

CLAUSE NOTES

COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) BILL 2020

PART 1 – PRELIMINARY

Clause 1 Short Title

Provides the title of the proposed Act.

Clause 2 Commencement

Provides that the Act will commence on Royal Assent.

Clause 3 Objectives of the Act

Explains that the objective of the Act is to deal with certain risks and hardships arising from the presence and spread of the disease.

Clause 4 Interpretation

This clause defines certain terms for the purposes of the Act.

The term 'disease' is defined as the disease known as coronavirus disease 2019 (COVID-19), as a notifiable disease declared by the Director of Public Health.

While an emergency declaration is in force the term 'emergency manager' is taken to mean the State Controller. In any other case, the term 'emergency manager' is the Director of Public Health.

PART 2 – GENERAL PROVISIONS IN RELATION TO NOTICES

Clause 5 Circumstances in which certain notices may be issued

Subsection (1) provides that the issuing of notices (other than those notices issued under sections 23 and 26) may only occur where the Minister is of the opinion that 'emergency circumstances' exist.

Subsection (2) provides that emergency circumstances will exist if the Minister is satisfied that the issuing of a notice is necessary or desirable because of:

- the presence of the disease; or
- the risk of contraction of the disease; or
- restrictions on movement that have been imposed; or
- a reduction in the number of persons available to carry out a legislative function; or
- the desirability of ensuring the supply of goods and services.

Subsection (3) provides alternative criteria for the issuing of notices under section 23. In accordance with section 23, the Treasurer is able to issue notices waiving or refunding certain fees if he or she is of the opinion that it is necessary or desirable to do so due to the economic effects of the relevant emergency circumstances.

Clause 6 Emergency manager to approve making of notices

Explains that all notices, except notices issued under section 23, section 26 and certain notices issued under section 20, must be approved by the emergency manager.

Clause 7 Scrutiny of notices

This clause requires all notices issued under the Act to be tabled in Parliament, and provided to the Subordinate Legislation Committee, and sets out the relevant procedures and timeframes for doing so.

Clause 8 When notice takes effect and duration of notice

The clause provides that notices, unless otherwise specified, will take effect on the day of their Gazettal and be in effect for 12 months, or a shorter period as specified in the notice.

Once the emergency cessation day is declared under section 25, all notices (unless revoked at an earlier date) will be taken to have been revoked after 60 days unless otherwise revoked earlier.

The clause also provides that a notice may only have effect for up to 12 months from its commencement.

Clause 9 Notices may be re-issued

This clause makes it clear that notices may be reissued.

Clause 10 Effect of notices

This clause provides that notices will operate in accordance with the terms of the notice.

Clause 11 Amendment and revocation of notices

This clause provides the Minister with power to amend or revoke a Ministerial notice made under the Act.

The clause also provides that the revocation of a notice does not impact on the validity or lawfulness of an action (or subsequent action) undertaken in accordance with or relying upon a provision in a notice prior to its revocation.

The clause also makes clear that the revocation of a notice does not mean that a liability to any requirement under an Act is reinstated on a person if that requirement did not apply to them by operation of a notice. However, any relevant prospective liability under a legislative requirement is reinstated.

Clause 12 No notices may be issued after emergency cessation day

This clause provides that no new notices can be made or reissued, once the emergency cessation day is declared under section 25.

PART 3 – CONTINUANCE OF PUBLIC ADMINISTRATION

Clause 13 Extension of statutory timelines

This clause provides the Minister with the power to make a notice extending or reducing a statutory timeframe.

Clause 14 Amendment of planning and other permits

This clause provides the Minister with the power to make a notice to amend or revoke a permit or class of permits, including planning permits, and other permits as prescribed by regulation.

Clause 15 Protection from offence against planning law

This clause provides the Minister with the power to make a notice 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*, where there is or was a state of emergency in effect.

Clause 16 Extension of period of appointment, employment and certain authorities for benefit of Crown

This clause provides the Minister with the power to make a notice, despite the *State Service Act 2000* or any other Act to extend (for up to 12 months) the employment of State Service employees and holders of a statutory office.

Clause 17 Authorisation to take actions electronically

This clause provides the Minister with the power to make a notice to allow actions ordinarily required to be undertaken physically or evidenced via a non-electronic means to be undertaken electronically. Subsection (3) specifically provides that Gazettal requirements can be met via electronic means, subject to certain conditions being met.

