



2020

# **Parliament of Tasmania**

**JOINT PARLIAMENTARY STANDING COMMITTEE**

## **SUBORDINATE LEGISLATION**

### **REPORT 12**

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 20 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
*(RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL ACT 1993)***

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 23 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
*(MINERAL RESOURCES DEVELOPMENT ACT 1995)***

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 18 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
**(SUPREME COURT – RULE COMMITTEE)****

#### **Members of the Committee**

**Ms Tania Rattray MLC (*Chair*)**  
**Ms Ruth Forrest MLC (*Deputy Chair*)**  
**Ms Meg Webb MLC**

**Ms Alison Standen MP**  
**Mr Nic Street MP**  
**Mr John Tucker MP**

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## Introduction

The Committee was appointed under the provisions of Section 3 of the *Subordinate Legislation Committee Act 1969* (No. 44 of 1969). Section 8 of the Act outlines the functions of the Committee, as follows –

- (a) to examine the provisions of every regulation, with special reference to the question whether or not –
  - (i) 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 is made;
  - (ii) the form or purport of the regulation calls for elucidation;
  - (iii) the regulation unduly trespasses on personal rights and liberties;
  - (iv) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or
  - (v) the regulation contains matters that, in the opinion of the Committee, should properly be dealt with by an Act and not by regulation; and
- (b) to make such reports and recommendations to the Legislative Council and the House of Assembly as it thinks desirable as the result of any such examination.

### ***COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 — SCRUTINY OF NOTICES***

The Parliament of Tasmania passed the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act) on 26 March 2020. The Act prescribes a role for the Joint Standing Committee on Subordinate Legislation in the scrutiny of certain notices under the Act.

In response to this new scrutiny role, the Committee has given 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 will:

- Meet weekly until further notice (as resolved by the Committee on 2 July 2020);
- 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.

### ***Notice under section 20 of the Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)***

The Committee noted the Notice had not been tabled and was not outside the prescribed statutory time-frame under section 7(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. Further, in light of the Parliament not back in session until towards the end of August 2020 and the need for the Committee to publish a Report on this Notice in a timely manner.

The Committee wrote to the Attorney General requesting a copy of the Tribunal's Practice Directions. A copy is attached to this Report.

At its meeting on 7 August 2020, the Committee concluded its examination of the Notice and **RESOLVED** the Notice be examined, noting that it was consistent with the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The supporting documentation provided by the Attorney-General, all correspondence and Minutes of Proceedings relevant to the Notice are attached to this Report for completeness.

#### **Notice under section 23 of the Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)**

The Committee noted the Notice had not been tabled and was not outside the prescribed statutory time-frame under section 7(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. Further, in light of the Parliament not back in session until towards the end of August 2020 and the need for the Committee to publish a Report on this Notice in a timely manner.

The Committee wrote to the Minister for Resources requesting further detail related to the decision to issue this Notice to assist the Committee's deliberations. A copy of this letter and response are attached to the Report.

At its meeting on 7 August 2020, the Committee concluded its examination of the Notice and **RESOLVED** the Notice be examined, noting that it was consistent with the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The supporting documentation provided by the Minister for Resources, all correspondence and Minutes of Proceedings relevant to the Notice are attached to this Report for completeness.

#### **Notice under section 18 of the Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Supreme Court – Rule Committee)**

The Committee noted the Notice had not been tabled and was not outside the prescribed statutory time-frame under section 7(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. Further, in light of the Parliament not back in session until towards the end of August 2020 and the need for the Committee to publish a Report on this Notice in a timely manner.

At its meeting on 7 August 2020, the Committee concluded its examination of the Notice and **RESOLVED** the Notice be examined, noting that it was consistent with the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The supporting documentation provided by the Attorney-General, all correspondence and Minutes of Proceedings relevant to the Notice are attached to this Report for completeness.

A handwritten signature in black ink, reading "Tania Rattray". The script is cursive and fluid, with the first name "Tania" and last name "Rattray" clearly distinguishable.

Tania Rattray MLC  
**CHAIR**

20 August 2020

Attorney-General  
Minister for Justice  
Minister for Corrections  
Minister for Building and Construction  
Minister for the Arts  
Minister for Heritage

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8 JUL 2020

Hon Tania Rattray MLC  
Chair  
Parliamentary Standing Committee on Subordinate Legislation  
Parliament House  
HOBART TAS 7000

Email – [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

A handwritten signature in blue ink that reads "Tania".

Dear Ms Rattray

Please find enclosed a copy of a notice (the notice) issued by me as Attorney-General pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The notice was signed on 22 June 2020 and was published in Gazette No 22002 on Wednesday, 24 June 2020.

Section 20 of the Act allows the Attorney-General to, by Notice, authorise courts, tribunals and other entities to conduct proceedings in an 'approved manner', where requested by that court, tribunal or other entity, despite any legislative instrument to the contrary. Section 20(2)(c) provides that in this case the 'approved manner' means 'the manner determined from time to time by' the President, Chair, or other Head, of the Tribunal.

In accordance with section 20(3)(c) of the Act, the Chairperson requested that a Notice be issued under section 20(1).

The Notice addresses the issue that alternative arrangements to the requirements of section 18(1) of the *Resource Management and Planning Appeal Tribunal Act 1993* (the RMPAT Act) are necessary or desirable in the emergency circumstances. Section 18(1) provides that "Subject to this section, a hearing of an appeal must be held in public."

The Tribunal has implemented measures to reduce the potential risk of exposure to COVID-19 through persons being present at the Tribunal, and to reflect social distancing requirements. This includes, amongst other things, that proceedings are now occurring as far as possible remotely, by way of telephone or audio visual link.

The Notice will enable the Tribunal to operate in a way which reduces the risk of spread of COVID-19 in Tasmania.

The Chairperson noted in her request that the Tribunal has adopted a series of protocols to allow participation in hearings of the Tribunal, set out in the Tribunal's Practice Directions. These Practice Directions provide for matters including the use of videoconference and teleconference.

The Chairperson noted that any member of the public may attend a hearing by telephone if that request is made prior to the hearing. The Tribunal has established telecommunication support with Telstra which allows at least 20 to 50 people to listen to proceedings by telephone. A copy of the recording of the proceedings may also be provided if necessary. The Chairperson noted that the measures achieve 'open justice' and allow transparency in the decision making process.

The Notice enables the Tribunal, despite section 18(1) of the Act to the extent that it requires an appeal to be held in public, to conduct hearings in the approved manner determined by the Chairperson in accordance with section 20(2) of the Act.

The measures requested by the Chairperson are considered proportionate in the circumstances and provide adequate safeguards to protect the principle of open justice to the greatest extent possible.

