



2021

# **Parliament of Tasmania**

**JOINT STANDING COMMITTEE**

## **SUBORDINATE LEGISLATION**

### **REPORT 14**

**SCRUTINY OF NOTICE ISSUED UNDER SECTIONS 11, 18 and 19 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
(LOCAL GOVERNMENT)**

**SCRUTINY OF NOTICE ISSUED UNDER SECTIONS 11 and 17 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
(LOCAL GOVERNMENT)**

#### **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 sections 11, 18 and 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Local Government)**

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.

### **Notice under sections 11 and 17 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Local Government)**

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 these Notices 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

Mr Stuart Wright  
 Secretary  
 Joint Standing Committee on Subordinate Legislation  
 Parliament House  
 Email: [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

9 APR 2021

RECEIVED

09 APR 2021

Dear Mr Wright

**Notice under Section 17 and Notice under Sections 18 & 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* for the consideration of the Joint Standing Committee on Subordinate Legislation.**

On 30 March 2021, I re-issued two Ministerial Notices under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID Miscellaneous Act) (refer to Attachments 1 & 2). The Notices enable councils to continue to meet remotely, take certain actions electronically and exhibit formal statutory documentation on council websites.

Section 7(3) of the COVID Miscellaneous Act specifies that if a Minister issues a notice under the COVID Miscellaneous Act, he or she is to send a copy of the Notice to the Joint Standing Committee on Subordinate Legislation (the Committee), within 14 days. The submission of the Notices to yourself, as the Secretary of the Committee, must be completed during the caretaker period to avoid contravening this requirement.

Section 7(4) of the COVID Miscellaneous Act specifies that sections 7(4), 8 and 9 of the *Subordinate Legislation Committee Act 1969* apply to a copy of a Notice sent to the Committee under section 7(3) of the COVID Miscellaneous Act as if the Notice were Regulations.

Please find attached copies of the following documents:

- Notice under section 17 of the Act (refer to Attachment 1);
- Notice under section 18 and 19 of the Act (refer to Attachment 2);
- Ministerial Notice Statement outlining the rationale for, and effect of, the Notices (refer to Attachment 3); and
- the advice given by the Chief Parliamentary Counsel in respect to the Notices (refer to Attachment 4 & 5).

Yours sincerely

Peter Gutwein MP  
 Premier

Attachments:

- 1 SIGNED - COVID Miscellaneous Act Notice Under Section 17 (Re-Issue)
- 2 SIGNED - COVID Miscellaneous Act Notice Under Sections 18 & 19 (Re-Issue)
- 3 Ministerial Notice Statement
- 4 Advice of Chief Parliamentary Counsel regarding the Notice under Section 17 of the Act
- 5 Advice of Chief Parliamentary Counsel regarding the Notice under Section 18 and 19 of the Act

TASMANIA

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

**NOTICE UNDER SECTIONS 11 and 17**

I, PETER GUTWEIN, the Premier, being of the opinion that the relevant emergency circumstances exist in relation to this notice and with the approval of the emergency manager –

- (a) in pursuance of section 17(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, declare that, despite any of the provisions specified in the Schedule to this notice, any action required to be taken by means of a physical action such as signature or personal service, or evidenced in a document that is not an electronic document, under those provisions, may be taken or evidenced by means of an electronic signature or signatures, or an electronic document, respectively; and
- (b) in pursuance of section 11(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, revoke the notice “Notice under section 17 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*” signed on 3 April 2020 and published in the Gazette No. 21 963 on 3 April 2020.

Dated: 30.3.21

Signed: 

Premier

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## SCHEDULE

1. Section 237 of the *Local Government Act 1993*.
  2. Section 238(1) of the *Local Government Act 1993*.
  3. Regulation 4(7) of the *Local Government (Meeting Procedures) Regulations 2015*.
  4. Regulation 34(6) of the *Local Government (Meeting Procedures) Regulations 2015*.
  5. Regulation 35(1)(b) of the *Local Government (Meeting Procedures) Regulations 2015*.
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TASMANIA

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

**NOTICE UNDER SECTIONS 11, 18 AND 19**

I, PETER CARL GUTWEIN, the Premier, being of the opinion that the relevant emergency circumstances exist in relation to this notice, and with the approval of the emergency manager –

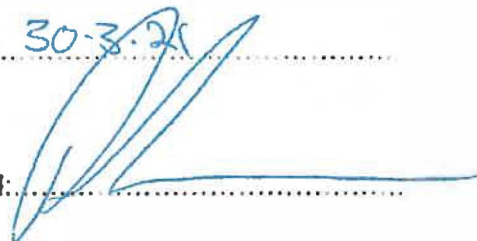
- (a) in pursuance of section 18 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, declare that, despite regulations 11(1), 14 and 37(2) of the *Local Government (Meeting Procedures) Regulations 2015* –
  - (i) a meeting, of a council or a planning authority, within the meaning of the *Land Use Planning and Approvals Act 1993*, may be held in the approved manner, within the meaning of section 18(2) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, on the condition that the quorum for the meeting is constituted by the number of those members of the council, or planning authority, respectively, who are present in accordance with that approved manner during the conduct of the meeting; and
  - (ii) a meeting, of a council or a planning authority, that is required by any of those provisions of the *Local Government (Meeting Procedures) Regulations 2015* to be open to the public, may only be held in accordance with the approved manner referred to in sub-paragraph (i), on the condition that –

- (A) an electronic recording of the meeting is available, for viewing by members of the public, at a website of the relevant local council; and
  - (B) the electronic recording so available is, as far as reasonably practicable, made so available for viewing contemporaneously with the meeting; and
- (b) in pursuance of section 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, declare that, despite any provision specified in the Schedule to this notice, a requirement specified in the provision for public exhibition of documents, or information, at a place or in a manner specified in the provision, is taken to be satisfied if the document, or the information contained in the document, is –
  - (i) available, for viewing by members of the public, at a website of the relevant local council; and
  - (ii) available in hard copy, on request by telephone and for a fee representing the cost of reproducing the document, for collection from a place nominated by an officer of the relevant council; and
- (c) in pursuance of section 11(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, revoke the notice “**Notice under sections 18 and 19 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020**” signed on 3 April 2020 and published in the *Gazette* No. 21 963 on 3 April 2020.

