

DRAFT SECOND READING SPEECH

The Hon Peter Gutwein MP, Premier

*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS)
BILL 2020*

Madam Speaker, the Bill I am introducing today is essential to support the continuity of government services, and key regulatory functions, during what is likely to be a period of significant social and economic upheaval for all Tasmanians.

The health and wellbeing of Tasmanians is the Government's highest priority as we face the significant challenges presented to us by the spread of COVID-19.

As I have said before, we will continue to put the health and safety of Tasmanians first as we work to support business, jobs, families and the community through these difficult times.

We are already seeing the significant impacts of coronavirus in Tasmania. As of 24 March, there were 36 cases of COVID-19 confirmed in the State.

At the meeting of the National Cabinet last night, further actions were agreed to support social distancing measures for non-essential gatherings that were already in place to protect the Australian community from the spread of the disease.

This Bill introduces a range of measures to reduce the risks to the State, and the risk to, or hardship suffered by our community, as a result of the spread of COVID-19 in Tasmania.

The Bill will ensure that key regulatory requirements of the State, and the administration of law, can adapt to the unique challenges that the COVID-19 presents to both governments and the broader community.

There is no doubt that the COVID-19 pandemic will affect the business of government and its interaction with statutory entities, private businesses and the community.

This Bill is designed to support State and local government entities to quickly and effectively respond to this unprecedented public health emergency. It also puts in place measures to support the community in complying with various legislative and regulatory provisions.

The pandemic situation is likely to continue to evolve rapidly, and governments at all levels need to be ready to respond to support our communities.

There are areas of law that were simply not designed to work in the kinds of circumstances that we are likely to face as this emergency unfolds.

The Bill contains a range of provisions that aim to provide for the continuation of public administration, the reduction of public physical contact in relation to public administration, and which address financial hardship.

The Bill also contains provisions that allow for the amendment of permit provisions, and it provides the power to exclude the application of planning laws where a development or use of land is necessary to implement or comply with a requirement, direction or authorisation under *the Emergency Management Act 2006* or the *Public Health Act 1997* under a state of emergency.

In short, this Bill is about getting us ready so we can act on the advice of the experts, and act promptly, where and when we need to.

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Madam Speaker, at its centre, this Bill provides a power for the Premier, the Treasurer and the Attorney-General to make declarations by public notice to adjust the operation of a range of statutory requirements in legislation.

I will outline these changes, briefly:

Except for a number of specific matters identified in the Bill, these powers may only be exercised where the State Controller (where a state of emergency is in place) or the Director of Public Health has given their approval.

The Bill also provides for the Attorney-General to make notices where the Chief Magistrate, Chief Justice or a head of a Tribunal or other relevant entity has requested changes to reduce public physical contact, including to ensure that hearings are not required to be held in public where they are held in accordance with terms set out in the notice.

Under the Bill, notices may be issued in relation to any of the following matters, to alter the technical requirements that may otherwise apply under an Act or an instrument of a regulatory character:

- The extension or reduction of statutory timeframes;
- The amendment of provisions of planning permits (or other permits, as prescribed by regulation);

- The application of planning law in relation to land developed or used to support actions taken consistent with a requirement, direction or authorisation given under emergency management legislation;
- The extension of State Service and statutory office appointments (up to a maximum of 12 months);
- Actions (including meetings) that would otherwise be required by law to be taken or conducted in person and/or in the public (including local council meetings);
- The conduct of court and tribunal proceedings;
- The waiver or deferral of fees or charges levied under legislative instruments;
- The application of certain shop trading hour restrictions (for example, Good Friday trading); and
- Processes for the public exhibition of documents, and Gazettal requirements.

To ensure the continuous operation of the law, the Bill also provides that regulations and rules that are due to expire in 2020 will be extended for a further 12 months from their expiry date.

These instruments provide for the day-to-day administrative requirements and procedures of significant areas of the State's law. The Bill ensures 12 months additional time is available for the instruments to be reviewed and remade as required.

In addition to the broader power to make a notice to defer or waive certain fees and charges, the Bill contains specific financial hardship provisions that allow the Minister to void lease terminations and rent increases for commercial tenancies, and provide for the waiver and refund of the annual administration fee for taxis and hire vehicles for 2020.

