



2021

## **Parliament of Tasmania**

**JOINT STANDING COMMITTEE**

# **SUBORDINATE LEGISLATION**

## **REPORT 15**

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 14 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
*(LAND USE PLANNING AND APPROVALS ACT 1993)***

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

**Ms Tania Rattray MLC (*Chair*)**

**Ms Ruth Forrest MLC**

**Ms Meg Webb MLC (*Deputy Chair*)**

**Mr Felix Ellis MP**

**Ms Janie Finlay MP**

**Ms Madeleine Ogilvie 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:

- 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 14 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Land Use Planning and Approvals Act 1993)***

At its meeting on 1 July 2021, 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 Premier relevant to the Notice is attached to this Report for completeness.

The Minutes of Proceedings related to this Notice are not attached to this Report due to the Committee not scheduled to meet again until 2 September 2021.

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.

Hon Tania Rattray MLC  
**CHAIR**

1 July 2021



## PREMIER OF TASMANIA

13 April 2021

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

RECEIVED

13 APR 2021

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

Dear Ms Rattray

Please find enclosed copy of a Notice issued by me as Premier pursuant to section 14 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The Notice was signed on 31 March 2021 and published in the Gazette on 1 April 2021.

The Notice provides for the following:

**1. Variation to provisions on planning permits to extend operating hours of certain business who will administer the Covid-19 vaccines (Section 14 Notice)**

The notice will enable those businesses or government service providers who will be administering the Covid-19 vaccines to operate outside the operating hours that are stipulated in the relevant planning permits.

The notice will do this by amending any relevant condition so that the operating hours are effectively up to 24 hours a day and 7 days a week, if the purpose of extending the operating hours is for administering the Covid-19 vaccines.

The effect of the notice means that a relevant planning authority will not need to take compliance action on the business on the basis of not adhering to operating hours, provided the business is extending its hours only for the purpose of administering the Covid-19 vaccines.

**2. Variation to provisions on planning permits to allow additional sites to administer the Covid-19 vaccines (Section 14 Notice)**

There are also some sites around the state that are suitable to use for administering the Covid-19 vaccines, however the relevant permits for these sites may not stipulate an approval for the use of the site to administer the Covid-19 vaccines.

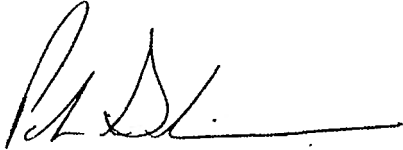
An example of this is a chemist, which would be issued with a planning permit under the General Retail and Hire use class, but administering vaccines would fall under either the Hospital Services use class or Business and Professional Services use class (if for a medical centre or consulting room).

The second part of the notice also provides for sites to be allowed to administer the Covid-19 vaccines by amending the approved use of the site.

The effect of the notice means that a relevant planning authority will not need to take enforcement or compliance action on the business/site on the basis that the permit does not provide for the use of the site to administer the Covid-19 vaccines.

I enclose a fact sheet to provide further information on the Notice and the advice provided by the Office of Parliamentary Counsel (OPC) under section 7(2) of the *Subordinate Legislation Act 1992*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Gutwein', followed by a long horizontal line.

Peter Gutwein MP  
**Premier**

Attachments –

- Signed Notice for s14
- Fact Sheet
- CPC Advice for Notice under s14

**TASMANIA**

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

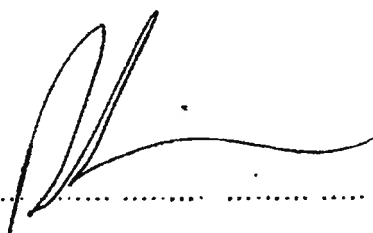
**NOTICE UNDER SECTION 14**

I, PETER CARL GUTWEIN, the Premier, in pursuance of section 14 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, being of the opinion that the relevant emergency circumstances exist in relation to this notice and with the approval of the emergency manager, amend a provision of any permit, granted in accordance with and in force under the *Land Use Planning and Approvals Act 1993* –

- (a) which places a curfew, or other daily or hourly time restriction, however described, on operations undertaken in accordance with that permit, by removing that curfew, or other daily or hourly time restriction, if the operations undertaken are for the purposes of the lawful vaccination of persons with a COVID-19 vaccine; and
- (b) by amending that provision to allow land that is the subject of the permit to be used for the purposes of the lawful vaccination of persons with a COVID-19 vaccine –

for a period of 12 months commencing on the day on which the making of this notice is published in the *Gazette*.

