

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

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

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I move that the Bill now be read a second time.

This Bill is another step in delivering on our Government's commitment to respond to the COVID-19 disease emergency and to manage the risks associated with the spread of the disease and the financial hardship affecting the community as a result.

The Tasmanian Government is committed to responding quickly to the issues faced by Tasmania as a result of the COVID-19 disease emergency.

The COVID-19 Disease Emergency (Miscellaneous Provisions) Bill (No. 2) of 2020 provides a range of discrete measures to address the effects of the COVID-19 disease in Tasmania by amending or modifying the application of a number of Tasmanian Acts.

While most of these changes will be in place for the emergency period, the Bill also makes a small number of discrete amendments to the *Emergency Management Act 2006* and the *Public Health Act 1997* that will continue to apply to public health and other emergencies beyond the current COVID-19 disease emergency.

The Bill follows on from the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* which was passed earlier this year and commenced on 27 March 2020.

I also intend to table a separate Bill to deliver on the Government's commitment under the National Cabinet to implement the *Mandatory Code of Conduct for Commercial Leasing Principles during COVID-19*.

As the Premier noted when the first *COVID-19 Disease Emergency (Miscellaneous Provisions) Bill* was introduced to Parliament in March, there are areas of law in our State that were simply not designed to work in the kinds of circumstances that we are likely to face as this emergency unfolds.

The Bill before you now builds on the foundations put in place by that Act to ensure that the Government and the administration of law can continue to respond and adapt to the COVID-19 disease emergency situation.

The Bill makes a number of discrete amendments identified as being necessary at this time in response to the COVID-19 disease emergency, by modifying or amending certain provisions of the following Acts and, where relevant, associated regulations:

- the *Constitution Act 1934* and the *Electoral Act 2004*;
- the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*;
- 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*.

The Bill is set out in a number of discrete Parts that deal with how each of these pieces of legislation are either modified, or amended, by the Bill.

It also provides for the making of regulations for the purposes of this Act and provides for the Minister to declare the emergency cessation day with respect to the provisions contained within this Bill.

Madam Speaker, I will now turn to the specific provisions of the Bill.

Part 2 of the Bill deals with the Legislative Council periodic election for 2020.

These elections for the divisions of Huon & Rosevears are an important part of Tasmania's democratic system and we take the responsibility to conduct these elections in accordance within our current framework very seriously.

On 5 April, I announced that the Legislative Council elections would be deferred as part of measures to protect Tasmanians against the spread of the coronavirus.

This decision was based on advice from the Director of Public Health that it is likely that the gathering of people on a polling day in May, would be a public health risk and against current directions issued under the Public Health Act 1997.

For these reasons, it is not considered feasible to hold the Legislative Council periodic elections in May 2020.

A number of steps have been taken to defer the elections.

First, the Tasmanian Electoral Commission has resolved not to conduct the Legislative Council periodic elections during May 2020.

Second, Her Excellency, the Governor has revoked a proclamation appointing 30 May 2020 as the polling day for the Legislative Council periodic elections.

Finally, the Premier has issued a Notice under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* relating to the polling day for Huon and Rosevears.

The Notice allows a polling day for the elections on a Saturday in either June, July or August 2020. That day can be fixed by proclamation.

As I said at the time, while these elections are an important part of our State's democratic process, on advice from the Director of Public Health and in the best interests of the Tasmanian community, the strongest measures must be in place to minimise any risk of transmission or spread of the coronavirus (COVID-19) infection.

I also stated at that time that, should public health circumstances require a further deferral of the election, then a further Notice would need to be considered.

In addition to these steps already taken to defer the elections, this Bill includes provisions to ensure certainty and continued representation for the people of Huon and Rosevears by extending the time within which the Legislative Council periodic elections for 2020 can be held and extending the terms of the current Members for Huon and Rosevears until the election can be held, and related matters.

Specifically, Part 2 of the Bill modifies the application of the *Constitution Act 1934* and *Electoral Act 2004* to enable the election to be held, so far as possible, on a day on which the holding of the election will not substantially increase the risk of the spread of the disease.

Importantly, the Bill modifies the application of these Acts with respect to this matter, but does not amend the provisions of these Acts directly. Rather, it allows for the provisions of the Bill to prevail in relation to this matter only, to the extent of any inconsistency between a provision of those Acts and a provision of the Bill.

The Government understands the importance of these elections to the people of Huon and Rosevears and we will continue to take advice from the Director of Public Health to ensure they are conducted safely and in the best interests of the Tasmanian community.

The Bill provides legislative certainty for various matters relating to the deferral of the election, by modifying the application of the *Constitution Act 1934* and *Electoral Act 2004*.

