

CLAUSE NOTES

COVID-19 Disease Emergency (Miscellaneous Provisions) Bill (No. 2) of 2020

PART 1 PRELIMINARY

Clause 1 Short title

Specifies the name of the proposed Act.

Clause 2 Commencement

Provides that the provisions of the Act commence on a day or days to be proclaimed.

Clause 3 Interpretation

Defines certain terms for the purposes of the Act.

Clause 4 Act binds Crown

Provides that the Act binds the Crown.

PART 2 LEGISLATIVE COUNCIL PERIODICAL ELECTIONS 2020

Clause 5 Objectives of Part 2

The objectives of this Part are to modify the application of the *Constitution Act 1934* and *Electoral Act 2004* in relation to the 2020 election in response to the risk of the spread of the COVID-19 disease.

Clause 6 Part to prevail over certain other Acts

The provisions of this Part apply in relation to the 2020 election and to the extent of an inconsistency between a provision of this Part and a provision of the *Constitution Act 1934* or *Electoral Act 2004*, this Part prevails.

Clause 7 Interpretation of Part 2

Defines certain terms for the purposes of this Part. The definitions of Council and Council division are consistent with definitions of these terms in the *Constitution Act 1934* and *Electoral Act 2004*.

Clause 8 When 2020 election to be held

Provides that the Governor may proclaim a Saturday in a month before 31 December 2020 for the 2020 election to be held. The Governor may only make a proclamation where the Director of Public Health has notified the Minister that he or she is of the opinion there is no longer a significant risk to public health that would make it undesirable to hold the 2020 election.

Provides that if the 2020 election cannot be held by 31 December 2020, the Governor must proclaim the 2020 election to be held at the time of the next periodical election for a Council member in 2021.

Clause 9 Term of Council members to which 2020 election relates and their successors

Provides that the term of office for a Council member to which the 2020 election relates expires when the new candidate for that Division is elected. This provision extends the term of those current Council members until the 2020 election can be held.

Provides that the term of office of a Council member to which the 2020 election relates will expire on the day on which the new candidate is elected at the next periodic election for that Council division in May 2026. This will provide for a return to the usual 6-year term of Council members under the *Constitution Act 1934* from that periodical election onward.

PART 3 FUNCTIONS OF TASMANIAN HEALTH SERVICE

Clause 10 Interpretation and application of Part 3

For the purposes of this Part, “the Act” is the *Tasmanian Health Service Act 2018*, and a word or phrase in this Part has the meaning assigned to it under the Act. The provisions of this Part apply despite any provision of the Act and in the event of an inconsistency, a provision of this Part prevails.

Clause 11 Functions of Tasmanian Health Service include provision of assistance to certain persons

Provides that during the emergency period, the THS may enter into contracts or arrangements in relation to the provision of functions, hospital services, or health support services as reasonably required to ensure such functions and services may be performed or provided despite the COVID-19 disease-related factors.

This section applies irrespective of whether the function or service is not consistent with the Ministerial Charter, not specified in, or inconsistent with the service plan, or would otherwise not be authorised under the Act.

PART 4 TAXI OPERATION

Clause 12 Interpretation and application of Part 4

Defines the terms ‘ordinary taxi’ and ‘wheelchair accessible taxi’ and provides that a word or phrase in this Part has the meaning assigned to it under the *Taxi and Hire Vehicle Industries Act 2008*.

These provisions apply despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or *Taxi Industry Regulations 2018* and to the extent of an inconsistency, a provision of this Part prevails.

Clause 13 Requirement to make new taxi licences available not to apply in relation to year 2020

Provides that section 23(1) of the *Taxi and Hire Vehicle Industries Act 2008* does not apply in relation to the year 2020 for any taxi area. Also provides that the Minister responsible for the *Taxi and Hire Vehicle Industries Act 2008* may declare by notice/s that in respect of 2021 and/or 2022, section 23(1) does not apply in relation to any taxi area.

