an indoor gathering of greater than 100 people on premises in the ACT from 5:00pm 19 March until the end of the current public health emergency.	19-Mar-20	Movement (s 13), Association (s 15)	Nil - no ES
3	NI2020-163	Public Health (Outdoor Gatherings) Emergency Direction 2020	Directs that, to alleviate the public health emergency, a person must not allow or organise an outdoor gathering on premises in the ACT from 5:00pm 19 March until the end of the current public health emergency.	19-Mar-20	Movement (s 13), Association (s 15) etc.	Nil - no ES
4	NI2020-164	Public Health (Returned Travellers) Emergency Direction 2020	Directs that, from 19 March 2020, a person who enters the ACT must self-quarantine for 14 days except in exceptional circumstances.	19-Mar-20	Liberty (s 18), Association (s 15) etc.	Nil - no ES
5	NI2020-165	Public Health (Emergency) Declaration Extension 2020	Extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	20-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
6	NI2020-167	Public Health (Emergency) Declaration Further Extension 2020 (No 1)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	22-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
7	NI2020-168	Public Health (Residential Aged Care Facilities) Emergency Direction 2020	Restricts access to residential aged care facilities to limit the spread of Novel Coronavirus 2019 (2019-nCoV) within a particularly vulnerable population.	23-Mar-20	Right to life (s 9), Family (ss 11 + 12), Movement (s 13), Association (s 15)	Nil - no ES

8	NI2020-169	Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020	Prohibits the operation of non-essential business and undertakings from 11:59pm 23 March in order to limit the spread of Novel Coronavirus 2019 (2019-nCoV).	23-Mar-20	Equality and non-discrimination (s 8) - indirectly	Nil - no ES
9	NI2020-172	Public Health (Emergency) Declaration Further Extension 2020 (No 2)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	24-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
10	NI2020-173	Housing Assistance Public Rental Housing Assistance Program (Exempt Income and Assets) Determination 2020 (No 2)	<p>Determines that any one-off payments or other payments (including the Coronavirus Supplement), concessions or rebates made by the Commonwealth Government or Australian Capital Territory as part of economic responses to the COVID-19 emergency are to be disregarded for the purposes of the Rental Housing Assistance Program.</p> <p>Also determines that any withdrawals of superannuation up to a value of \$10,000 in 2019-20 and \$10,000 in 2020-21 under the Commonwealth Government's early access to superannuation measure will be disregarded for the purposes of the Program.</p>	25-Mar-20	Right to home (s 12)	Nil - no ES
11	NI2020-176	Public Health (Emergency) Declaration Further Extension 2020 (No 3)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	26-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
12	NI2020-177	Public Health (Self-Isolation) Emergency Direction 2020	From 11:59pm 24 March 2020, requires persons diagnosed with coronavirus disease 2019 (COVID-19), caused by the novel coronavirus SARS-CoV-2, to self-isolate in order to limit the spread of COVID-19.	25-Mar-20	Life (s 9), Liberty (s 18), Association (s 15) etc.	Nil - no ES
13	NI2020-178	Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 2)	From 11:59pm 25 March 2020, prohibits the operation of non-essential businesses and undertakings in order to limit the spread of coronavirus disease 2019 (COVID-19), caused by the novel coronavirus SARS-CoV-2.	25-Mar-20	Equality and non-discrimination (s 8) - indirectly, religion (s 14), family (s 12), association (s 15)	Nil - no ES

14	NI2020-180	Cemeteries and Crematoria (Medical Referees) Appointment 2020 (No 1)*	Appoints the people, each being a doctor for a continuous period of not less than five years, described in schedule 1 as medical referees for the purposes of the Cemeteries and Crematoria Regulation 2003.	30-Mar-20	Right to life (s 9) - indirectly	Nil - no ES
15	NI2020-181	Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 3)	From 11:59pm 26 March 2020, prohibits the operation of non-essential businesses and undertakings in order to limit the spread of coronavirus disease 2019 (COVID-19), caused by the novel coronavirus SARS-CoV-2.	27-Mar-20	Equality and non-discrimination (s 8) - indirectly, religion (s 14), family (s 12), association (s 15)	Nil - no ES
16	NI2020-183	Public Health (Returned Travellers) Emergency Direction 2020 (No 2)	From 6:00am 28 March 2020, directs that a person who enters the ACT from overseas must be quarantined in designated premises until cleared by an authorised medical officer except in exceptional circumstances.	28-Mar-20	Liberty (s 18), Association (s 15), Humane treatment while deprived of liberty (s 19) etc.	Nil - no ES
17	NI2020-184	Public Health (Emergency) Declaration Further Extension 2020 (No 4)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	28-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
18	NI2020-185	Corrections Management (Use of Audio-Visual Equipment for Visits) Operating Procedure 2020*	Instructs ACT Corrective Services staff on the temporary audio-video measures to permit detainee contact with approved visitors.	30-Mar-20	Family (ss 11 + 12), association (s 15)	Nil - no ES
19	NI2020-188	Public Health (Emergency) Declaration Further Extension 2020 (No 5)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	30-Mar-20	Right to life (s 9), other rights consequentially	Nil - no ES
20	NI2020-189	Housing Assistance Delegation 2020 (No 1)*	Delegates all but select functions of the Commissioner for Social Housing under the Housing Assistance Act 2007 which are specified in column 2 of the attached schedule to each person holding or performing the duties of an office in the ACT Public Service specified in column 3 of the schedule	2-Apr-20	No	Nil - no ES