In light of uncertainty regarding the date on which the periodic election for 2020 may be safely held, the Bill provides that the Governor may, under section 19(4) of the *Constitution Act 1934*, appoint by proclamation to hold the 2020 election on a Saturday in a month before 31 December 2020.

The Governor may only make a proclamation if the Director of Public Health has notified the Minister he or she is of the opinion that there is no longer a significant risk to public health that would make it undesirable to hold the 2020 election.

The Bill extends the term of the current Council members for Huon and Rosevears until an election can be held, and provides that if the election cannot be held before December 2020, the election in respect of 2020 will be held at the time of the periodic election of 2021, in a Saturday in a month in May 2021, in accordance with section 19(4) of the *Constitution Act 1934*.

The Bill also provides that the term of the newly elected members in the Council divisions of Huon and Rosevears will end at the time of the new candidates being declared for the next periodic election for those Council divisions in May 2026. This will ensure a return to the usual six-year term of office provided under the *Constitution Act 1934*, at the time of the 2026 periodic election.

The provisions in Part 2 reflect the need to modify the provisions of the *Constitution Act 1934* and the *Electoral Act 2004* in relation to the Legislative Council 2020 periodic elections, and are not specifically linked to the emergency cessation day as defined in this Bill. Some of these provisions, such as the provisions allowing for a return in 2026 to the usual six-year fixed term for Council members under section 19 of the *Constitution Act 1934*, will need to be in place beyond the emergency cessation day.

I will now turn to Part 3 of the Bill, which relates to the functions of the Tasmanian Health Service (THS) during the emergency period.

Section 17 of the *Tasmanian Health Service Act 2018* sets out the powers and functions of the Tasmanian Health Service in providing health services and health support services where those services are not provided for under that Act. Under the Act, the Tasmanian Health Service is not able to act as a service provider in contracts with third parties, such as other health service providers, unless those services are specifically contemplated in the THS Service Plan in place at the time.

This may limit the ability of the Tasmanian Health Service to enter into commercial arrangements with a third party service provider to deliver services to a third party where this arrangement is not specifically set out in the THS Service Plan. In the context of managing the COVID-19 disease response, it is considered that modifying this requirement during the emergency period would assist in managing the relationships between public and private hospitals where the THS may provide services to support those private facilities.

The Bill provides that the Tasmanian Health Service may enter into contracts or arrangements during the emergency period to ensure that functions, hospital services, medical services, health services and health support services, that are reasonably required, may be performed or provided during the emergency period. It provides that, for the emergency period, such contracts and arrangements may be entered into where it is not consistent with the Ministerial Charter, is not specified in, or is inconsistent with, the THS Service Plan, or it would otherwise not be authorised under the Act.

It is critical in the current COVID-19 disease emergency that these services and functions are able to be delivered, and that documents and plans that may be in place that were not specifically designed to address a disease emergency such as this, and may not be adequately responsive to the changing circumstances of the emergency, do not hinder the ability of the Tasmanian Health Service and health providers to deliver critical health services during this time.

Parts 4 and 5 of the Bill address specific matters relating to financial hardship during the emergency period.

Part 4 modifies the operation of the *Taxi and Hire Vehicle Industries Act 2008* and the *Taxi Industry Regulations 2018* in relation to taxi licences and the regulation of ordinary and wheelchair-accessible taxis during the emergency period, and also separately modifies the application of section 23(1) of that Act in relation to the years 2020, 2021 and 2022.

The Bill provides that the requirement under section 23(1) of the *Taxi and Hire Vehicle Industries Act 2008* to make available new licences for issue does not apply in 2020 and that the Minister may, by notice, declare that this requirement does not apply in 2021 and/or 2022 in relation to any taxi area. The amendment relates to financial hardship effects of the COVID-19 disease emergency, however the modification of the operation of section 23(1) is not linked to the emergency period under the Act.

This modification is broadly consistent with the existing provisions of section 23 of the *Taxi and Hire Vehicle Industries Act 2008* which already provide for the Minister to declare by notice that the requirement under section 23(1) does not apply in relation to a taxi area in respect of any of the years of 2016, 2017 or 2018.

The Government had originally intended to introduce a Bill this year to amend this section of the Act in relation to the requirement under section 23(1) to extend the years in which such a notice could be made, however due to the current COVID-19 emergency situation, this has not yet occurred. This provision gives broad effect to that intention, for the current year and also for 2021 and 2022.

Part 4 also provides that while this provision is in force, the Commission may approve vehicles for use, and issue or transfer licences, for ordinary and wheelchair-accessible taxis to continue to operate, where the specific maximum vehicle age and odometer readings set out in the provision, which reflect certain provisions in the *Taxi and Hire Vehicle Industries Act 2008* and *Taxi Industry Regulations 2018* are exceeded.