I enclose a fact sheet to provide further information on the notice and the Advice provided by the Office of Parliamentary Counsel (OPC).

Yours sincerely



Hon Elise Archer MP  
**Attorney-General**  
**Minister for Justice**

Attachments –

- Signed Notice
- Fact Sheet
- OPC Advice



TASMANIA

*COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*

**NOTICE UNDER SECTION 20**

I, ELISE NICOLE ARCHER, the Attorney-General, in pursuance of section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, at the request of the chairperson of the Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993* ("the Act"), being of the opinion that the relevant emergency circumstances exist in relation to this notice and with the approval of the emergency manager, declare that –

- (a) in relation to proceedings at the hearing of appeals conducted by the Appeal Tribunal, despite section 18 of the Act, to the extent that it requires that a hearing of an appeal must be held in public, such proceedings may be heard in the approved manner determined by the chairperson of the Appeal Tribunal in accordance with section 20(2) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) unless the contrary intention appears, an expression used in this notice that is defined in the *Resource Management and Planning Appeal Tribunal Act 1993* has the same meaning in this notice as it has in that Act.

Dated: 22 June 2020

Signed: 

Attorney-General

**ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL*****Notice under section 20 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

I advise that this statutory rule –

- (a) appears to be within the powers conferred by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) does not appear, without clear and express authority being provided by any Act, to –
  - (i) have any retrospective effect; or
  - (ii) impose any tax, fee, fine, imprisonment or other penalty; or
  - (iii) sub-delegate powers delegated by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (c) appears to be within the general objectives of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (d) is expressed in as clear and unambiguous language as is reasonably possible.

Dated 11 June, 2020.



Kate Woodward  
**Deputy Chief Parliamentary Counsel**

**MINISTERIAL NOTICE - FACT SHEET**

***COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

The attached Ministerial Notice is issued pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act) in relation to the Resource Management and Planning Appeal Tribunal (the Tribunal). The Attorney-General has issued the Notice, being of the opinion it was necessary and desirable to do so due to the presence of emergency circumstances set out in section 5(2)(b) of the Act.

Approval of the emergency manager (the State Controller) has been obtained in accordance with section 6 of the Act.

**Reason for Notice**

Section 20 of the Act allows the Attorney-General to, by Notice, authorise courts, tribunals and other entities to conduct proceedings in an 'approved manner', where requested by that court, tribunal or other entity, despite any legislative instrument to the contrary. Section 20(2)(c) provides that in this case the 'approved manner' means 'the manner determined from time to time by' the President, Chair, or other Head, of the Tribunal.

In accordance with section 20(3)(c) of the Act, the Chairperson requested that a Notice be issued under section 20(1).

The Notice addresses the issue that alternative arrangements to the requirements of section 18(1) of the *Resource Management and Planning Appeal Tribunal Act 1993* (the RMPAT Act) are necessary or desirable in the emergency circumstances. Section 18(1) provides that "Subject to this section, a hearing of an appeal must be held in public."

The Tribunal has implemented measures to reduce the potential risk of exposure to COVID-19 through persons being present at the Tribunal, and to reflect social distancing requirements. This includes, amongst other things, that proceedings are now occurring as far as possible remotely, by way of telephone or audio visual link.

The Notice will enable the Tribunal to operate in a way which reduces the risk of spread of COVID-19 in Tasmania.

The Chairperson noted in her request that the Tribunal has adopted a series of protocols to allow participation in hearings of the Tribunal, set out in the Tribunal's Practice Directions. These Practice Directions provide for matters including the use of videoconference and teleconference.

The Chairperson noted that any member of the public may attend a hearing by telephone if that request is made prior to the hearing. The Tribunal has established telecommunication support with Telstra which allows at least 20 to 50 people to listen to proceedings by telephone. A copy of the recording of the proceedings may also be provided if necessary.

The Chairperson noted that the measures achieve 'open justice' and allow transparency in decision making process.

### **Effect of Notice**

The Notice enables the Tribunal, despite section 18(1) of the Act to the extent that it requires an appeal to be held in public, to conduct hearings in the approved manner determined by the Chairperson in accordance with section 20(2) of the Act.

The measures requested by the Chairperson are considered proportionate in the circumstances and provide adequate safeguards to protect the principle of open justice to the greatest extent possible.



## Joint Standing Committee Subordinate Legislation

16 July 2020

The Hon Elise Archer MP  
Attorney-General  
Minister for Justice  
10<sup>th</sup> Floor  
15 Murray Street  
HOBART 7000

Dear Attorney-General

**Notice issued under section 20 of the  
*COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*  
*(Resource Management and Planning Appeal Tribunal Act 1993)***

The Joint Standing Committee on Subordinate Legislation is currently considering the above Notice. At the Committee's meeting on 16 July 2020, the Committee resolved to write to you to request that a copy of the protocols, set out in the Tribunal's Practice Direction (referred to in the supporting documentation dated 8 July 2020) be provided to the Committee to enable further consideration of this Notice.

It would be appreciated if you would please forward the required documentation at your early convenience.

Yours sincerely

A handwritten signature in black ink, reading "Tania Rattray".

TANIA RATTRAY MLC

CHAIR

w. 03 6212 2250 f. 03 6212 2345 m. 0488 009 642 e. [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

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Minister for Justice  
Minister for Corrections  
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30 JUL 2020

Hon Tania Rattray MLC  
Chair  
Parliamentary Standing Committee on Subordinate Legislation  
Parliament House  
HOBART TAS 7000

Email – [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

*Tania*

Dear Ms ~~Rattray~~

Thank you for your correspondence dated 16 July 2020 in relation to the notice for the Resource Management and Planning Appeal Tribunal (the notice) issued by me as Attorney-General pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

Please find attached the Tribunal's Practice Direction as mentioned in the documentation previously provided to you dated 8 July 2020. This information is made available to people engaging with the Tribunal through its website at <https://www.mpat.tas.gov.au/tribunal-response-to-novel-coronavirus-covid-19>

The Chairperson wishes to note that the Tribunal has begun the process of having parties attend in person at matters in accordance with social distancing requirements.

However, the notice remains necessary to ensure the Tribunal can continue to operate in all circumstances in a way which reduces the risk of spread of COVID-19 in Tasmania.

Yours sincerely

Hon Elise Archer MP  
**Attorney-General**  
**Minister for Justice**

Attachments –

- RMPAT COVID-19 Practice Direction including Advice 1 and 2.



The Tribunal has located to new premises at 38 Barrack Street, Hobart.

The new premises have greater space to allow some attendances in person within social distancing requirements and new technology is available at the Tribunal premises.

