

TASMANIA

**COVID-19 DISEASE EMERGENCY
(MISCELLANEOUS PROVISIONS) BILL (No. 2)
2020**

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**COVID-19 DISEASE EMERGENCY
(MISCELLANEOUS PROVISIONS) BILL (No. 2)
2020**

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to provide for special measures, related to the social effect of, and the risk of the spread of, COVID-19 disease in the State, by amending, or modifying the application of, the *Constitution Act 1934*, the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, the *Electoral Act 2004*, the *Emergency Management Act 2006*, the *Public Health Act 1997*, the *Tasmanian Health Service Act 2018*, the *Taxi and Hire Vehicle Industries Act 2008* and the *Vehicle and Traffic Act 1999*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act (No. 2) 2020*.

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Part 1 – Preliminary

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

commencement day, in relation to a provision of this Act, means the day on which the provision commences;

Director has the same meaning as in the *Public Health Act 1997*;

disease means the disease, known as coronavirus disease 2019 (COVID-19), declared under section 40 of the *Public Health Act 1997* to be a notifiable disease;

emergency cessation day means the day declared under section 17(1) to be the emergency cessation day;

emergency period means the period beginning on 1 March 2020 and ending at the end of the emergency cessation day.

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4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

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Part 2 – Legislative Council Periodical Elections 2020

**PART 2 – LEGISLATIVE COUNCIL PERIODICAL
ELECTIONS 2020**

5. Objectives of Part 2

The objectives of this Part are to allow for the modification of the application of the *Constitution Act 1934* and *Electoral Act 2004* in relation to the 2020 election, so as to enable that election to be held, so far as possible, on a day on which the holding of that election will not substantially increase the risk of the spread of the disease.

6. Part to prevail over certain other Acts

- (1) The provisions of this Part apply in relation to the 2020 election, despite any provision of the *Constitution Act 1934* or of the *Electoral Act 2004*.
- (2) In the event of an inconsistency, in relation to the 2020 election, between a provision of this Part and a provision of the *Constitution Act 1934* or of the *Electoral Act 2004*, the provision of this Part prevails, and the provision of the *Constitution Act 1934* or of the *Electoral Act 2004* does not apply, to the extent of the inconsistency.

7. Interpretation of Part 2

In this Part –

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Council means the Legislative Council of the Parliament of Tasmania;

Council division means a division, of the Council, determined in accordance with the *Constitution Act 1934*;

current Council member means a member of the Council who, on or after the commencement day, holds office, before the 2020 election, in relation to a Council division to which the 2020 election is to relate;

periodical election has the same meaning as in the *Constitution Act 1934*;

2020 election means the periodical election, for Council members for certain Council divisions, that is to be held for the year 2020.

8. When 2020 election to be held

- (1) The Governor may, under section 19(4) of the *Constitution Act 1934*, appoint by proclamation in behalf of the 2020 election a Saturday in a month before 31 December 2020.
- (2) The Governor may only make a proclamation in accordance with subsection (1) if, before the day on which the proclamation is made, the Director has notified the Minister that he or she is of the opinion that there is no longer a significant risk

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Part 2 – Legislative Council Periodical Elections 2020

to public health that would make it undesirable to hold the 2020 election.

- (3) Despite section 19 of the *Constitution Act 1934*, if a notice has not been given to the Minister under subsection (2) in time for the 2020 election to be able, under the *Electoral Act 2004*, to be held on a Saturday in a month before 31 December 2020, the Governor must, under section 19(4) of the *Constitution Act 1934*, appoint by proclamation in behalf of the 2020 election the Saturday in a month that is appointed by proclamation under section 19 of the *Constitution Act 1934* for the next periodical election that is to be held in the year 2021 for a Council member.