PART 4 – REDUCTION OF PUBLIC PHYSICAL CONTACT

Clause 18 Authorisation for meetings not to be held in person

This clause deals with meetings (but excludes court and tribunal proceedings). This clause provides the Minister with the power to issue a notice to establish an approved manner for the conduct of meetings that are subject to a notice,

which will allow meetings to be conducted through, or via, an alternative means (e.g. electronically).

The clause also allows for the Minister to set the conditions for the conduct of meetings according to conditions set out in the notice, including conditions relating to quorums, and in relation to the limitation or restriction of public attendance at meetings.

Where public attendance and participation is limited by notice under this section, a condition of the notice must include provision (as far as is practicable) for the meeting to be viewed electronically.

The Minister may only issue a notice under this section if requested by one or more members of that body (or their nominee), or another person approved by the Minister to make the request, and that the conditions set out in the section have been met, in the opinion of the Minister.

Clause 19 Public exhibition of certain documents

This clause provides the Minister with the power to issue a notice altering the means by which public exhibition of certain documents can occur.

Where a notice is issued under this section, an 'approved manner' of public exhibition must allow for the electronic viewing of the document, and for the making of public submissions electronically or by post (where a legislative instrument provides for submissions).

Clause 20 Proceedings of courts, Tribunals, &c., may be authorised to not be required to be held in public

This clause deals with hearings conducted by courts, tribunals and similar entities. This clause provides the Attorney-General with the power to issue a notice altering the manner in which hearings may be conducted. The Attorney-General may only issue a notice under this provision upon request from the relevant presiding officer of the court or tribunal, and the approved manner with regard to the conduct of court and tribunal proceedings is that which is to be determined by the court or tribunal itself.

Clause 21 Alteration of certain restrictions to shop trading hours

This clause provides the Minister with the power to issue a notice to alter certain restrictions to shop trading hours that apply under section 5 of the *Shop Trading Hours Act 1984*.

PART 5 – FINANCIAL HARDSHIP PROVISIONS

Clause 22 **Alteration of decision in relation to when fees payable in relation to taxis, &c.**

This clause provides the Transport Commission with the power to waive and/or refund annual administration fee for taxis and hire vehicles under the *Taxi and Hire Vehicles Act 2008* for 2020.

Clause 23 **Waiver or refund of certain fees, &c.**

Subsection (1) provides the Treasurer with the power to issue a notice waiving or deferring certain classes of rates, fees, taxes, imposts or charges ordinarily payable under a legislative instrument, or providing the Secretary of the relevant Department the discretion to waive those rates, fees, taxes, imposts or charges.

Subsection (2) further provides the Treasurer with the power to issue a notice directing that the following may not be altered without the approval of the Treasurer:

- the method used to calculate rates, fees, taxes, imposts and charges; or
- the rate to be used to determine the amount payable; or
- the amount of a fixed fee or charge.

PART 6 – CONTINUANCE OF CERTAIN LEGISLATIVE INSTRUMENTS

Clause 24 **Postponement of repeal of certain regulations and rules**

Under this clause, subordinate legislation due to expire in 2020 (as set out in Schedule 1) will be automatically extended for a further 12 months from the date on which they were due to expire. The clause also provides that regulations are not prevented from being remade earlier.

PART 7 – MISCELLANEOUS

Clause 25 **Section 18 of *Public Health Act 1997* not to apply**

This clause removes the application of Section 18 of the *Public Health Act 1997* (Compensation) in relation to any loss or damage resulting from anything done under the emergency powers in Division 2 of Part 2 of that Act in relation to coronavirus disease 2019 (COVID-19).

Clause 26 **Emergency cessation day**

Subsection (1) requires the Director of Public Health to notify the Minister when the Director of Public Health considers that emergency circumstances in section 5(2) no longer exist to the extent that notices under Part 4 of the Act may be required to be issued.

Subsection (2) requires the Minister to declare an emergency cessation date within 90 days of being issued with a notice by the Director of Public Health under subsection (1).

Clause 27 Provisions restricting rent increases or termination of commercial tenancies

This clause enables the Minister, by notice, to declare that, notwithstanding any provision in a lease, a commercial lease cannot be terminated or rent increased, during the emergency period.

This clause applies to all leases within a class of leases specified in the notice.

The emergency period use the same definition as the consequential amendments to the *Residential Tenancy Act 1997* included in this Bill.