The Tribunal has therefore made the following changes to its directions for attendance at Tribunal Hearings to ensure it complies with Public Health advice for social distancing in responding to the Novel Coronavirus (COVID-19).

### **ATTENDANCE BY TELEPHONE CONFERENCE OR VIDEO CONFERENCE:**

1. All hearings and mediations will continue to ordinarily occur by telephone conference (and all persons are encouraged to continue to appear by telephone conference), however attendance in person can be requested as set out in under **ATTENDING TRIBUNAL PREMISES** below.

Anyone may attend any public hearings of the Tribunal by telephone conference. Where the Tribunal has advertised proceedings and you wish to attend, please give as early notice as possible and no later than 48 hours prior to the hearing.

2. **PLEASE READ ADVICE 1** with respect to the protocols for attendance by telephone conference which has been updated. Please have regard to the new information. **PLEASE NOTE: WHEN THE TRIBUNAL CONTACTS YOU BY TELEPHONE FOR A HEARING, THE CALL WILL APPEAR AS A SYDNEY TELEPHONE NUMBER. THERE MAY ALSO BE AN AUTOMATED VOICE ADVISING YOU HAVE JOINED THE CONFERENCE.**
3. **PLEASE READ ADVICE 2** with respect to attendance by video conference which has been updated. Please have regard to the new information.

### **ATTENDING TRIBUNAL PREMISES:**

#### **1. General**

Members of the public are encouraged to limit their visits to Tribunal premises if possible. All notices can be filed electronically by email, and fees can be paid by telephone.

2. **Any person who wishes to attend the Tribunal premises must comply with the following requirements:**
  - a. A person will not attend the premises if they: have COVID19, have been instructed to quarantine and their 14 days are not yet finished; or are unwell.

including with fever (or night sweats/chills) or respiratory symptoms eg. shortness of breath, cough, sore throat.

- b. A person who is required to appear in proceedings, will notify the Tribunal as a matter of urgency if they are unable to attend the premises for these reasons. The Tribunal will make alternative arrangements for their attendance remotely where possible.
- c. Any person present on Tribunal premises will observe all lawful directions issued regarding social distancing and limiting exposure to the virus as permitted by the *Court Security Act 2017* including:
  - maintaining a 1.5 metre distance between each person whether in hearing rooms or common areas;
  - following all directions from Tribunal staff as the maximum number of persons who may enter a space or room at any one time and where to be seated;
  - avoiding touching surfaces/items and any physical contact between persons;
  - sanitize hands whenever entering or exiting the premises
  - covering coughs or sneezes with elbow or tissues (and safely disposing of tissues).

### **3. Public Hearings (Directions Hearings, Mentions, Full Hearings):**

Any person may request to attend a public hearing in person. This request must be made no later than 48 hours prior to the listing. This is to ensure the Tribunal knows how many persons wish to attend in person and can appropriately manage the safety requirements of social distancing at the Tribunal premises. The Tribunal will notify you if there is sufficient room for members of the public to attend the day before the hearing. If there is not, you will still be able to attend by telephone conference. Priority will be given to parties to proceedings as explained below under: **HOW THE TRIBUNAL WILL PRIORITISE ATTENDANCE IN PERSON.**

### **4. Mediations:**

Parties to proceedings may request a mediation be convened in person between parties to the proceedings. This request must be made at least 7 days prior to the listing, and preferably when the directions hearing occurs. On-site mediations have additional requirements which include parties completing a consent form located here (insert link), and returning the form to the Tribunal prior to the mediation.

## **HOW THE TRIBUNAL WILL PRIORITISE ATTENDANCE IN PERSON:**

The Tribunal will prioritise requests to attend hearings in person by giving first preference to parties, their representatives/lawyers and witnesses. Members of the public may still attend by telephone, and if there is enough room at premises within prescribed safety limits, they may attend in person when confirmed by the Tribunal. Telephone conference attendance will be arranged if the premises cannot accommodate all persons who wish to attend.



## **VARIATIONS TO THESE DIRECTIONS:**

Any directions as to the manner in which a hearing should proceed will be done after affording all parties an opportunity to be heard with respect to Natural Justice or any other relevant considerations.

## **RECORDINGS OF PROCEEDINGS:**

The Tribunal acknowledges there may be circumstances which arise which prevent a member of the public from attending a public hearing (such as technological limitations or failures). As such, until further notice, the Tribunal will provide (at no cost) a copy of the recording of any public hearing to any member of the public who wishes to listen to proceedings before the Tribunal but was unable to attend. Please note, that the provision of any recording will be subject to directions restricting its use and publication to other persons which will require that the recording is not to be provided to any other person or published in any way.

## **TESTING:**

Legal practitioners and other professionals who regularly appear before the Tribunal may wish to make arrangements with their own support staff to facilitate the testing requirements of the Tribunal for use of Video Conferencing systems. The testing process will be a technical test only, and will not require the actual appearance of legal practitioners or professionals to establish connections

# ADVICE 1:

## PARTICIPATION BY TELEPHONE CONFERENCE

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In order to participate by telephone conference in Tribunal listings the following processes will be adopted.

1. All parties to proceedings will be required to provide the Tribunal with preferred telephone numbers for participation in hearings.
2. **PLEASE NOTE THAT WHEN THE TRIBUNAL RINGS YOU FOR YOUR CONFERENCE THE NUMBER WILL APPEAR AS A SYDNEY TELEPHONE NUMBER.** This cannot be altered as it is a feature of the new telephone system at the Tribunals premises. **THERE MAY ALSO BE AN AUTOMATED VOICE ADVISING YOU HAVE JOINED THE CONFERENCE.**
3. Please ensure that when you connect to a conference that you are in a location which is quiet and removed from background noise.
4. Where members of the public may attend a hearing of the Tribunal, they must notify the Tribunal in advance that they wish to attend and no later than 48 hours prior to the listing. You will be sent instructions as to how to participate in any conference. If you attend a listing, you are not permitted to interrupt or speak during the proceedings, unless the presiding officer invites persons to speak (eg. in Directions Hearings the officer may wish to confirm if any member of the public seeks to make an Application to Join the appeal.)

**PLEASE NOTE:** The location from where you connect, whether as a party or a member of the public, is considered “Court Premises” pursuant to the *Court Security Act 2017*.

**The recording of proceedings whether in person, by telephone conference or video conference is not permitted under any circumstances and you must obey lawful directions issued by a Tribunal officer as if present at the Tribunal hearing rooms.**

## ADVICE 2:

# PARTICIPATION BY VIDEO CONFERENCING

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The Tribunal will be utilising its new Video Conferencing (VC) facilities on a regular basis for the conduct of full hearings (and other listings where appropriate). To assist parties in using the Tribunal VC facilities, the following requirements and processes will be adopted.