Section 23(1) provides that before 30 September each year, the Commission must make available for issue in each taxi area an additional number of owner-operator taxi licences as specified in that provision.

Clause 14 Older taxis may continue to operate

Provides that the Commission may approve a vehicle for use as an ordinary taxi or wheelchair-accessible taxi to continue to operate and issue or transfer a licence where the vehicle exceeds maximum age and odometer readings set out in this Part, despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or *Taxi Industry Regulations 2018*.

This section ceases to be in force on the emergency cessation day or a later day, determined by the Minister by notice in the Gazette, that occurs before the emergency cessation day.

PART 5 REGISTRATION OF CERTAIN VEHICLES

Clause 15 Interpretation and application of Part 5

In this Part “the Act” means the *Vehicle and Traffic Act 1999* and any regulations under that Act and a word or phrase in this Part has the meaning assigned to it under that Act. Defines the ‘relevant period’ during which the registration of a vehicle may be frozen.

The provisions of this Part apply despite any provision of the Act and to the extent of an inconsistency, a provision of this Part prevails.

Clause 16 Registrar may freeze registration of certain vehicles

Provides that the Registrar may, by notice, ‘freeze’ the registration of a vehicle owned by a person, or member of a class of persons or in relation to a registered operator, or a registered operator within a class of persons, for the relevant period. An owner of a vehicle or a registered operator may nominate a day on which this section is to cease to apply for that vehicle.

Once the registration is no longer frozen, either the registration will be extended by the period for which it was frozen, or where the owner or a registered operator requests, the Registrar must refund the amount of registration paid to the person, for all or part of the relevant period.

Provides that a vehicle may not be used on a public street when the registration is frozen, unless otherwise authorised under the Act.

PART 6 COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 AMENDED

Clause 17 Principal Act

In this Part, the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* is the Principal Act.

Clause 18 Section 4 amended (Interpretation)

Amends section 4 to expand the definition of 'permit', from "a permit issued in accordance with the *Land Use Planning and Approvals Act 1993*, and a permit, licence, certification, or other authority, that is issued under a prescribed Act; or within a class of permit, licence, certification, or other authority, that is prescribed" to include a 'relevant licensing Act' and inserts a definition of 'relevant licensing Act'.

This definition is relevant to section 14 of the Principal Act which provides that the Minister may amend or revoke, by notice, for the period specified, a provision of a permit or any permit within a class of permits.

Clause 19 Section 13 amended (Extension of statutory timelines)

Amends section 13(1) of the Principal Act to replace the term "must be" with "may be, or must be". Section 13 provides for the Minister to make notices to extend or reduce statutory timeframe by which actions must be taken by a person, or body of persons, under a provision of a relevant legislative instrument. This provides that a notice may also be made where an action "may be taken" to provide greater certainty around the matters for which a notice can be made under section 13.

PART 7 EMERGENCY MANAGEMENT ACT 2006 AMENDED

Clause 20 Principal Act

In this Part, the *Emergency Management Act 2006* is the Principal Act.

Clause 21 Section 60C inserted 60C Infringement notices

Inserts a new section 60C in the Principal Act to provide for infringement offences to be prescribed and for a police officer to issue and serve an infringement notice in relation to these offences. An infringement notice may not be served on a person under the age of 18 years, is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005* and is not to relate to more than 3 offences.

Provides that regulations may prescribe different penalties for bodies corporate and individuals for infringement notices and that the penalty is not to exceed 20% for an individual, or 30% for a body corporate, of the maximum penalty that could be imposed by a court for that offence.

Currently, the maximum penalty for an offence under the Principal Act is 100 penalty units (\$16,800). Therefore an infringement penalty for an offence under the Principal Act can be prescribed, but must not exceed 20 penalty units (\$3,360) for an individual or 30 penalty units (\$5,040) for a body corporate.

PART 8 PUBLIC HEALTH ACT 1997 AMENDED

Clause 22 Principal Act

In this Part, the *Public Health Act 1997* is the Principal Act.

