

EXPLANATORY MEMORANDUM

COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021

Overview of the Bill

The COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021 (**the Bill**):

- amends the *Emergency Management Amendment (COVID-19 Response) Act 2020* to extend the sunset date that applies to section 72A of the *Emergency Management Act 2005 (EMA)* so the powers under that provision are available for a further 6 months beyond the current sunset date of 4 January 2022; and
- amends the *Criminal Code Amendment (COVID-19 Response) Act 2020* to ensure that higher penalties continue to apply to serious assaults and threats against public officers committed in the context of COVID-19 for a further 6 months beyond the current sunset date of 4 January 2022.

The Bill is divided into four Parts:

- Part 1. Preliminary;
- Part 2. *The Criminal Code (the Code)* amended;
- Part 3. *Criminal Code Amendment (COVID-19 Response) Act 2020* amended; and
- Part 4. *Emergency Management Amendment (COVID-19 Response) Act 2020* amended.

PART 1. PRELIMINARY

Clause 1 - Short Title

Clause 1 provides that the Bill, once enacted, will be known as the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act (No. 2) 2021 (the Act)*.

Clause 2 - Commencement

Clause 2 provides for the commencement of the Act.

Part 1 comes into operation on the day the Act receives Royal Assent.

The rest of the Act will come into operation on the day after Royal Assent.

PART 2. THE CRIMINAL CODE AMENDED

Clause 3 - Act amended

The purpose of this Part is to amend the Code.

Clause 4 - Section 318 amended

Section 318 of the Code deals with assaults on particular categories of people, including but not limited to public officers, in the course of performing their duties.

The *Criminal Code Amendment (COVID-19 Response) Act 2020* amended section 318 of the Code to insert new subsection (1A). This was further amended by the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2020* and the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2021*. The amendments collectively provide that, for the period of 21 months following the relevant commencement date, subsection (1) applies as if amended by inserting new paragraph (1a). This identifies a higher maximum penalty of 10 years' imprisonment in circumstances where:

- at the commission of the offence the offender knows that they have COVID-19; or
- at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act that creates a belief, suspicion or fear that the offender has COVID-19.

Clause 4 of this Bill will delete the reference to "21 months" in section 318(1A) and will insert "27 months". When read with the new commencement date inserted by clause 7 of this Bill, this will have the effect that the new paragraph (1a) will continue to apply for a further six months, with a cessation date of 4 July 2022.

Clause 5 - Section 338B amended

Section 338B of the Code deals with threats.

The *Criminal Code Amendment (COVID-19 Response) Act 2020* amended section 338B of the Code to insert a new subsection (2). This was further amended by the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2020* and the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2021*. The amendments collectively provide that, for the period of 21 months following the relevant commencement date, a higher maximum penalty will apply where an offender threatens to injure, endanger or harm someone by exposing them to COVID-19. This offence attracts a penalty of imprisonment of seven years, with a summary conviction of three years' imprisonment and a fine of up to \$36,000.

Clause 5 of this Bill will delete the reference to "21 months" in section 338B(2) and will insert "27 months". When read with the new commencement date inserted by clause 7 of this Bill, this will have the effect that the higher penalties will continue to apply to

threats of COVID-19 exposure for a further six months, with a new cessation date of 4 July 2022.

PART 3. CRIMINAL CODE AMENDMENT (COVID-19 RESPONSE) ACT 2020 AMENDED

Clause 6 - Act amended

The purpose of this Part is to amend the *Criminal Code Amendment (COVID-19 Response) Act 2020*.

Clause 7 - Section 2 amended

Section 2 of the *Criminal Code Amendment (COVID-19 Response) Act 2020* provides for the commencement of that Act. It was previously amended by the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2020* and the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2021*.

Section 2(b) currently provides that sections 4(2) and 5(3), which will delete the higher maximum penalties, will commence on 4 January 2022.

Clause 7 of this Bill will delete the reference to “4 January 2022” in section 2(b) and will insert “4 July 2022”. This has the effect that those provisions will continue to operate for a further six months, with a new cessation date of 4 July 2022.

PART 4 EMERGENCY MANAGEMENT AMENDMENT (COVID-19 RESPONSE) ACT 2020 AMENDED

Clause 8 - Act amended

The purpose of this Part is to amend the *Emergency Management Amendment (COVID-19 Response) Act 2020*.

Clause 9 - Section 2 amended

Section 2 of the *Emergency Management Amendment (COVID-19 Response) Act 2020* provides for the commencement of that Act. It was previously amended by the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2020* and the *COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Act 2021*.

Section 2(c) currently provides that section 10 of that Act commences on 4 January 2022. Section 10 provides that section 72A of the EMA (as inserted by section 9 of the *Emergency Management Amendment (COVID-19 Response) Act 2020*), and all references to section 72A in other sections of the EMA, are to be deleted. Sections 2(c) and 10 of the *Emergency Management Amendment (COVID-19 Response) Act 2020* currently operate to delete all references to section 72A on 4 July 2021.

Clause 9 of this Bill will delete the reference to “4 January 2022” in section 2(c) and will insert “4 July 2022”. This has the effect that section 72A will continue to apply for a further six months, with a new cessation date of 4 July 2022.