Please note the Tribunal will reserve the use of VC for primary representatives and witnesses who may require visual participation in a hearing. Until the limits of the system have been fully tested, the Tribunal will restrict appearance by video conference to 6-8 connections.

The Tribunal will now be using Microsoft Teams for Video Conferencing. For information about Microsoft Teams you can find it [here](#).

### **In order to use the VC facilities you must have:**

1. A stable internet connection.
2. Computer desktop/laptop with webcam and microphone. The computer should have a web browser or Microsoft Teams app installed.
3. The computer/location from which you participate in the test phases set out below, MUST be the location you intend to be connected to the full hearing.

### **Testing Requirements:**

If you request VC for either yourself or any witnesses, the following requirements will apply:

1. All persons nominated to be connected by VC must arrange for an appointment with a Tribunal officer to individually connect to the VC system of the Tribunal no later than 2 weeks prior to the hearing to test individual connections (if not already tested).
2. Support administrative staff may attend this appointment rather than legal practitioners or witnesses. However, the test connection must be made to the computer/location from which the person intends to connect to the full hearing VC.
3. If you cannot support the connection by VC, you may participate by telephone conference.

If these arrangements give rise to any objections or concerns over a denial of Natural Justice, parties may make written applications to vary participation arrangements. Submissions will need to address the reasons why remote attendance would give rise to a denial of Natural Justice.

**PLEASE NOTE:** The location from where you connect, whether as a party or a member of the public, is considered “Court Premises” pursuant to the *Court Security Act 2017*.

The recording of proceedings whether in person, by telephone conference or video conference is not permitted under any circumstances and you must obey lawful directions issued by a Tribunal officer as if present at the Tribunal hearing rooms.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 26 JUNE 2020 & MONDAY 29 JUNE 2020**

**COMMENCEMENT**

The Committee met at 11.03 am in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*)  
Ms Forrest (*Deputy Chair*)  
Ms Meg Webb

**House of Assembly**

Ms Standen  
Mr Street  
Mr Tucker

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(held-over)**

That the following Notices be held-over —

3. Notice under Section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**THURSDAY 2 JULY 2020**

**COMMENCEMENT**

The Committee met at 11.03 am via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (*CR2*)

**House of Assembly**

Ms Standen (*via Webex*)  
Mr Street (*via Webex*)  
Mr Tucker (*via Webex*)

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(held-over)**

That the following Notices be held-over —

1. Notice under Section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

## **JOINT PARLIAMENTARY STANDING COMMITTEE**

### **SUBORDINATE LEGISLATION**

**TUESDAY 7 JULY 2020 AND WEDNESDAY 8 JULY 2020**

#### **COMMENCEMENT**

The Committee met at 1.32 pm via Webex and in Committee Room 2, Parliament House, Hobart.

#### **MEMBERS PRESENT**

##### **Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)

Ms Forrest (*Deputy Chair*) (*via Webex*)

Ms Webb (*CR2*)

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

Ms Standen (*via Webex*)

Mr Street (*via Webex*)

Mr Tucker (*via Webex*)

#### **NOTICES UNDER COVID-19 DISEASE EMERGENCY (MISCELLEANEOUS PROVISIONS) ACT 2020 (held-over)**

***RESOLVED***, That the following Notices be held-over —

2. Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

The Committee noted the supporting documentation is due close of business tomorrow, Wednesday 8 July 2020.

The Acting Secretary drafted correspondence regarding outstanding supporting documentation.

The Committee ***RESVOLED*** that the draft correspondence be adopted and sent on Thursday 9 July 2020 if the supporting documentation is not received by the due date of Wednesday 8 July 2020.

## **JOINT PARLIAMENTARY STANDING COMMITTEE**

### **SUBORDINATE LEGISLATION**

**THURSDAY 16 JULY 2020**

#### **COMMENCEMENT**

The Committee met at 2.00 pm via Webex and in Committee Room 2, Parliament House, Hobart.

## **MEMBERS PRESENT**

### **Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (CR2)

### **House of Assembly**

Mr Street (*via Webex*)  
Mr Tucker (*via Webex*)

## **APOLOGY**

Ms Standen

## **SUPPORTING CORRESPONDENCE (NOTICES)**

**RESOLVED**, the following supporting correspondence be received —

3. Letter dated 8 July 2020 from the Attorney-General, the Hon Elise Archer MP regarding Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

## **NOTICES UNDER COVID-19 DISEASE EMERGENCY (MISCELLEANEOUS PROVISIONS) ACT 2020 (held-over)**

**RESOLVED**, That the following Notices be held-over —

1. Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

The Committee **RESOLVED** the *Chair* write to the Minister requesting a copy of the protocols.

## **JOINT PARLIAMENTARY STANDING COMMITTEE**

### **SUBORDINATE LEGISLATION**

**TUESDAY 21 JULY 2020**

## **COMMENCEMENT**

The Committee met at 1.32 pm via Webex and in Committee Room 2, Parliament House, Hobart.

## **MEMBERS PRESENT**

### **Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (CR2)

### **House of Assembly**

Mr Street (CR2)  
Mr Tucker (CR2)  
Ms Standen (*via webex*)

## **OUTWARDS CORRESPONDENCE**

**RESOLVED**, the following outwards correspondence be endorsed —

3. Letter dated 16 July 2020 to the Attorney-General, the Hon Elise Archer MP requesting a copy of the protocols, set-out in the Tribunal's Practice Direction in relation to Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(held-over)**

**RESOLVED**, That the following Notices be held-over —

1. Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 28 JULY 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (*CR2*)

**House of Assembly**

Mr Street (*CR2*)  
Mr Tucker (*CR2*)  
Ms Standen (*via webex*)

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(held-over)**

**RESOLVED**, That the following Notices be held-over —

1. Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

The Committee noted no response had been received to correspondence sent 16 July 2020.

The Committee **AGREED** the Acting Secretary send a follow-up email.



**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 7 AUGUST 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (CR2)

Ms Forrest (*Deputy Chair*) (*via Webex*)

Ms Webb (CR2)

**House of Assembly**

Mr Street (CR2)

Mr Tucker (CR2)

Ms Standen (*via webex*)

**SUPPORTING  
CORRESPONDENCE  
(COVID-19 NOTICES)**

**RESOLVED**, the following supporting correspondence be received —

2. Letter dated 30 July 2020 from the Attorney-General, the Hon Elise Archer MP providing a copy of the Tribunal's Practice Directions regarding Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(examined)**

The Committee noted the following Notices had not been tabled and were not outside the prescribed statutory time-frame under section 7(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. However, due to the Parliament not back in session until towards the end of August 2020 and the need to publish the Report on this Notice in a timely manner. The Committee **RESOLVED**, that the following Notices be examined —

1. Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Resource Management and Planning Appeal Tribunal Act 1993)*.