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

- (1) The term of office of a current Council member in relation to a Council division to which the 2020 election is to relate expires on the day on which there is publicly declared, under section 148 of the *Electoral Act 2004*, the name of the candidate elected in relation to the Council division as a result of the 2020 election.
- (2) Before the next periodical election, after the 2020 election, for the office of a Council member in relation to a Council division to which the 2020 election relates, the term of office, in relation to the Council division, of a Council member in relation to that division –

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- (a) is to begin on the day on which the name of the person elected in relation to the Council division as a result of the 2020 election is declared, under section 148 of the *Electoral Act 2004*, as the candidate elected in relation to the Council division as a result of the 2020 election; and
- (b) expires on the day on which there is publicly declared, under section 148 of the *Electoral Act 2004*, the name of the candidate elected in relation to the Council division as a result of the next Council election for the division after the 2020 election.

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Part 3 – Functions of Tasmanian Health Service

PART 3 – FUNCTIONS OF TASMANIAN HEALTH SERVICE

10. Interpretation and application of Part 3

(1) In this Part –

the Act means the *Tasmanian Health Service Act 2018*.

(2) In this Part, a word or phrase that appears in this section and in the Act has the meaning assigned to it under the Act.

(3) The provisions of this Part apply despite any provision of the Act.

(4) In the event of an inconsistency between a provision of this Part and a provision of the Act, the provision of this Part prevails, and the provision of the Act does not apply, to the extent of the inconsistency.

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

(1) During the emergency period, the THS may –

(a) enter into a contract or arrangement with any person; and

(b) in accordance with such a contract or arrangement, perform for the person, provide to the person, or assist the person to perform or provide –

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any functions, hospital services, medical services, health services, or health support services, that are reasonably required to ensure that, despite the disease-related factors, such services may be performed or provided by the THS or performed or provided by the person.

(2) This section applies irrespective of whether the performance of a function, or the provision of a service, referred to in this section, or the provision of assistance to enable such a function to be performed, or service to be provided, by another person –

- (a) is not consistent with the Ministerial Charter; or
- (b) is not specified in, or is inconsistent with, the service plan in force from time to time; or
- (c) would, but for this section, otherwise not be authorised under the Act.

(3) In this section –

disease-related factors means factors arising from, or related to –

- (a) the disease; or
- (b) actions taken, or attempts made, to reduce the risk of the spread of the disease, whether or not taken under the *Public Health Act 1997* or the *Emergency Management*

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Part 3 – Functions of Tasmanian Health Service

Act 2006 and whether or not the actions taken, or attempts made, occur within the State or outside the State or relate to matters within the State; or

- (c) actions taken, or attempts made, to reduce the social and financial effects of the disease, whether or not the actions taken, or attempts made, occur within the State or outside the State or relate to matters within the State; or
- (d) a failure to take, or to attempt to take, actions referred to in paragraph (a), (b) or (c).

PART 4 – TAXI OPERATION

12. Interpretation and application of Part 4

(1) In this Part –

ordinary taxi means a taxi that is not a wheelchair-accessible taxi;

wheelchair-accessible taxi means a taxi that is –

- (a) a wheelchair-accessible taxi; or
- (b) a remote area wheelchair-accessible taxi; or
- (c) a substitute wheelchair-accessible taxi.

(2) In this Part, a word or phrase that appears in this Part and in the *Taxi and Hire Vehicle Industries Act 2008* has the meaning assigned to it under that Act.

(3) The provisions of this Part apply despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the *Taxi Industry Regulations 2018*.

(4) In the event of an inconsistency between a provision of this Part and a provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the *Taxi Industry Regulations 2018*, the provision of this Part prevails, and the provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the

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Part 4 – Taxi Operation

Taxi Industry Regulations 2018 does not apply,
to the extent of the inconsistency.

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

- (1) Section 23(1) of the *Taxi and Hire Vehicle Industries Act 2008* does not apply in relation to the year 2020 in relation to any taxi area.
- (2) The Minister with responsibility for the *Taxi and Hire Vehicle Industries Act 2008* may, by a notice, or notices, in the *Gazette*, declare that section 23(1) of that Act does not apply in relation to the year 2021, or 2022, or both, in relation to any taxi area specified in the notice.