21	NI2020-190	Housing Assistance Housing Asset Assistance Program Delegation 2020 (No 1)*	Delegates all functions of the Commissioner for Social Housing (other than making determinations) under the Housing Assistance Housing Asset Assistance Program 2008 (No 1) as approved in DI2008–180 which are specified in column 2 of the attached schedule to each person holding or performing the duties of an office in the ACT Public Service specified in column 3 of the schedule.	2-Apr-20	No	Nil - no ES
22	NI2020-191	Housing Assistance Public Rental Housing Assistance Program Delegation 2020 (No 1)*	Delegates all functions of the Commissioner for Social Housing under the Housing Assistance Public Rental Housing Assistance Program 2013 which are specified in column 2 of the attached schedule to each person holding or performing the duties of an office in the ACT Public Service specified in column 3 of the schedule.	2-Apr-20	No	Nil - no ES
23	NI2020-194	Nature Conservation (Closed Reserve—Tidbinbilla Nature Reserve) Declaration 2020 (No 3)*	Declares public access to Tidbinbilla Nature Reserve, as identified by red shading in the map in schedule 1, is prohibited.	31-Mar-20	Movement (s 13)	Nil - no ES
24	NI2020-202	Public Health (Non-Essential Gatherings) Emergency Direction 2020	From 11:59pm 31 March, prohibits non-essential gatherings in residential and other premises to limit the spread of coronavirus disease 2019 (COVID-19).	1-Apr-20	Movement (s 13), Association (s 15), Family (ss 11 + 12)	Nil - no ES
25	NI2020-203	Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 4)	From 11:59pm on 31 March 2020, prohibits the operation of non-essential businesses and undertakings in order to limit the spread of coronavirus disease 2019 (COVID-19).	1-Apr-20	Equality and non-discrimination (s 8) - indirectly, religion (s 14), family (s 12), association (s 15)	Nil - no ES
26	NI2020-206	Public Health (Emergency) Declaration Further Extension 2020 (No 6)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	1-Apr-20	Right to life (s 9), other rights consequentially	Nil - no ES

27	NI2020-207	Health (Canberra Hospital Clinical Ethics Committee) Quality Assurance Committee Approval 2020 (No 1)*	Approves the Canberra Hospital Clinical Ethics Committee as a Special Purpose Quality Assurance Committee for the purpose of the consideration and provision of advice and/or recommendations around ethical matters arising in clinical practice.	6-Apr-20	No	Nil - no ES
28	NI2020-208	Public Health (Emergency) Declaration Further Extension 2020 (No 7)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	3-Apr-20	Right to life (s 9), other rights consequentially	Nil - no ES
29	NI2020-215	Public Health (Returned Travellers) Emergency Direction 2020 (No 3)	From 11:59am on 3 April 2020, requires that people (other than accompanied minors or diplomatic visa holders) must travel directly to designated premises and reside there until cleared by an authorised medical officer.	4-Apr-20	Liberty (s 18), Association (s 15), Humane treatment while deprived of liberty (s 19) etc.	Nil - no ES
30	NI2020-216	Public Health (Emergency) Declaration Further Extension 2020 (No 8)	Further extends the declared public health emergency in respect of COVID-19 for a period of 2 days.	5-Apr-20	Right to life (s 9), other rights consequentially	Nil - no ES
31	NI2020-217	Health (Canberra Health Services Medical and Dental Appointments Advisory Committee) Scope of Clinical Practice Committee Approval 2020*	Approves the Canberra Health Services Medical and Dental Appointments Advisory Committee as a scope of clinical practice committee for Canberra Health Services.	9-Apr-20	No	Nil - no ES
32	NI2020-218	Public Health (Emergency) Declaration Further Extension 2020 (No 9)	Further extends the declared public health emergency in respect of COVID-19 for a period of 90 days.	7-Apr-20	Right to life (s 9), other rights consequentially	Nil - no ES
33	NI2020-219	Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 5)	From 11:59pm on 9 April 2020, prohibit the operation of non-essential businesses and undertakings in order to limit the spread of coronavirus disease 2019 (COVID-19), caused by the novel coronavirus SARS-CoV-2	14-Apr-20	Equality and non-discrimination (s 8) - indirectly, religion (s 14), family (s 12), association (s 15)	Nil - no ES