The Committee **RESOLVED** that the Acting Secretary prepare a draft report.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**THURSDAY 20 AUGUST 2020**

## **COMMENCEMENT**

The Committee met at 1.32 pm and in Committee Room 2, Parliament House, Hobart.

## **MEMBERS PRESENT**

### **Legislative Council**

Ms Rattray (*Chair*)  
Ms Forrest (*Deputy Chair*)  
Ms Webb

### **House of Assembly**

Mr Street  
Mr Tucker  
Ms Standen

## **DRAFT REPORT**

### **No. 12**

### **SCRUTINY OF**

### **NOTICES ISSUED**

### **UNDER THE**

### **COVID-19 DISEASE**

### **EMERGENCY**

### **(MISCELLANEOUS**

### **PROVISIONS) ACT**

### **2020**

### **(SECTION 20**

### **RESOURCE**

### **MANAGEMENT AND**

### **PLANNING APPEAL**

### **TRIBUNAL ACT 1993)**

### **(SECTION 23**

### **MINERAL RESOURCES**

### **DEVELOPMENT ACT**

### **1995)**

### **(SECTION 18**

### **SUPREME COURT –**

### **RULE COMMITTEE)**

The Committee considered Draft Report No. 12.

The Committee amended Draft Report No. 12.

The Committee **RESOLVED** —

1. Draft Report No. 12 as amended be adopted with all relevant attachments including today's Minutes (once confirmed); and
2. Presented to the President out of session by Ms Webb.

**Minister for Resources  
Minister for Primary Industries and Water  
Minister for Energy  
Minister for Veteran Affairs**



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3 July 2020

Hon Tania Rattray MLC  
Chair  
Parliamentary Standing Committee on Subordinate Legislation  
Parliament House  
HOBART TAS 7000

Dear Chair

The current COVID-19 restrictions have created difficulties for various elements of the Tasmanian economy and the Government has sought to ease the pressure on businesses and individuals through various measures.

Please find attached a Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* to waive some fees and rents applicable under the *Mineral Resources Development Act 1995* for six months. The Notice was approved by the Treasurer on 1 July 2020 and the notice is expected to be published in the Tasmanian Government Gazette on 8 July 2020.

I provide the Notice for the scrutiny of the Standing Committee as required under the *Subordinate Legislation Act 1992*.

Yours sincerely

Hon Guy Barnett MP  
**Minister for Resources**

**Attachments:**

1. Copy of Notice under s. 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*
2. Advice of the Deputy Chief Parliamentary Counsel
3. Fact Sheet

TASMANIA

*COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*

**NOTICE UNDER SECTION 23**

I, PETER CARL GUTWEIN, the Treasurer, in pursuance of section 23(1)(b) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, being of the opinion that the economic effects of the relevant emergency circumstances are such that it is necessary or desirable to issue the notice, declare that -

(a) despite sections 20 and 42B of the *Mineral Resources Development Act 1995* ("the Act"), rent that would otherwise be payable under those provisions is not payable, by a licensee under that provision, if the rent is due to be paid within the 6-month period after the notification in the *Gazette* of the making of this notice; and

(b) despite sections 25, 27, 35, 44A and 46A of the Act, an application fee that would otherwise be payable under any of those provisions is not payable, by a person making an application under any of those provisions, if the application is made by the person within the 6-month period after the notification in the *Gazette* of the making of this notice.

Dated: 1.7.2020  
Signed:   
Treasurer

**ADVICE OF CHIEF PARLIAMENTARY COUNSEL*****Notice under section 23 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

I advise that this statutory rule –

- (a) appears to be within the powers conferred by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) does not appear, without clear and express authority being provided by any Act, to –
  - (i) have any retrospective effect; or
  - (ii) impose any tax, fee, fine, imprisonment or other penalty; or
  - (iii) sub-delegate powers delegated by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (c) appears to be within the general objectives of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (d) is expressed in as clear and unambiguous language as is reasonably possible.

Dated 26 June, 2020.



Robyn Webb  
**Chief Parliamentary Counsel**

## **Standing Committee on Subordinate Legislation**

### **FACT SHEET**

Notice to waive some rents and fees *Mineral Resources Development Act 1995* under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*

The *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (COVID-19 Act) provides the power for the Treasurer to declare certain fees and charges not payable in order to provide relief from financial hardship resulting from the impacts of the coronavirus.

Consistent with the Government's Explorer Support Package, it is proposed to waive some fees and rents applicable under the *Mineral Resources Development Act 1995* for six months.

The attached Notice approved by the Treasurer was prepared by the Office of Parliamentary Counsel, and provides relief from exploration licence and special exploration licence rents, and application fees for extensions of term, surrender and work condition exemptions for those licences under the *Mineral Resources Development Act 1995*, for a period of six months.



## Joint Standing Committee Subordinate Legislation

16 July 2020

The Hon Guy Barnett MP  
Minister for Resources  
Level 5  
4 Salamanca Place  
HOBART 7000

Dear Minister

**Notice issued under section 23  
*COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*  
*(Mineral Resources and Development Act 1995)***

The Joint Parliamentary Standing Committee on Subordinate Legislation is currently considering the above Notice. At its meeting on 7 July 2020, the Committee resolved that I write to seek further information regarding the impact of COVID-19 on the mineral resources sector and the nature of the financial hardship operators have experienced that warrants the issuing of this Notice.

It would be appreciated if you would provide a response at your early convenience.

Yours sincerely

A handwritten signature in black ink that reads "Tania Rattray".

TANIA RATTRAY MLC

CHAIR

w. 03 6212 2320 f. 03 6212 2345 m. 0488 060 687 e. [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

**Minister for Primary Industries and Water**  
**Minister for Energy**  
**Minister for Resources**  
**Minister for Veterans' Affairs**

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Ms Tania Rattray  
Chair – Joint Parliamentary Standing Committee  
Legislative Council  
Email: [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

3 August 2020

Dear Ms Rattray

Thank you for your letter of the 16 July 2020 regarding the impact of COVID-19 on the mineral resources sector.

The mining and mineral processing sector directly employs 5 600 Tasmanians with many located in regional Tasmania. Several of the mines are major employers and their operations support several regional towns. The mining sector provides more than \$30 million to the government in fees and royalties each year. It is the largest commercial export industry for Tasmania by a significant margin.

The exploration industry is essential for the continued life of existing mines, and to generate new mine developments. Without exploration, the industry will eventually fail and the jobs, economic benefits and government revenue will cease. However, as with many other industries, the COVID pandemic is having a significant impact on the mineral exploration sector in Tasmania.