Dated: .....

30.3.20

Signed: .....



Premier

## SCHEDULE

1. Section 22(4) of the *Local Government Act 1993*.
2. Section 28T(6) of the *Local Government Act 1993*.
3. Section 31(1)(b) and (4)(a)(ii) of the *Local Government Act 1993*.
4. Section 56B(3) of the *Local Government Act 1993*.
5. Section 64(2) of the *Local Government Act 1993*.
6. Section 66(4) of the *Local Government Act 1993*.
7. Section 69 of the *Local Government Act 1993*.
8. Section 71(3) of the *Local Government Act 1993*.
9. Section 109C(4) of the *Local Government Act 1993*.
10. Section 109E(3) of the *Local Government Act 1993*.
11. Section 157(2) of the *Local Government Act 1993*.
12. Section 206 of the *Local Government Act 1993*.
13. Section 269(4) of the *Local Government Act 1993*.
14. Section 339F(3) of the *Local Government Act 1993*.
15. Regulation 7(3), (4) and (5) of the *Local Government (Meeting Procedures) Regulations 2015*.
16. Regulation 9(2) and (4) of the *Local Government (Meeting Procedures) Regulations 2015*.
17. Regulation 35(2) of the *Local Government (Meeting Procedures) Regulations 2015*.

## **MINISTERIAL NOTICES - FACT SHEET**

The attached Ministerial Notices have been re-issued by the Premier pursuant to sections 17, 18 and 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act).

### **Reasons for the Notices**

On 30 March 2021, the Premier re-issued two Ministerial Notices under the Act in respect to the statutory obligations of councils under the *Local Government Act 1993*. The Notices permit councils to meet remotely, exhibit formal statutory documentation on council websites, and to take certain actions through electronic means rather than a physical action (ie signing documents electronically). These actions are not ordinarily permitted under the *Local Government Act 1993*.

The Notices were first issued on 3 April 2020. Due to the requirements of section 8(2)(a) of the Act, the Notices were due to expire on the anniversary of their gazettal of 3 April 2021. Section 9 of the Act allows for the re-issuing of notices, provided the Premier or Minister re-issuing the notice is satisfied that the relevant emergency circumstances still exist.

The demands of the pandemic emergency and, in turn, public health directions have eased such that most councils have resumed ordinary practices, such as holding physical council meetings. However, because of the uncertainties about the pandemic emergency, councils will need the flexibility to meet and transact business remotely in order to manage statutory compliance and business continuity risks.

Furthermore, a small number of councils continue to hold meetings virtually due to concerns about the size of public galleries and compliance with physical distancing requirements. These councils will need to continue to operate meetings in this way, until a solution can be found that accommodates the public's physical attendance at the location of the council meetings.

The kind of flexibility provided for in the Notices under the Act will need to continue for some time to support the gradual, phased relaxation of physical distancing requirements.

Councils are not required to observe the practices in the Notices, and may switch between the practices permitted in the Notice or the ordinary statutory requirements according to the relevant circumstances. The Government has been working with the local government sector to understand the constraints that public health directions may have for councils in fulfilling their statutory obligations under State legislation.

As the Notices were scheduled to expire on 3 April 2021, they have been re-issued during the State election's caretaker period to ensure that the flexibility is available to councils in responding to the circumstances of the pandemic. The re-issued Notices will have effect for a further 12 months from the date of their Gazettal.

## Effect of the Notices

The Ministerial Notices provide for the following:

- Matters that would ordinarily require a physical action to either support the conduct of a council meeting, or in relation to certain approvals, may be done electronically (Section 17 of the Act). Significant aspects of councils' statutory functions require physical signatures of authorised individuals. In the event of more stringent physical distancing requirements being imposed, work from home arrangements or working across separate offices makes physical authorisations, such as signature, operationally inefficient, if not impossible for councils.
- Councils may meet in the 'approved manner' as provided for under section 18 of the Act. This allows for councils to meet and transact business by means of teleconference, or another agreed method. In the lead up to the issuing of the Notices in April 2020, one council almost had to cancel a council meeting, due to three councillors being in self-isolation. The Notice provides the discretion for all or some councillors to participate in meetings remotely, subject to the relevant circumstances.
- Documents that require physical display or inspection at council premises under the suite of local government legislation can instead be displayed or inspected in the 'approved manner', which provides that these documents must be accessible on council websites (Section 19 of the Act). Where council offices are closed to the public, compliance with legislative requirements to display or make available various documents for viewing at the council office is impossible.

The Notices also include certain conditions which aim to preserve, to the extent possible in the circumstances, the policy intent of the relevant statutory provisions. In particular, wherever practicable, councils must ensure that an electronic recording of a council meeting is available for viewing contemporaneously with the meeting. This ensures that council meetings are still transparent to the community when held remotely.

**ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL*****Notice under section 17 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 25 March, 2021.



K. Woodward  
**Deputy Chief Parliamentary Counsel**

**ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL*****Notice under sections 11, 18 and 19 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 25 March, 2021.



K. Woodward  
**Deputy Chief Parliamentary Counsel**