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Madam Speaker, there are likely to be a range of situations where, in order to support the emergency response to the COVID-19 pandemic, the Government will need to use the proposed notice powers to temporarily override conditions that would ordinarily apply under the legislation areas covered by the Bill.

For example:

- It may be necessary to relax planning permit restrictions on delivery times for supermarket restocking to ensure that community demand for groceries can be met. And we may need to allow the major supermarkets to open on Good Friday, despite current shop trading restrictions.
- The Government may need to waive or extend the timeframes for the payment of certain fees and charges for members of the community who are struggling financially.
- Certain statutory officers and categories of state service employees, such as registered nurses, may need to have their appointments extended without the usual processes, so they can continue to deliver their crucial functions for the community.
- And meetings and proceedings that would ordinarily require physical attendance to be legally constituted might instead need to be conducted remotely by electronic means such as videoconference.

The heads of power provided for by the Bill are deliberately broad, so as to allow for the relevant details to be specified by notice. These notices can then be amended or revoked in response to rapidly changing circumstances.

Flexibility is also the reason why the Bill provides that the power to make notices can be delegated to other Ministers. It is possible that a number of notices will need to be made covering a range of legislative instruments in the areas specified by the Bill.

It is prudent and appropriate to allow for Ministers to make notices in relation to their respective portfolio areas. Delegation also reduces the continuity risk that could arise if the power rested solely with a single Minister.

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Madam Speaker, I have said this Bill aims to support and ensure continuity of administrative law and government regulation and services during the COVID-19 emergency. That is true, but it also includes a number of targeted consequential amendments to the *Emergency Management Act 2006*.

These amendments provide for the following:

- A power of arrest for failures to comply with directions/requirements made under emergency powers. This applies to offences relating to

emergency management workers under the *Emergency Management Act 2006*, and the 'emergency powers' requirements in the *Public Health Act 1997*;

- Increasing the maximum term of imprisonment for offences under the *Emergency Management Act 2006* to equate with those under the *Public Health Act 1997*;
- Extending to 12 weeks the time for operation for directions issued under the *Emergency Management Act 2006*; and
- The suspension of the operation of the *Personal Information Act 2004* in relation to the exchange of information between State Agencies and between State Agencies and Commonwealth agencies in relation to the emergency.

The advice from the State Controller is that all of these measures are crucial in supporting the emergency management response at an operational level.

With respect to arrest powers, of course we would hope, and indeed expect, that the community will cooperate with any direction that is being made for the sake of public health. However, our front line Police officers need to be able to ensure it has the necessary powers and authorities to enforce compliance where there are flagrant breaches that put the broader community at risk.

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Madam Speaker, finally, I would like to specifically outline the important provisions that we have included in this Bill protect tenants, particularly those who are experiencing hardship from a loss of income as a result of COVID-19.

This will be achieved by altering the operation of certain provisions of the *Residential Tenancy Act 1997* for the period of the emergency.

The emergency period will commence on the date the *COVID-19 Disease (Miscellaneous Provisions) Act 2020* commences, for an initial period of 120 days. The Minister may extend the period for 90 days by issuing an order under the Act.

The Minister may make as many orders to extend the emergency period as the Minister deems necessary to reasonably mitigate any significant, widespread hardship caused, or likely to be caused, to a significant number of tenants by the presence of COVID-19 in the State.

Against the same criteria, the Minister must when satisfied that the provisions enabled by the emergency period are no longer necessary, declare the emergency period has ended.

During the emergency period, there will be a moratorium on the eviction of tenants for breaching a condition of their residential tenancy agreement, where that breach relates to rent being in arrears. A property owner will not be able to issue a notice to vacate for this reason during the emergency period.

In addition, a notice to vacate relating to rent arrears which was given prior to the commencement of the emergency period will have no effect during the emergency period, if the tenant is yet to vacate the property.

This will effectively put on hold any appeals from tenants for a notice to vacate that are currently waiting to be heard by the Magistrates Court.

At the end of the emergency period, a property owner will be able to issue a notice to vacate in the normal way if the tenant continues to be in breach of their residential tenancy agreement. At this time, a property owner will be able to recover any outstanding rent from the tenant's bond or, in the event the amount exceeds the Bond, through civil proceedings, just as they are able to do now.