There is anecdotal evidence of job losses for exploration companies operating in Tasmania as companies strive to remain solvent, and the latest ABS statistics indicate greenfields exploration expenditure of only \$0.2 million, for the March 2020 quarter, compared with an average \$0.6 million per quarter for the previous six quarters. Exploration at mine sites is also well down, with a number of companies curtailing their exploration programs as a result of constrained cash flows due to increased operating costs in the COVID environment and lower metal prices, especially for base metals such as zinc, lead and copper.

Exploration is a global enterprise and many companies exploring in Tasmania are based internationally or elsewhere in Australia, and staff, contractors and equipment have not been able to effectively travel to Tasmania. As an example, one Tasmanian-based company was preparing to undertake a geophysical survey in March-April, however, the equipment and expertise required to operate it are only available in the USA. The contractor is still not able to travel to the State.

Many exploration companies have no source of revenue other than equity capital raisings. Exploration is regarded as risk capital which is harder to raise. Small to medium size companies have found it extremely difficult to promote their projects internationally or to raise money in the COVID



environment. Maintaining employment through the exploration supply chain is important for the future of the Tasmanian economy and regional Tasmania.

One potential source of support for the exploration sector was the Federal Government's JobKeeper program. However, JobKeeper does not apply to financially hard hit explorers because these companies do not have cash flows. Despite requests from the exploration sector, the Federal Government has not extended the JobKeeper program.

The lack of access to JobKeeper, difficult logistics for personnel and equipment due to border controls and travel restrictions, and limited access to capital raisings, have therefore all impacted on the ability of companies to explore in the State.

The Tasmanian "Exploration Support Package" does not involve direct funding from government. It provides support through waivers and exemptions and it has been very well received by AMEC (Australian Mining and Exploration Council), TMEC (Tasmanian Mining Manufacturing and Energy Council), the National Coordinating Mechanism COVID Resources, the explorers and others associated with the industry and supply chain.

The package has been designed to support the exploration companies by:

- Suspension of rental payments for exploration licences for the next six months;
- Exemptions from exploration licence work conditions for up to six months with fees for these applications waived; and
- Application fees for the surrender or extension of term of exploration licences waived for six months.

These measures apply to exploration licences only and do not cover retention licences or mining leases. The package will assist companies undertaking greenfields exploration to maintain their licences in good standing until restrictions on movement of personnel and equipment ease, and allow time for capital raising markets to improve so that companies can secure funding arrangements to continue their exploration programs.

Almost all States and Territories have recognised the dire position many exploration companies are facing and have provided exploration support packages.

Tasmania needs to maintain its exploration investment attractiveness so that new mines are discovered and developed to both maintain and increase employment especially in regional areas. This package will help maintain this much needed investment.

Yours sincerely



Hon Guy Barnett MP  
Minister for Resources

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 7 JULY 2020 AND WEDNESDAY 8 JULY 2020**

**COMMENCEMENT**

The Committee met at 1.32 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (via Webex)

Ms Forrest (*Deputy Chair*) (via Webex)

Ms Webb (CR2)

**House of Assembly**

Ms Standen (via Webex)

Mr Street (via Webex)

Mr Tucker (via Webex)

**SUPPORTING  
CORRESPONDENCE  
(NOTICE)**

**RESOLVED**, the following supporting correspondence be received —

1. Letter dated 3 July 2020 from the Hon Guy Barnett MP, Minister for Primary Industries and Water regarding Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(additional since  
last meeting)**

**RESOLVED**, That the following Notice be held-over —

1. Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

The Committee **RESOLVED** to write to the Minister seeking further information as to how industry operators have been impacted financially as a result of the COVID-19 pandemic.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**THURSDAY 16 JULY 2020**

**COMMENCEMENT**

The Committee met at 2.00 pm via Webex and in Committee Room 2, Parliament House, Hobart.

## **MEMBERS PRESENT**

### **Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (*CR2*)

### **House of Assembly**

Mr Street (*via Webex*)  
Mr Tucker (*via Webex*)

## **APOLOGY**

Ms Standen

## **DRAFT CORRESPONDENCE**

The Committee considered the following draft correspondence

1. Letter dated 16 July 2020 to the Minister for Resources, the Hon Guy Barnett MP requesting further information regarding financial hardship in relation to Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

The Committee amended the correspondence.

The Committee **RESOLVED** the draft correspondence be adopted and sent.

## **NOTICES UNDER COVID-19 DISEASE EMERGENCY (MISCELLENEOUS PROVISIONS) ACT 2020 (held-over)**

**RESOLVED**, That the following Notices be held-over —

2. Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

## **JOINT PARLIAMENTARY STANDING COMMITTEE**

### **SUBORDINATE LEGISLATION**

**TUESDAY 28 JULY 2020**

## **COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

## **MEMBERS PRESENT**

### **Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (*CR2*)

### **House of Assembly**

Mr Street (*CR2*)  
Mr Tucker (*CR2*)  
Ms Standen (*via webex*)

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(held-over)**

**RESOLVED**, That the following Notices be held-over —

2. Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

The Committee noted no response had been received to correspondence sent 16 July 2020.

The Committee **AGREED** the Acting Secretary send a follow-up email.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 7 AUGUST 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (CR2)  
Ms Forrest (*Deputy Chair*) (*via Webex*)  
Ms Webb (CR2)

**House of Assembly**

Mr Street (CR2)  
Mr Tucker (CR2)  
Ms Standen (*via webex*)

**SUPPORTING  
CORRESPONDENCE  
(COVID-19 NOTICES)**

**RESOLVED**, the following supporting correspondence be received —

3. Letter dated 3 August 2020 from the Minister for Resources, the Hon Guy Barnett MP providing a response regarding the impact of COVID-19 on the mineral resources sector in relation to Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLENEOUS  
PROVISIONS)  
ACT 2020  
(examined)**

The Committee noted the following Notices had not been tabled and were not outside the prescribed statutory time-

frame under section 7(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. However, due to the Parliament not back in session until towards the end of August 2020 and the need to publish the Report on this Notice in a timely manner. The Committee **RESOLVED**, that the following Notices be examined —

2. Notice under section 23 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Mineral Resources Development Act 1995)*.

The Committee **RESOLVED** that the Acting Secretary prepare a draft report.

## **JOINT PARLIAMENTARY STANDING COMMITTEE**

### **SUBORDINATE LEGISLATION**

**THURSDAY 20 AUGUST 2020**

#### **COMMENCEMENT**

The Committee met at 1.32 pm and in Committee Room 2, Parliament House, Hobart.

