



# JOINT PARLIAMENTARY STANDING COMMITTEE ON SUBORDINATE LEGISLATION

## ANNUAL REPORT 2020-2021

---

### **INTRODUCTION**

The Joint Parliamentary Standing Committee on Subordinate Legislation (the Committee) is a statutory committee of the Tasmanian Parliament. The Committee is established under the provisions of Section 3 of the *Subordinate Legislation Committee Act 1969* (the Act). Members are appointed at the beginning of each Parliamentary session, and vacancies are filled as when required.

The Committee's function is to examine every regulation, by-law and rule made by an entity under a power delegated to the entity by the Parliament. Section 2 of the Act provides that regulation means a regulation, rule, or by-law that is made under an Act and is required by law to be laid before both Houses of Parliament, but does not include rules of court made by the judges, or by a majority of them, under the authority of an Act. Essentially, regulations comprise all subordinate legislation made by the Governor-in-Council, but do not include Orders, Proclamations or Rules of the Supreme Court. By-laws are those made by municipal councils, marine boards and other semi-government authorities. The Committee also examines other instruments referred to it by Acts.

By virtue of section 8 of the Act the Committee is required to conduct its examination of regulations with particular reference to the question of whether or not —

- (a) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it was made;
- (b) the form or purport of the regulation calls for elucidation;
- (c) the regulation unduly trespasses on personal rights and liberties;
- (d) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions;
- (e) the regulation contains matters that, in the opinion of the Committee, should be properly dealt with by an Act and not by regulation; or
- (f) whether the requirements of the Subordinate Legislation Act 1992 have been met.

## **Notices issued under the *COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020***

Arising from the COVID-19 pandemic, the Parliament of Tasmania passed the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* on 26 March 2020. The Act prescribed a role for the Committee to scrutinize certain notices under the Act.

In response to this new scrutiny role, the Committee gave extensive consideration to an appropriate mechanism for it to report upon its deliberations on all notices gazetted under the Act in the interest of public transparency. The Committee agreed to —

- Publish a list of the notices to be discussed by the Committee, and documentation relating to notices to be examined by the Committee, to be published on the Committee website prior to each meeting; and
- Present regular reports to Parliament, which will contain further information in relation to the completed examinations of notice.

The Committee in its work examining COVID-19 notices considered issues in respect to the type of subordinate legislative instruments that it is expected to scrutinize. The Committee sought independent legal advice on this matter. Upon consideration of this legal advice, the Committee wrote to the Premier stating that it was of the Committee's opinion that legislative reform is required to clarify what is within scope of the Committee's functions and further requesting the Premier to consider a review of the processes applying in the making of subordinate legislation to strengthen weaknesses in the current arrangements. The Committee to date, has not received a response.

## **COMMITTEE ACTIVITY**

### **General Overview**

During the reporting period the Committee held a total of fifteen (15) meetings in relation to the scrutiny of regulations and scrutiny of notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. The Committee examined thirty-three (33) instruments published in the Government Gazette (this figure does not include notices, detail in relation to notices is provided separately in this Report). A breakdown of the instruments is provided as follows:

- eight (2) by-laws;
- twenty regulations; and
- five rules.

As part of the examination of these instruments, the Committee requested information from Ministers in writing, in relation to regulations imposing significant increases in fees, explanations of some provisions and other issues of concern. The majority of queries were resolved to the Committee's satisfaction using this mechanism to obtain further information.

The Committee has from time to time encountered some issues in the timeliness of receiving information or the adequacy of information from Departments. The Committee works to remind Departments and Authorities of their respective obligations to ensure that explanatory materials are adequate and that the requirements of the Act and the *Acts Interpretation Act 1931* and *Subordinate Legislation Act 1992* are met.

The Committee continues to monitor the timeliness of the preparation for and provision of supporting documentation to the Committee and timely tabling of legislative instruments.

During the year the Committee also received briefings from Departmental officers in relation to the following instruments –

1. FISHERIES (SCALLOP) RULES 2020 (S.R. 2020, No. 52);
2. COVID-19 DISEASE EMERGENCY (COMMERCIAL LEASES) REGULATIONS 2020 (S.R. 2020, No. 50); and
3. NATIONAL ENERGY RETAIL LAW (TASMANIA) AMENDMENT REGULATIONS 2020 (S.R. 2020, No. 57).

The briefings provided Members with further details and clarification of specific issues.

In addition, to the abovementioned mechanisms used by the Committee to clarify specific issues and obtain further information, the Committee resolved to commence inquiries to scrutinize instruments in more detail through the inquiry process. The Committee reported upon these inquiries into the following instruments as follows —

### **FISHERIES (ROCK LOBSTER AMENDMENT RULES 2019 (S.R. 2019, No. 62)**

On 23 October 2019 the Committee resolved to commence an Inquiry into the FISHERIES (ROCK LOBSTER AMENDMENT RULES 2019 (S.R. 2019, No. 62) (the Rules). The Committee held Public Hearings on 31 October 2019.

The Rules were resolved as “examined” on 19 March 2019.

A Report regarding the Committee’s findings was presented to the President out of session on 2 July 2020 and tabled in the House of Assembly on 18 August 2020.

### **WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019**

On 22 May 2020 the Committee resolved to commence an Inquiry into the WINNALEAH IRRIGATION DISTRICT BY-LAWS 2019 (the By-Laws). The Committee held Public Hearings on 5 June 2020 and 8 July 2020.

The By-Laws were resolved as ‘examined’ on 8 July 2020.

A Report regarding the Committee’s findings was presented to the President out of session on 11 August 2020 and tabled in the House of Assembly on 18 August 2020.

### **Notices issued under the *COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020***

#### **General Overview**

The Committee examined eight (8) Notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. In this reporting year 12 (twelve) notices have been reported upon.

As part of the examination of these notices, the Committee requested information from Ministers in writing, seeking clarification of specific issues and requesting further information. In all instances, queries were resolved to the Committee’s satisfaction using this mechanism to obtain further information.

The Committee reported upon all notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* in this reporting period.

## **MEETING ATTENDANCE RECORD**

### **Committee Membership**

#### **Second Session - Forty-Ninth Parliament**

##### **Legislative Council**

Hon Tania Rattray MLC (Chair)  
Hon Ruth Forrest MLC (Deputy Chair)  
Hon Meg Webb MLC

##### **House of Assembly**

Mr Felix Ellis MP (from 17/09/2020)  
Ms Alison Standen MP  
Mr Nic Street MP  
Mr John Tucker MP (to 15/09/2020)

#### **First Session - Fiftieth Parliament**

##### **Legislative Council**

Hon Tania Rattray MLC (Chair)  
Hon Ruth Forrest MLC  
Hon Meg Webb MLC (Deputy Chair)

##### **House of Assembly**

Mr Felix Ellis MP  
Ms Janie Finlay MP  
Ms Madeleine Ogilvie MP



**Date: 28 October 2021**

**Hon Tania Rattray MLC  
Chair**