34	NI2020-220	Cemeteries and Crematoria (Medical Referees) Appointment 2020 (No 2)*	Appoints the people, each being a doctor for a continuous period of not less than five years, described in schedule 1 as medical referees for the purposes of the Cemeteries and Crematoria Regulation 2003.	16-Apr-20	Right to life (s 9) - indirectly	Nil - no ES
35	NI2020-222	Rail Safety National Law (ACT) (Exemption) Notice 2020 (No 1)*	Exempts rail transport operators from s 114 of the Rail Safety National Law (ACT), which requires the rail operator to prepare and implement a health and fitness program for rail safety workers who carry out rail safety work.	16-Apr-20	Right to life (s 9) - indirectly, Security of person (s 18)	Nil - no ES
36	NI2020-223	Rates (Commercial Land) Exemption 2020*	Declares that the owner of a parcel of eligible land is exempt from the payment of rates in the amount of \$2,622 for the 2019-20 financial year; and if the rates for the 2019-20 financial year for that land are less than \$2,622, any amount unused or not refunded (under part 4 of the Taxation Administration Act 1999) will be carried over to exempt rates for the owner of that parcel of land for following financial years until the unused amount is exhausted.	16-Apr-20	No	Nil - no ES
37	NI2020-225	Road Transport (Safety and Traffic Management) Parking Permit Declaration 2020 (No 1)*	Declares parking permits for medical practitioners, nurses, MLAs, volunteers etc. that the Road Transport Authority may issue for the parking of a vehicle in an area designated by a permit zone sign for use by holders of that kind of parking permit.	16-Apr-20	Equality and non-discrimination (s 8) - indirectly	Nil - no ES
38	NI2020-227	Territory Records (Records Disposal Schedule – Emergency Management Records) Approval 2020 (No 1)*	Approves a records disposal schedule for records pertaining to the function of emergency management.	20-Apr-20	Freedom of expression (s 16)	Nil - no ES
39	NI2020-232	Emergencies (Service Provider) Approval 2020 (No 3)*	Approves Jason Preston trading as First Aid Services ABN 32 502 823 221 (the provider) to provide ambulance services (the services) at events in the ACT and during the COVID-19 emergency period.	20-Apr-20	No	Nil - no ES

40	NI2020-233	Emergencies (Service Provider) Approval 2020 (No 4)*	Approves First Aid Australia Pty Ltd trading as Ambulance Service Australia ABN 65 087 670 488 (the provider) to provide ambulance services (the services) at events in the ACT and during the COVID-19 emergency period.	20-Apr-20	No	Nil - no ES
41	NI2020-234	Emergencies (Service Provider) Approval 2020 (No 5)*	Approves Paramedical Services Pty Ltd trading as Paramedical Services ABN 76 054 350 275 (the provider) to provide ambulance services (the services) at events in the ACT and during the COVID-19 emergency period.	20-Apr-20	No	Nil - no ES
42	NI2020-237	Aboriginal and Torres Strait Islander Elected Body (Determination of polling day) Declaration 2020 (No 1)*	Postpones the upcoming election of the Aboriginal and Torres Strait Islander Elected Body to now start polling from 3 July 2021 for the purposes of section 29A of the Aboriginal and Torres Strait Islander Elected Body Act 2008.	24-Apr-20	Taking part in public life (s 17); Aboriginal and Torres Strait Islander cultural rights (s 27(2))	Nil - no ES
43	NI2020-238	Health (Canberra Hospital Neurology Committee) Quality Assurance Committee Approval 2020 (No 1)*	Approves the Canberra Hospital Neurology Committee as a quality assurance committee for Canberra Health Services.	23-Apr-20	No	Nil - no ES
44	NI2020-239	Health (DonateLife ACT Clinical Case Review Committee) Quality Assurance Committee Approval 2020 (No 1)*	Approves the DonateLife ACT Clinical Case Review Committee as a quality assurance committee for Canberra Health Services.	23-Apr-20	No	Nil - no ES
45	NI2020-240	Health (Canberra Hospital General Medicine Unit) Quality Assurance Committee Approval 2020 (No 1)*	Approves the Canberra Hospital General Medicine Unit Quality Assurance Committee as a quality assurance committee for Canberra Health Services.	23-Apr-20	No	Nil - no ES