Clause 28 Delegation

Under this clause Ministers with the power to issue notices under the Act (the Premier, the Attorney-General and the Treasurer) can delegate those powers to another Minister.

Clause 29 Regulations

This clause provides that the Governor may make regulations for the purposes of this Act.

Clause 30 Consequential Amendments

The clause notes that consequential amendments will be made to other legislation as specified in Schedule 2.

Clause 31 Administration of Act

This is a formal clause assigning administration of the Act to the Premier and the Department of Premier and Cabinet until provision is made under section 4 of the *Administrative Arrangements Act 1990*.

SCHEDULE 1 – RELEVANT INSTRUMENTS

Specifies those rules and regulations that will be extended for a further 12 months in accordance with section 24.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Emergency Management Act 2006

Clause 1 This clause inserts a definition of ‘COVID-19 state of emergency’ into the *Emergency Management Act 2006*.

Clause 2 This clause amends section 40 of the *Emergency Management Act 2006* to enable emergency powers to be authorised in a COVID-19 state of emergency.

The amended provision will allow emergency powers, being exercised in relation to a COVID 19 state of emergency, to be exercised for up to 12 weeks.

Clause 3 This clause increases the current penalty for an offence with respect to emergency management workers under section 60 of the *Emergency Management Act 2006* from 3 months to 6 months.

Clause 4 This clause inserts a new section 60A into the *Emergency Management Act 2006* to provide that the *Personal Information Protection Act 2004* does not apply to the sharing of personal information by certain bodies or persons performing functions or powers under the Act, the *Public Health Act 1997* or another State or Commonwealth Act relating to the management of an emergency or public health, where personal information is requested, required, obtained, disclosed or used during a state of emergency.

This clause also inserts a new section 60B into the *Emergency Management Act 2006* to provide police officers with the power to use reasonable force to arrest a person where they believe, on reasonable grounds, that the person is committing, has committed, or is about to commence an offence under section 60 of the *Emergency Management Act* (Offence with respect to emergency management workers) or under specified provisions in the *Public Health Act 1997*.

Clause 5 This clause removes the requirement for an authorised officer to give written notice prior to exercising the emergency power to enter premises under the *Emergency Management Act 2006* in relation to coronavirus 2019 (COVID-19).

Residential Tenancy Act 1997

Clause 1 This clause introduces the definitions for the COVID-19 Emergency Act, COVID-10 emergency day, emergency period and socially-dislocating disease.

These definitions are used to determine the period the amendments to the *Residential Tenancy Act 1997* are in place

Clause 2 This clause enables the Minister to make an order to extend the emergency period. The emergency period can be extended where the Minister thinks it is 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 or risk of its spread.

The emergency period can be extended for a maximum of 90 days, for as many times as necessary.

The Minister must declare the emergency period has ended when satisfied the amendments included in the Bill are no longer necessary, having regard to the same criteria.

- Clause 3** This clause confirms that a residential tenancy agreement is able to be amended by mutual agreement of the owner and the tenant (for example, to agree reduced rent).
- Clause 4** This section confirms that the general repairs provisions do not apply during the emergency period (note: there are no changes to urgent repairs or emergency repairs).
- Clause 5** This amends provisions regarding how an agreement can be terminated to include an order of the Commissioner made under section 38A (order allowing for termination in case of severe COVID-19 related hardship).
- Clause 6** This section allows for a tenant or owner who have a residential tenancy agreement of fixed term to apply to the Residential Tenancy Commissioner for the lease to be terminated on the ground that its continuation would result in severe hardship as a result of COVID-19.
- The order from the Commissioner can specify the date of the termination and if any compensation is payable.
- Clause 7** The order is able to be appealed to the Magistrates Court (Civil Division)
This section prevents an owner from issuing a notice to vacate for a breach of a residential tenancy agreement for failure to pay rent during the emergency period.
- This applies for the period of the tenancy agreement. It also applies to any notice to vacate given before the emergency period where the tenant has not vacated the premises.
- Clause 8** This section amends the responsibilities of the tenant for cleanliness and damage where they are unable to comply as a result of other provisions in the COVID-19 Emergency Act or it is not reasonably practical to comply as a result of the presence of COVID-19.
- Clause 9** This section confirms that inspections by owners (or property managers on their behalf) will be limited during the emergency period.
- The time period for this clause is able to be reduced by a determination by the Residential Tenancy Commissioner by notice in the Gazette.