Clause 23 Section 3 amended (Interpretation)

Amends section 3 of the *Public Health Act 1997* to provide a definition of COVID-19 disease.

Clause 24 Section 15 amended (Duration of emergency declaration)

Amends section 15(1)(a) of the Principal Act to extend the period for which an emergency declaration remains in force, unless it is sooner revoked, from a period not exceeding 7 days, to, in relation to the COVID-19 disease only, a period not exceeding 12 weeks.

Amends section 15(2) to extend the period for which the Director may extended an emergency declaration from a period not exceeding 7 days, to, in relation to the COVID-19 disease only, a period not exceeding 12 weeks.

Clause 25 Section 42 amended (Directions of Director)

Amends section 42(2) of the Principal Act to increase the current maximum penalty of a fine not exceeding 50 penalty units (\$8,400) to a maximum fine not exceeding 100 penalty units (\$16,800) or imprisonment for a term not exceeding 6 months, or both.

Section 42(2) provides a penalty where a person does not comply with a direction given by the Director under section 42(1) to a person who the Director is aware or suspects on reasonable grounds has, or may have been exposed to, a notifiable disease.

This new penalty is consistent with the higher maximum existing penalty under section 16(3) of the Principal Act for where a person does not comply with a direction of the Director of Public Health, where an emergency declaration is in force.

Clause 26 Section 169 amended (Infringement notices)

Amends section 169(1) of the Principal Act to provide that in addition to an authorised officer or a council being able to serve an infringement notice on a person if of the opinion that the person has committed a prescribed offence, a police officer may also serve an infringement notice.

Clause 27 Section 194 amended

Amends section 194 of the Principal Act to provide that in the absence of evidence to the contrary, in any proceedings for an offence of failing to comply with a direction under that Act, certain evidence, if established, is sufficient evidence that a person knew of the requirements of the direction.

Clause 28 Section 198B inserted

Inserts a new section 198B in Division 8 of the Principal Act which provides that the emergency declaration made under that Act on 17 March 2020 is to have effect, and is to be taken to have always had effect, for a period of 12 weeks on and from that day and may be extended under the Act.

This amendment validates the original emergency declaration in regard of the COVID-19 disease emergency and provides that it has a longer period of 12 weeks,

consistent with the extension under clause 24 of the period for which such a declaration may be extended.

PART 9 MISCELLANEOUS

Clause 29 Emergency cessation day

Provides that the Minister by notice may declare a day to be the emergency cessation day. The Minister may only declare such a day if he or she is reasonably of the opinion that the risks related to the disease and the deleterious economic effects of those factors have sufficiently reduced, so that it is reasonable to declare a day to be the emergency cessation day.

Clause 30 Regulations

Provides that the Governor may make regulations for the purposes of this Act, including for the following matters:

- To apply or incorporate a code, standard or policy document prepared or published by the Minister, a specified person or body;
- For any matter or thing to be determined, dispensed with, regulated or prohibited, at the discretion of the Minister, State Controller, Director of Public Health or any other person or body specified in the regulations;
- That the requirement under section 4 or 5 of the *Subordinate Legislation Act 1992*, for compliance with guidelines, or preparation of a regulatory impact statement does not apply;
- That contravention of any of the regulations is an offence, and the maximum fines to be applied for such offences; and
- Savings and transitional provisions for this Act or any regulations made under this Act.

The maximum penalty that can be imposed under the regulations by a court for a breach of the regulations is 100 penalty units (\$16,800), and a further fine not exceeding 20 penalty units (\$3,360) for continuing offences for each day during which the offence continues).

Provides that despite section 47(3)(c) of the *Acts Interpretation Act 1931*, all regulations made under this Act must be laid before each House of Parliament on the next sitting-day after the regulations are made.

Clause 31 Administration of Act

Provides that until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*, administration of the Act is assigned to the Premier and the department responsible to that Minister in relation to the Act is the Department of Premier and Cabinet.