46	NI2020-242	Children and Young People (Childcare Service Licence) Temporary Standards Exemption 2020 (No 3)	Grants an exemption to Noah's Ark Resource Centre Inc - Playschool to allow them to operate without a suitably qualified educator in term two of 2020 while the regular teacher is unavailable due to the COVID-19 situation. An experienced and suitably skilled educator has been selected to act as the Playschool Teacher. This Temporary Standard Exemption is valid for four months after the day it commences.	28-Apr-20	Right to education (s 27A); rights of children (s 11)	Nil - no ES
47	NI2020-246	Health (Canberra Hospital Department of Emergency Medicine Quality Assurance Committee) Quality Assurance Committee Approval 2020 (No 1)*	Approves the Canberra Hospital Department of Emergency Medicine Quality Assurance Committee as a quality assurance committee for Canberra Hospital.	28-Apr-20	No	Nil - no ES
48	NI2020-247	Health (Canberra Health Services Geriatric Medicine Morbidity and Mortality Committee) Quality Assurance Committee Approval 2020 (No 1)*	Approves the Canberra Health Services Geriatric Medicine Morbidity and Mortality Committee as a quality assurance committee for Canberra Health Services.	28-Apr-20	No	Nil - no ES
49	NI2020-248	Health (Canberra Hospital Rapid Response Committee) Quality Assurance Committee Approval 2020 (No 1)*	Approves the Canberra Hospital Rapid Response Committee as a quality assurance committee for Canberra Hospital.	28-Apr-20	No	Nil - no ES
50	NI2020-249	Administrative Arrangements 2020 (No 2)*	Makes revised administrative arrangements under the Australian Capital Territory (Self-Government) Act 1988 (Cwlth) and the Public Sector Management Act 1994 (adding the COVID-19 Emergency Response Act to the Chief Minister's portfolio).	29-Apr-20	No	Nil - no ES
51	NI2020-253	Legislation (Workers Compensation) Delegation 2020 (No 1)*	Delegates functions of the Work Safety Commissioner under the Workers Compensation Act 1951 to the persons occupying or performing the duties of the position listed in scheduled tables.	30-Apr-20	No	Nil - no ES

52	NI2020-255	Public Health (Non-Essential Gatherings) Emergency Direction 2020 (No 2)	From 1 May 2020, revises the prohibition on non-essential gatherings to allow more than two people from a single household to visit another household.	1-May-20	Movement (s 13), Association (s 15), Family (ss 11 + 12)	Nil - no ES
53	NI2020-256	Corrections Management (COVID-19 Temporary Leave) Operating Procedure 2020	Outlines procedures for the Commissioner of Corrections to grant and cancel COVID-19 leave permits to detainees during the public health emergency.	7-May-20	Right to life (s 9), liberty (s 18), fair hearing (s 21)	Nil - no ES
54	NI2020-267	Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 6)	Varies the prohibition on operation of non-essential businesses, including new risk mitigation guidance and updating requirements for weddings, funerals outdoor training, social sport, auctions, display homes and open houses to accommodate no more than 10 persons.	9-May-20	Right to life (s 9), equality and non-discrimination (s 8) - indirectly, religion (s 14), family (s 12), association (s 15)	Nil - no ES
55	NI2020-268	Public Health (Non-Essential Gatherings) Emergency Direction 2020 (No 3)	Updates the direction concerning non-essential gatherings to permit not more than 10 people to enter and remain on premises unless ordinarily resident there or members of two households that can still observe social distancing of 1 person per 4 square metres. Also permits outdoor gatherings of no more than 10 people (including for bootcamps, personal training, real estate auctions, weddings, funerals or religious ceremonies etc.)	9-May-20	Life (s 9), Movement (s 13), Association (s 15), Religion (s 14).	Nil - no ES
56	NI2020-269	Public Health (Returned Travellers) Emergency Direction 2020 (No 4)	Updates the direction concerning self-quarantine of returned travellers to, among other things, provide exemptions to self-isolation in designated premises for members of international flight crew, air ambulance/medevac crew and those who have already completed self-quarantine elsewhere in Australia, however now applies, clarifies enforcement but appears to now apply the direction to unaccompanied minors (insofar as they still enter the ACT).	9-May-20	Liberty (s 18), Association (s 15), Humane treatment while deprived of liberty (s 19), Rights of children (s 11)	Nil - no ES
57	NI2020-261	Mental Health (Facility) Approval 2020 (No 1)	Approves the COVID-19 Emergency Department on Garran Oval, adjacent to Canberra Hospital, as a mental health facility for a period of 90 days.	11-May-20	Equality and non-discrimination (s 8), Liberty and security of person (s 18), humane treatment while deprived of liberty (s 19)	Nil - no ES

* Notifiable instruments marked with an asterisk appear, in our view, to be in response to COVID-19, though they do not explicitly indicate that they are made in COVID-19.