Dated: 31.3.21 .....

Signed:  .....

Premier

## **MINISTERIAL NOTICE - FACT SHEET**

The attached Ministerial Notice is to be issued pursuant to section 14 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID-19 Act). The Emergency Manager has approved the issuing of the Notice, as required under section 6 of the COVID-19 Act. In this case the Emergency Manager is the Director of Public Health.

### **Reasons for Notice**

The Government's rollout of the Covid-19 vaccines will require the use of many sites around the state, such as medical centres, hospitals, health centres, pharmacies and potentially a range of public buildings. Many of these sites have existing planning permits that limit the uses or have conditions that limit the operating hours of the particular business.

With the intended rapid rollout of the vaccines, extended operating hours may be required in order to achieve the target dates for population vaccination.

The timely rollout of the vaccines is a very important step in the economic and social recovery of the State and should not be restricted by planning authorities being obliged under the law to undertake enforcement or compliance action against any of these businesses/sites over the issue of extended operating hours or use of the site when it relates to delivering the vaccines.

The key areas that are to be addressed in the Notice include providing that:

- planning permits that place a limitation on operating hours provide for the administration of the Covid-19 vaccines at any time covering 24 hours a day, 7 days a week, and
- extending the scope of allowed use on planning permits to allow the land to be used for the Covid-19 vaccines rollout.

The Premier considers that the issuing of the attached Notice is necessary to effectively implement the timely rollout of the Covid-19 vaccines.

The attached Notice is considered to be consistent with the objectives of the COVID-19 Act, and the emergency circumstances specified in sections 5(2)(b) of the COVID-19 Act are considered to exist in relation to the Notice, as follows:

- the need to amend or revoke provisions of existing planning permits, so as to ensure health services across the State can provide for the Covid-19 vaccines to be rolled out in a timely manner, which in turn will provide a long term safeguard to all Tasmanian residents against the risk of contraction of the disease (Sections 5(2)(b)).



## Effect of Notice

The Ministerial Notice provides for the following:

### **1. variation to provisions on planning permits to extend operating hours of certain business who will administer the Covid-19 vaccines (Section 14 Notice)**

The notice will enable those businesses or government service providers who will be administering the Covid-19 vaccines to operate outside the operating hours that are stipulated in the relevant planning permits.

The notice will do this by amending any relevant condition so that the operating hours are 24 hours a day and 7 days a week, if the purpose of extending the operating hours is for administering the Covid-19 vaccines.

The effect of the notice means that a relevant planning authority will not be able to take compliance action on the business on the basis of not adhering to operating hours, provided the business is extending its hours only for the purpose of administering the Covid-19 vaccines.

### **2. variation to provisions on planning permits to allow additional sites to administer the Covid-19 vaccines (Section 14 Notice)**

There are also some sites around the state that are suitable to use for administering the Covid-19 vaccines, however the relevant permits for these sites may not stipulate an approval for the use of the site to administer the Covid-19 vaccines.

An example of this is a chemist, which would be issued with a planning permit under the General Retail and Hire use class, but administering vaccines would fall under either the Hospital Services use class or Business and Professional Services use class (if for a medical centre or consulting room).

The second part of the notice also provides for sites to be allowed to administer the Covid-19 vaccines by amending the approved use of the site.

The effect of the notice means that a relevant planning authority will not be able to take enforcement or compliance action on the business/site on the basis that the permit does not provide for the use of the site to administer the Covid-19 vaccines.

**ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL*****Notice under section 14 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 March, 2021



K. Woodward  
**Deputy Chief Parliamentary Counsel**