#### **MEMBERS PRESENT**

##### **Legislative Council**

Ms Rattray (*Chair*)  
Ms Forrest (*Deputy Chair*)  
Ms Webb

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

Mr Street  
Mr Tucker  
Ms Standen

#### **DRAFT REPORT**

**No. 12**

#### **SCRUTINY OF**

#### **NOTICES ISSUED**

#### **UNDER THE**

#### **COVID-19 DISEASE**

#### **EMERGENCY**

#### **(MISCELLANEOUS**

#### **PROVISIONS) ACT**

**2020**

#### **(SECTION 20**

#### **RESOURCE**

#### **MANAGEMENT AND**

#### **PLANNING APPEAL**

#### **TRIBUNAL ACT 1993)**

#### **(SECTION 23**

#### **MINERAL RESOURCES**

#### **DEVELOPMENT ACT**

**1995)**

#### **(SECTION 18**

#### **SUPREME COURT –**

#### **RULE COMMITTEE)**

The Committee considered Draft Report No. 12.

The Committee amended Draft Report No. 12.

The Committee **RESOLVED** —

1. Draft Report No. 12 as amended be adopted with all relevant attachments including today's Minutes (once confirmed); and
2. Presented to the President out of session by Ms *Webb*.

Attorney-General  
Minister for Justice  
Minister for Corrections  
Minister for Building and Construction  
Minister for the Arts  
Minister for Heritage

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29 JUL 2020

Hon Tania Rattray MLC  
Chair  
Parliamentary Standing Committee on Subordinate Legislation  
Parliament House  
HOBART TAS 7000

Email – [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

Dear Ms Rattray

Please find enclosed a copy of a notice issued by the Premier pursuant to section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act). The notice was published in Gazette No. 22 009 on 22 July 2020.

Section 18 of the Act allows the Premier to, by Notice and with approval of the emergency manager, authorise bodies of persons to conduct meetings via alternative means, where requested by or (with authorisation) on behalf of that body of persons.

On 25 May 2020, in accordance with section 18(5) of the Act, Chief Justice of the Supreme Court of Tasmania, the Hon Alan Blow AO, wrote to the Premier requesting that a Notice be issued under section 18(2) declaring that despite any provision of the *Supreme Court Civil Procedure Act 1932*, meetings of the Supreme Court Rule Committee held for the purposes of that Act may be held in the approved manner. The Chief Justice advised that for the purposes of section 18(3) of the Act, he ordinarily presides over Rule Committee meetings. The Rule Committee is established under section 202(1) of the *Supreme Court Civil Procedure Act 1932*.

The Supreme Court has implemented measures to reduce the potential risk of exposure to COVID-19 through persons being present at the Court, and to reflect social distancing requirements. This includes, amongst other things, that proceedings and other meetings are now occurring as far as possible remotely, by way of telephone or audio visual link.

The Notice clarifies that the Rule Committee may conduct its meetings remotely. The measure requested by the Chief Justice is considered proportionate in the circumstances of COVID-19, to reduce the risk of spread of the disease.

I have enclosed a Fact Sheet, which explains in more detail the rationale for, and effect of, the proposed notice.

Yours sincerely



Hon Elise Archer MP  
**Attorney-General**  
**Minister for Justice**

Attachments –

- Signed Notice
- Fact Sheet
- OPC Advice



**MINISTERIAL NOTICE - FACT SHEET**

***COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

The attached Ministerial Notice is issued pursuant to section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act), with approval of the Emergency Manager (the State Controller).

**Reason for Notice**

Section 18 of the Act allows the Premier to, by Notice and with approval of the emergency manager, authorise bodies of persons to conduct meetings via alternative means, where requested by or (with authorisation) on behalf of that body of persons.

The Supreme Court of Tasmania has implemented measures to reduce the potential risk of exposure to COVID-19 through persons being present at the court. This includes, amongst other things, that most (if not all) of the judiciary are now working remotely from the court, by way of telephone or audio visual link, and that hearings and other meetings are occurring by remote means.

On 25 May 2020, in accordance with section 18(5) of the Act, Chief Justice of the Supreme Court of Tasmania, the Hon Alan Blow AO, wrote to the Premier requesting that a Notice be issued under section 18(2) declaring that despite any provision of the *Supreme Court Civil Procedure Act 1932*, meetings of the Rule Committee held for the purposes of that Act may be held in the approved manner. The Chief Justice advised that for the purposes of section 18(3) of the Act, he ordinarily presides over Rule Committee meetings.

The Notice will enable the Rule Committee to operate in a way which reduces the risk of spread of COVID-19 in Tasmania by meeting remotely.

**Section 202(4) of the *Supreme Court Civil Procedure Act 1932***

The Rule Committee is established under section 202(1) of the *Supreme Court Civil Procedure Act 1932*. It consists of the judges of the Supreme Court, of the Associate Judge, and of four practitioners of the Court as appointed by the Governor.

The Act provides it is the duty of the Rule Committee to consider matters including:

- the working and operation of the Rules of Court ,
- the arrangements as to the registries of the Court,
- the making of new or additional Rules of Court, and such alteration in the Rules of Court for the time being in force, as desirable for the better administration of justice.

The Rule Committee meets at least once per year.

Section 202(4) provides that –

Meetings of the Rule Committee shall be convened by or on the direction of the Chief Justice. Six members shall form a quorum, but every Rule of Court which is required to be recommended or approved by the Rule Committee, or a majority of such Committee, shall be recommended or approved, as the case may be, by at least a majority of all the members of the Rule Committee, of whom 4 shall be judges. At every meeting of the Rule Committee at which the Chief Justice is present he shall preside thereat. If the Chief Justice is absent, but at least two other judges are present, the senior puisne judge present shall preside, or if only one judge is present he shall preside. If no judge is present the members of the Committee present shall elect a chairman. Subject to the provisions of this Act the Rule Committee may regulate its own procedure.

His Honour has expressed the view that while one could argue that this subsection does not impliedly require a face-to-face meeting, it is important that the validity of future amendments to the *Supreme Court Rules* should not be open to challenge by litigants who might argue that a face-to-face meeting is mandatory.