This amendment (new clause 14) is linked to the emergency period under the Act and will cease to be in force on the emergency cessation day or a later day, determined by the Minister by a notice published in the Gazette before the emergency cessation day.

This modification of the application of the *Taxi and Hire Vehicle Industries Act 2008* and associated Regulations applies only to the maximum vehicle age and odometer readings set out in the provision, and does not affect other requirements for ordinary and wheelchair-accessible taxis, including other criteria in Schedule 1 for where the Commission may approve a vehicle for use as a wheelchair-accessible taxi.

For example, Schedule 1 of the *Taxi and Hire Vehicle Industries Act 2008* includes a range of other criteria for wheelchair-accessible taxis, including that the vehicle must comply with *Disability Standards for Accessible Public Transport 2002* formulated under section 31(1) of the *Disability Discrimination Act 1992* of the Commonwealth, that the vehicle be fitted with a wheelchair restraint assembly that complies with AS/NZS 10542.1:2009, and that any hoist or ramp fitted to the vehicle complies with AS3856. These important safety requirements will not be compromised by the changes made by this Bill.

Part 5 of the Bill modifies the application of the *Vehicle and Traffic Act 1999* and associated regulations to allow the Registrar to freeze the registration of a vehicle for part or all of the emergency period. Clause 15 of the Bill defines the 'relevant period' for this Part in relation to a vehicle as the emergency period, or a shorter period ending on a day nominated under clause 16(2) by the owner or a registered operator in relation to the vehicle.

Once the period ends, either the registration is to be extended for the period for which it was frozen or, where the owner or a registered operator requests, the registration is to be refunded to the person for the period for which the registration was frozen.

The Government has previously announced this financial hardship measure in response to the impact of the COVID-19 disease emergency and trading restrictions on Tasmanian small businesses.

If the registration of a vehicle is frozen under this provision, the Bill provides that the vehicle may not be used on a public street during that period, except if otherwise authorised under the Act.

Part 6 of the Bill makes two minor amendments to the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* that was passed by the Parliament earlier this year.

The first amendment expands the definition of permit under section 4 of that Act to include a "relevant licensing Act" which is defined in the Bill as – the *Conveyancing Act 2004*, the *Occupational Licensing Act 2005*, the *Property Agents and Land Transactions Act 2016*, the *Registration to Work with Vulnerable People Act 2013* and the *Security and Investigations Agents Act 2002*.

Section 14 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* provides that the Minister may make notices to amend or revoke, for the period specified in the notice, a permit or any permit within a class of permits specified in the notice.

While the definition of permit under section 4 of that Act allows for further Acts (in addition to the *Land Use Planning and Approvals Act 1993*) to be prescribed by Regulation to meet the definition of a 'permit' under section 4, it is expedient to make this amendment at this time as part of this Bill rather than to prepare a separate regulation under the Act for that purpose.

The Bill also makes a minor amendment to expand the wording in section 13 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* in relation to where a notice issued by the Minister may amend a statutory period by which an action must be taken under a relevant legislative instrument to include the period where such an action 'must be or may be' taken.

This amendment recognises that in many cases, the terminology used in a relevant legislative instrument could either be 'must' or 'may' and the current wording is likely to be too restrictive, with regard to the original intention of that provision.

It also recognises the definition of the terms 'must' and 'may' as set out in section 10A of the *Acts Interpretation Act 1931*, whereby "must" is to be construed as being mandatory and "may" is to be construed as being discretionary or enabling, as the context requires. The amendment in this Bill will address any uncertainty around whether a notice may be made under section 13 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* in relation to the amendment of statutory periods for various legislation, by notice, under that Act.

The effect and duration of notices that can be made under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* and related matters are set out in that Act. Madam Speaker, I now turn to Part 7 of the Bill, which makes amendments to the *Emergency Management Act 2006* to provide for infringement notices to be issued under that Act. These amendments are not restricted to the emergency period and are intended to permanently amend that Act to allow for infringement notices to be issued in relation to offences under that Act.

The Bill inserts a new section 60C in Part 4 of the *Emergency Management Act 2006* to allow infringement offences to be prescribed by regulation and for infringement notices to be issued and served by a police officer in relation to these infringement offences. It provides that an infringement notice may not be served on an individual who is younger than 18 years of age, and may not relate to more than three offences.

The Bill also provides that the regulations may prescribe different penalties for bodies corporate and individuals, and that the penalty for an infringement notice for an individual is not to exceed 20% of, and for a body corporate is not to exceed 30% of the maximum penalty that could be imposed by a court in respect of that offence.