This ensures that tenants have the incentive to continue to pay rent during the emergency period, where they are able to do so.

Social distancing is key to reducing the likelihood that COVID-19 will spread within the community. As such, the Bill also includes common-sense amendments to reduce the need for third parties to enter a rental property.

Amendments will be made to reduce the likelihood that tradespeople will enter a rental property. This will be achieved by removing the 28 day requirement for general repairs for the duration of the emergency period. No changes will be made to the arrangements for emergency and urgent repairs, as these are necessary to ensure the health and safety of tenants.

Further, changes will be made to reduce the ability of a property manager or owners to inspect a property during the emergency period. This will be limited to inspections which relate to urgent repairs and emergency repairs and other limited circumstances.

We are also amending the Act to make clear that a residential tenancy agreement can be varied by mutual agreement of the tenant and landlord.

This makes it absolutely clear that a tenant and landlord have the power to agree to changes to their agreement, such as a reduction in rent.

Any such agreement will be taken to form part of the residential tenancy agreement.

We are also introducing provisions to enable tenants or owners to break a fixed term lease if its continuation would cause the tenant severe hardship.

To access this, the tenant will need to make an application to the Residential Tenancy Commissioner, who will consider the application and can issue an order to terminate a lease.

These changes, which are similar to existing provisions in other jurisdictions' residential tenancy legislation, will ensure that individuals cannot be 'locked in' to a residential tenancy agreement that they can no longer afford or no longer need as a result of the impact of COVID-19.

These changes will also assist tenants experiencing hardship when having conversations with property owners regarding potential reductions in rent.

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Madam Speaker, there is no question that this is an extraordinary Bill in response to what are extraordinary times, while preserving safeguards such as Parliamentary review.

I want to reassure the Parliament and the community that there is appropriate accountability around the use of the new powers in this Bill and that proposed powers to override existing legislative provisions will only be able to be exercised where there is a clear, genuine and pressing need to do so as part of our response to the COVID-19 emergency, on the basis of expert advice.

This is why there are a number of checks and balances built into the Bill:

- Firstly, a notice may only be issued if it is approved by the State Controller (where there is a State of Emergency) or the Director of Public Health. The only exceptions are those notices that relate to economic hardship matters and notices that deal with the proceedings of certain courts. Certain notices relating to courts and tribunals can only be issued if required by the relevant presiding member, such as the Chief Magistrate or Chief Justice.
- Secondly, notices cannot be made for a reason that is unrelated to the pandemic situation. It must be based on the opinion of the relevant

Minister that it is required to manage risks associated with the transmission of the disease itself, to manage the impacts of the restricted movement or other elements of the emergency response, or because there are not enough people available to carry out the relevant function as a consequence of the pandemic and/or the emergency response. The exception to this is those notices relevant to economic hardship matters, which can only be issued by the Treasurer if the economic effects of the emergency make it necessary or desirable.

- Thirdly, notices will be tabled in the Parliament within three sitting days of being made, and subject to scrutiny by the Subordinate Legislation Committee as though they are Regulations.
- Fourthly, the 'emergency cessation day' must be declared by the Premier within 90 days of receiving advice from the Director of Public Health that it is no longer necessary to continue to allow for declarations to be made under this Bill. Once this advice is received, the Government has to act on it.
- And, finally, any remaining notices are taken to be automatically revoked 60 days after the emergency cessation day, and can only have effect for a maximum of 12 months from their commencement.

Madam Speaker, as Tasmania continues to deal with the COVID-19 pandemic, there will be disruptions to the day-to-day business of Tasmanian Government agencies, statutory authorities and local councils. We must do what is needed to minimise these disruptions and their flow-on effects to the community.

As we can see today, the Parliament itself is already having to adjust to the realities of the pandemic.

We need to be ready.

The changes this Bill will effect are 'mission critical' to the Government's broader emergency response effort. I would not be introducing this legislation otherwise.

I implore Members to support this Bill in the spirit of a unified Parliamentary effort to deal with this unprecedented public health emergency.

I commend the Bill to the House.