14. Older taxis may continue to operate

- (1) Despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the *Taxi Industry Regulations 2018*, the Commission may do any one or more of the following:
 - (a) approve a vehicle for use as an ordinary taxi or as a wheelchair-accessible taxi;
 - (b) issue a licence in relation to a vehicle or transfer a licence to a vehicle –

even if the vehicle –
 - (c) is a wheelchair-accessible taxi and the vehicle –

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- (i) in the case of a remote taxi area – is more than 7 years old; or
 - (ii) in the case of any other taxi area – is more than 12 months old or has an odometer reading of more than 1 000 kilometres, or both; or
 - (d) is an ordinary taxi and the vehicle –
 - (i) in the case of a vehicle operated under a taxi licence in relation to a metropolitan taxi area – is more than 5 years old; or
 - (ii) in the case of a vehicle operated under a taxi licence in relation to an area other than a metropolitan taxi area – is more than 7 years old.
- (2) Despite any provision of the *Taxi and Hire Vehicle Industries Act 2008*, a vehicle used, or intended for use, as a wheelchair-accessible taxi is not to be taken to fail to meet the criteria set out in Schedule 1 to that Act by reason only that the vehicle –
- (a) in the case of a remote taxi area – is more than 7 years old; or
 - (b) in the case of any other taxi area – is more than 12 months old or has an odometer reading of more than 1 000 kilometres, or both.

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Part 4 – Taxi Operation

- (3) Despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the *Taxi Industry Regulations 2018*, the responsible operator of a taxi licence in relation to a wheelchair-accessible taxi is not to be taken to fail to meet the criteria set out in Schedule 1 to the *Taxi and Hire Vehicle Industries Act 2008* by reason only that the vehicle –
- (a) in the case of a remote taxi area – is more than 7 years old; or
 - (b) in the case of any other taxi area – is more than 12 months old or has an odometer reading of more than 1 000 kilometres, or both.
- (4) Despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the *Taxi Industry Regulations 2018*, an ordinary taxi is not to be taken to fail to be suitable for use as a taxi, to fail to meet the vehicle specifications set out in Schedule 1 to the Act, or to fail to comply with the *Taxi Industry Regulations 2018*, by reason only that the vehicle –
- (a) in the case of a vehicle operated under a taxi licence in relation to a metropolitan taxi area – is more than 5 years old; or
 - (b) in the case of a vehicle operated under a taxi licence in relation to an area other than a metropolitan taxi area – is more than 7 years old.

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- (5) Despite any provision of the *Taxi and Hire Vehicle Industries Act 2008* or of the *Taxi Industry Regulations 2018*, the responsible operator of a taxi licence in relation to an ordinary taxi is not to be taken to fail to meet the vehicle specifications set out in Schedule 1 to the *Taxi and Hire Vehicle Industries Act 2008* by reason only that the vehicle –
- (a) in the case of a vehicle operated under a taxi licence in relation to a metropolitan taxi area – is more than 5 years old; or
 - (b) in the case of a vehicle operated under a taxi licence in relation to an area other than a metropolitan taxi area – is more than 7 years old.
- (6) This section ceases to be in force on whichever is the later of the following days:
- (a) the emergency cessation day;
 - (b) a later day, determined by the Minister by a notice published in the *Gazette* before the emergency cessation day.

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Part 5 – Registration of Certain Vehicles

PART 5 – REGISTRATION OF CERTAIN VEHICLES

15. Interpretation and application of Part 5

(1) In this Part –

relevant period, in relation to a vehicle,
means –

- (a) unless paragraph (b) applies, the emergency period; or
- (b) a shorter period ending on a day nominated under section 16(2) in relation to the vehicle;

the Act means the *Vehicle and Traffic Act 1999* and any regulations made under that Act.