This amendment does not create any new offences under the *Emergency Management Act 2006*. Instead, it provides an ability for police to issue and serve infringement notices in regard to existing offences under the Act.

These amendments are not limited to the emergency period for the COVID-19 disease emergency. The ability to create infringement offences and for police officers to issue and serve infringement notices in regard to these offences is something that is considered to warrant broader application and will provide a new enforcement option for police under the Act.

In relation to emergency circumstances, this may assist police in achieving more immediate compliance, where necessary. However, I am also advised the approach police are taking in response

to the current emergency is to encourage compliance in the first instance through an educative role by explaining the restrictions that are in place.

Part 8 of the Bill makes a number of amendments to the *Public Health Act 1997*. As I will outline in a moment, some of these amendments relate only to the emergency period for the current COVID-19 disease emergency, while other amendments are not restricted to the emergency period and will permanently amend that Act in regard to public health emergencies.

In relation to the COVID-19 disease emergency only, the Bill extends the periods at section 15 of the Act for which a public health emergency declaration made by the Director can be made, and extended, from a maximum period of seven days to a maximum period of 12 weeks. The change put forward in this Bill will ease the current requirement for the Director of Public Health to make a declaration extending the public health emergency declaration every seven days.

This change recognises the unprecedented and extended period of the current public health emergency for the COVID-19 disease in Tasmania and the likelihood that the disease emergency may continue for some time. There is a significant administrative burden on the Director of Public Health and government agencies associated with preparing and executing the declarations, and extensions of the declarations every seven days, in the current COVID-19 emergency situation. This also presents an administrative risk that a declaration may be made invalidly on a technical basis, undermining the integrity of the declarations.

The Bill does not make any further changes to the provisions for a public health emergency declaration under section 15 of the *Public Health Act 1997* and the Director will still be able to declare that the period by which the declaration is extended is a shorter period than the maximum period. The requirement that the Director must revoke an emergency declaration as soon as practicable after he or she is satisfied that the situation no longer requires the emergency declaration to be in force will also remain unchanged.

The Bill also inserts a new section 198B in the *Public Health Act 1997* to provide that the emergency declaration made under the Act on 17 March 2020 has effect for a 12 week period from the day it was made, consistent with the extended period of 12 weeks introduced by this Bill, and may be extended under the Act. This amendment will also address any possible issues that may arise that would otherwise require the validation on any previous extensions of the declaration made on 17 March 2020.

This amendment is consistent with the amendment to section 40 of the *Emergency Management Act 2006* introduced by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (in force) which provides that, in relation to the COVID-19 state of emergency only, an authorisation by the State Controller of the use of emergency powers may be made to have effect for a maximum period of 12 weeks. The maximum period of seven days for such an authorisation under that Act, other than in relation to the COVID-19 state of emergency, remains unchanged. As I mentioned earlier, the Bill also makes a number of permanent amendments to the *Public Health Act 1997*, which I will now briefly describe.

The Bill increases the penalty under section 42(2) of the *Public Health Act 1997* from the current penalty of a fine not exceeding 50 penalty units (currently set at \$8,400) to a new maximum penalty of a fine not exceeding 100 penalty units (currently set at \$16,800), or imprisonment for a term not exceeding 6 months or both. This new higher penalty will apply generally and is not restricted to the COVID-19 disease emergency.

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

It is also consistent with the penalty for an offence under section 60 of the *Emergency Management Act 2006*, which was recently increased from a maximum penalty of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months or both, to provide that the maximum period of imprisonment is a term not exceeding 6 months.

This new higher penalty in the *Emergency Management Act 2006* was made as a consequential amendment to the *Emergency Management Act 2006* in the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* passed by the Parliament earlier this year.

Section 42(2) of the *Public Health Act 1997* provides a penalty where a person does not comply with a direction given under section 42(1) by the Director, by notice served on the person, who the Director is aware or suspects on reasonable grounds has, or may have been exposed to, a notifiable disease.

These are serious offences and it is appropriate that the maximum penalties in the Act reflect this.

The Bill also consequentially amends section 169(1) of the *Public Health Act 1997* to provide that in addition to an authorised officer or a council, a police officer may serve an infringement notice on a person for a prescribed offence under that Act. This amendment recognises that in many cases, it may be a police officer who is dealing with an offence under this Act. This new higher penalty will apply generally and is not restricted to the COVID-19 disease emergency.

Finally, the Bill amends section 194 of the *Public Health Act 1997* 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 the Act, it is sufficient evidence that a person knew of the requirements of the direction if certain facts, set out in the Bill, are established. This new higher penalty will apply generally and is not restricted to the COVID-19 disease emergency.

I commend the Bill to the House.