#### Existence of relevant emergency circumstances

Under section 5 of the COVID-19 Act, a section 20(1) Notice can only be issued if a relevant ‘emergency circumstance’ exists in relation to the Notice. Subsection (2) qualifies that an emergency circumstance only exists where the Minister is “satisfied that it is necessary or desirable to issue the Notice because of –

*(a) the presence of the disease in persons in the State; or*

*(b) the risk of the contraction of the disease by persons in the State; or*

*(c) a restriction on the movement of persons that is imposed, by or under a relevant legislative instrument, because of the presence of the disease or the risk of the spread of the disease amongst persons in the State; or*

*(d) a reduction, in the numbers of persons available to carry out particular activities, relating to a relevant legislative instrument to which the notice relates, because of –*

*(i) the presence of the disease in persons in the State; or*

*(ii) the risk of the spread of the disease amongst persons in the State; or*

*(iii) circumstances related to the matters referred to in subparagraph (i) or (ii) ; or*

*(e) the desirability of ensuring the supply of goods or services, the supply of which may be hindered because of a circumstance referred to in another paragraph of this subsection.*

The circumstances outlined by the Chief Justice are considered (at a minimum) to satisfy section 5(2)(b) of the COVID-19 Act because of the risk of contraction of COVID-19 by Rule Committee members, Supreme Court staff, and wider public through exposure to infected persons as a result of their being present in or around court buildings. The measure requested by the Chief Justice is considered proportionate in the circumstances.

**ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL*****Notice under section 18 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

I advise that this statutory rule –

- (a) appears to be within the powers conferred by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) does not appear, without clear and express authority being provided by any Act, to –
  - (i) have any retrospective effect; or
  - (ii) impose any tax, fee, fine, imprisonment or other penalty; or
  - (iii) sub-delegate powers delegated by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (c) appears to be within the general objectives of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (d) is expressed in as clear and unambiguous language as is reasonably possible.

Dated 3 July, 2020.



Kate Woodward  
**Deputy Chief Parliamentary Counsel**

TASMANIA

*COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*

**NOTICE UNDER SECTION 18**

I, PETER CARL GUTWEIN, the Premier, in pursuance of section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* ("the Act"), being of the opinion that the relevant emergency circumstances exist in relation to this notice, in accordance with section 18(5) of the Act and with the approval of the emergency manager, declare that despite section 202(4) of the *Supreme Court Civil Procedure Act 1932*, meetings of the Rule Committee that are held for the purposes of *Supreme Court Civil Procedure Act 1932* may be held in the approved manner within the meaning of section 18(2) of the Act.

Dated: 10.7.20 .....

Signed:  .....

Premier



## Joint Standing Committee Subordinate Legislation

28 July 2020

The Hon Peter Gutwein MP  
Premier  
11<sup>th</sup> Floor  
15 Murray Street  
HOBART TAS 7000

Dear Premier

**Notice issued under section 18 of the  
*COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*  
(Supreme Court— Rule Committee)**

The Joint Standing Committee on Subordinate Legislation is currently considering the above Notice. At the Committee's meeting today, it was noted that the supporting documentation had not been received. The Committee resolved to write to you requesting that the supporting documentation accompanying this Notice include any updated Supreme Court Directions in relation to this Notice.

It would be appreciated if you would please forward the required documentation at your early convenience.

Yours sincerely

A handwritten signature in black ink, reading "Tania Rattray".

**TANIA RATTRAY MLC**  
CHAIR

w. 03 6212 2320 f. 03 6212 2345 m. 0488 060 687 e. [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**TUESDAY 28 JULY 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (*via Webex*)

Ms Forrest (*Deputy Chair*) (*via Webex*)

Ms Webb (CR2)

**House of Assembly**

Mr Street (CR2)

Mr Tucker (CR2)

Ms Standen (*via webex*)

**NOTICE UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLEANEOUS  
PROVISIONS)  
ACT 2020**  
(additional since  
last meeting)

1. Notice under section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Supreme Court – Rule Committee)

The Committee **AGREED** the *Chair* write requesting supporting documentation and to include any updated Directions relevant to the Notice.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**FRIDAY 7 AUGUST 2020**

**COMMENCEMENT**

The Committee met at 1.30 pm via Webex and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**

Ms Rattray (*Chair*) (CR2)

Ms Forrest (*Deputy Chair*) (*via Webex*)

Ms Webb (CR2)

**House of Assembly**

Mr Street (CR2)

Mr Tucker (CR2)

Ms Standen (*via webex*)

**OUTWARDS  
CORRESPONDENCE**

**RESOLVED**, the following outwards correspondence be endorsed —

2. Letter dated 28 July 2020 to the Premier, the Hon Peter Gutwein MP requesting any updated Supreme Court Directions be provided with the supporting documentation in relation to Notice under section 18 of

the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Supreme Court – Rule Committee).

**SUPPORTING  
CORRESPONDENCE  
(COVID-19 NOTICES)**

**RESOLVED**, the following supporting correspondence be received —

1. Letter dated 29 July 2020 from the Attorney-General, the Hon Elise Archer MP providing supporting documentation regarding Notice under section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Supreme Court – Rule Committee).

**NOTICES UNDER  
COVID-19 DISEASE  
EMERGENCY  
(MISCELLEANEOUS  
PROVISIONS)  
ACT 2020  
(examined)**

The Committee noted the following Notices had not been tabled and were not outside the prescribed statutory time-frame under section 7(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. However, due to the Parliament not back in session until towards the end of August 2020 and the need to publish the Report on this Notice in a timely manner. The Committee **RESOLVED**, that the following Notices be examined —

3. Notice under section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Supreme Court – Rule Committee)

The Committee **RESOLVED** that the Acting Secretary prepare a draft report.

**JOINT PARLIAMENTARY STANDING COMMITTEE**

**SUBORDINATE LEGISLATION**

**THURSDAY 20 AUGUST 2020**

**COMMENCEMENT**

The Committee met at 1.32 pm and in Committee Room 2, Parliament House, Hobart.

**MEMBERS PRESENT**

**Legislative Council**  
Ms Rattray (*Chair*)  
Ms Forrest (*Deputy Chair*)  
Ms Webb

**House of Assembly**  
Mr Street  
Mr Tucker  
Ms Standen

**DRAFT REPORT**  
**No. 12**  
**SCRUTINY OF**  
**NOTICES ISSUED**  
**UNDER THE**  
**COVID-19 DISEASE**  
**EMERGENCY**  
**(MISCELLANEOUS**  
**PROVISIONS) ACT**  
**2020**  
**(SECTION 20**  
**RESOURCE**  
**MANAGEMENT AND**  
**PLANNING APPEAL**  
**TRIBUNAL ACT 1993)**  
**(SECTION 23**  
**MINERAL RESOURCES**  
**DEVELOPMENT ACT**  
**1995)**  
**(SECTION 18**  
**SUPREME COURT –**  
**RULE COMMITTEE)**

The Committee considered Draft Report No. 12.

The Committee amended Draft Report No. 12.

The Committee ***RESOLVED*** —

1. Draft Report No. 12 as amended be adopted with all relevant attachments including today's Minutes (once confirmed); and
2. Presented to the President out of session by Ms *Webb*.