- (2) In this Part, a word or phrase that appears in this Part and in the Act has the meaning assigned to it under the Act.
- (3) The provisions of this Part apply despite any provision of the Act.
- (4) In the event of an inconsistency between a provision of this Part and a provision of the Act, the provision of this Part prevails, and the provision of the Act does not apply, to the extent of the inconsistency.

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16. Registrar may freeze registration of certain vehicles

- (1) The Registrar may determine that the registration of a vehicle –
 - (a) that is owned by a person, or a member of a class of persons, specified in the notice; or
 - (b) in relation to which there is a registered operator, or a registered operator who is within a class of persons, specified in the notice –is frozen for the relevant period.
- (2) An owner of a vehicle, or a registered operator in relation to a vehicle, may, by notice to the Registrar, nominate a day to be the day on which this section is to cease to apply in relation to the vehicle.
- (3) If the registration of a vehicle is frozen for the relevant period under subsection (1) –
 - (a) the period of the registration of the vehicle is not to be taken to include the relevant period; and
 - (b) the registration of the vehicle is extended for so much of the period, within the relevant period, as is a period in relation to which the registration was paid and has not been refunded under paragraph (c); and

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Part 5 – Registration of Certain Vehicles

- (c) if a person makes a request under subsection (4) for the Registrar to refund an amount, paid by the person for registration of the vehicle in relation to all, or part, of the relevant period – the Registrar must refund to the person the amount paid in relation to all, or part, of the relevant period, respectively.
- (4) The owner of a vehicle, or a registered operator in relation to a vehicle, may request the Registrar to refund the amount paid by the owner or registered operator for registration of the vehicle in relation to all, or part, of the relevant period, as nominated by the owner or registered operator in the request.
- (5) If the registration of a vehicle is frozen for the relevant period under subsection (1), the vehicle may not be used on a public street during that period, unless otherwise authorised under the Act.

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Part 6 – COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020
Amended

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

17. Principal Act

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

18. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting “or that may be issued or granted under a relevant licensing Act” after “prescribed” in paragraph (b)(ii) of the definition of *permit*;
- (b) by inserting the following definition after the definition of *relevant legislative instrument*:

relevant licensing Act means –

- (a) the *Conveyancing Act 2004*; and
- (b) the *Occupational Licensing Act 2005*; and

*No. 11 of 2020

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2020 Amended

- (c) the *Property Agents and Land Transactions Act 2016*; and
- (d) the *Registration to Work with Vulnerable People Act 2013*; and
- (e) the *Security and Investigations Agents Act 2002*;

19. Section 13 amended (Extension of statutory timelines)

Section 13(1) of the Principal Act is amended by omitting “must be” and substituting “may be, or must be,”.

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Part 7 – Emergency Management Act 2006 Amended

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**PART 7 – EMERGENCY MANAGEMENT ACT 2006
AMENDED**

20. Principal Act

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

21. Section 60C inserted

After section 60B of the Principal Act, the following section is inserted in Part 4:

60C. Infringement notices

(1) In this section –

infringement offence means an offence against this Act or the regulations that is prescribed by the regulations to be an infringement offence.

(2) A police officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained the age of 18 years.

(4) An infringement notice –

*No. 12 of 2006

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Part 7 – Emergency Management Act 2006 Amended

- (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to more than 3 offences.
- (5) The regulations –
- (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
 - (b) may prescribe different penalties for bodies corporate and individuals.
- (6) The penalty prescribed –
- (a) in relation to an individual, for any infringement offence, is not to exceed 20% of the maximum penalty that could be, in respect of the offence, imposed on an individual by a court; and
 - (b) in relation to a body corporate, for any infringement offence, is not to exceed 30% of the maximum penalty that could be, in respect of the offence, imposed on a body corporate by a court.

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Part 8 – Public Health Act 1997 Amended

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PART 8 – PUBLIC HEALTH ACT 1997 AMENDED

22. Principal Act

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

23. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *council fee* the following definition:

COVID-19 disease means the disease, known as coronavirus disease 2019 (COVID-19);

24. Section 15 amended (Duration of emergency declaration)

Section 15 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “, or, in relation to the COVID-19 disease, not exceeding 12 weeks” after “days”;
- (b) by inserting in subsection (2) “, or, in relation to the COVID-19 disease, not exceeding 12 weeks” after “days”.

*No. 86 of 1997

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Part 8 – Public Health Act 1997 Amended

25. Section 42 amended (Directions of Director)

Section 42(2) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

26. Section 169 amended (Infringement notices)

Section 169(1) of the Principal Act is amended by inserting “, a police officer” after “officer”.

27. Section 194 amended

Section 194 of the Principal Act is amended as follows:

- (a) by renumbering the section as subsection (1);
- (b) by inserting the following subsection after subsection (1):
 - (2) In the absence of evidence to the contrary, in any proceedings for an offence of failing to comply with a direction under this Act, it is sufficient evidence that a person knew of the requirements of the direction if it is established that –

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Part 8 – Public Health Act 1997 Amended

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- (a) a document specifying the direction was served on him or her; or
- (b) where the direction is a direction given by the Director, the direction was given to the person orally or the substance of the direction was conveyed to the person by an authorised person within the meaning of section 17.

28. Section 198B inserted

After section 198A of the Principal Act, the following section is inserted in Division 8:

198B. Extension of emergency declaration, &c.

The emergency declaration made on 17 March 2020 –

- (a) is to have effect for a period of 12 weeks on and from the day on which it was made; and
- (b) is to be taken to have always been in effect for a period of 12 weeks on and from that day; and
- (c) may be extended under this Act.

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Part 9 – Miscellaneous

PART 9 – MISCELLANEOUS

29. Emergency cessation day

- (1) The Minister, by notice, may declare a day to be the emergency cessation day.
- (2) The Minister may only declare under subsection (1) a day to be the emergency cessation day if he or she is reasonably of the opinion that the risks related to the disease, and the deleterious economic effect of such risks, have sufficiently reduced, so that it is reasonable to declare a day to be the emergency cessation day.

30. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may –
 - (a) apply or incorporate, wholly or partly and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body; and
 - (b) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited, according to the discretion of –
 - (i) the Minister; or

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Part 9 – Miscellaneous

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- (ii) the State Controller within the meaning of the *Emergency Management Act 2006*; or
 - (iii) the Director; or
 - (iv) any other person or body specified in the regulations.
- (3) A reference in this section to a code, standard, policy or other document includes a reference to an amendment of that code, standard, policy or other document, whether the amendment is published before or after the commencement day.
- (4) If a code, standard, policy or other document is referred to or incorporated in the regulations –
- (a) a copy of the code, standard, policy or other document must be made and kept available for viewing, without charge, at a website of the department primarily responsible for the administration of the matter to which the code, standard, policy, or other document, relates; and
 - (b) evidence of the contents of the code, standard, policy or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard, policy or other document.

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Part 9 – Miscellaneous

- (5) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (6) The regulations may specify that the requirement, under section 4 or 5 of the *Subordinate Legislation Act 1992*, for compliance with guidelines, or for the preparation of a regulatory impact statement, in relation to regulations made under this Act, does not apply in relation to a regulation specified in a regulation, or all regulations.
- (7) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
- (8) The regulations may –
 - (a) include provisions of a savings or transitional nature consequent on the enactment of this Act or the making of any regulations under this Act; and
 - (b) provide for any of those savings or transitional matters to take effect on the commencement day or on a later day

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Part 9 – Miscellaneous

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specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

- (9) 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 of that House after the regulations are made.

31. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Premier; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Premier and Cabinet.