



2022

Parliament of Tasmania

JOINT STANDING COMMITTEE SUBORDINATE LEGISLATION

REPORT 20

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 20 OF THE
COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020
(TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL)**

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

**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 SECTION 20 OF THE
COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020
(SUPREME COURT)**

Members of the Committee:

Ms Tania Rattray MLC (*Chair*)
Ms Ruth Forrest MLC
Ms Leonie Hiscutt MLC

Ms Lara Alexander MP
Ms Janie Finlay MP (*Deputy Chair*)
Mr Simon Wood 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 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Tasmanian Civil and Administrative Tribunal)

At its meeting on 2 June 2022, 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*.

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

At its meeting on 2 June 2022, 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*.

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

At its meeting on 2 June 2022, 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*.

Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Supreme Court)

At its meeting on 2 June 2022, 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 in relation to these Notices is attached to this Report for completeness.

The Minutes of Proceedings in relation to these Notices are not attached to this Report due to the Committee not scheduled to meet again until 18 August 2022.



Hon Tania Rattray MLC
CHAIR

29 June 2022

Department of Justice
STRATEGIC LEGISLATION AND POLICY

Level 14, Trafalgar Building, 110 Collins Street, Hobart
GPO Box 825, Hobart TAS 7001
Phone 03 61654930
Email bruce.paterson@justice.tas.gov.au Web www.justice.tas.gov.au



30 March 2022

RECEIVED

30 MAR 2022

Secretary
Parliamentary Standing Committee on
Subordinate Legislation
Parliament House
HOBART

By email: subleg@parliament.tas.gov.au

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 – Notice under section 20 – Tasmanian Civil and Administrative Tribunal (TASCAT)

Please find enclosed a copy of a notice issued by the Attorney-General pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The notice under section 20 was signed on 21 March 2022 and published in the Gazette on Wednesday 30 March 2022.

I enclose a fact sheet to provide further information on the notice and the Advice provided by the Office of Parliamentary Counsel (OPC).

Yours sincerely

Bruce Paterson
Acting Director
Strategic Legislation and Policy

Attachments –

- Signed Notice
- Fact Sheet
- CPC Advice

TASMANIA

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

NOTICE UNDER SECTION 20

I, ELISE NICOLE ARCHER, the Attorney-General, in pursuance of section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, at the request of the President of the Tasmanian Civil and Administrative Tribunal established under the *Tasmanian Civil and Administrative Tribunal Act 2020* ("the Act"), being of the opinion that the relevant emergency circumstances exist in relation to this notice and with the approval of the emergency manager, declare that –

- (a) in relation to proceedings conducted by the Tribunal, despite –
 - (i) section 81 of the Act, including proceedings conducted in accordance with section 152 of the Act; and
 - (ii) section 30 of the *Health Practitioners Tribunal Act 2010* –to the extent that those provisions require that a proceeding must be open to members of the public, such a proceeding may be heard in the approved manner determined by the President of the Tribunal in accordance with section 20(2) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) unless the contrary intention appears, an expression used in this notice that is defined in the Act has the same meaning in this notice as it has in the Act.

Dated: 21 March 2022

Signed: 

Attorney-General

ADVICE OF CHIEF PARLIAMENTARY COUNSEL***Notice under section 20 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 15 March, 2022.



Robyn Webb
Chief Parliamentary Counsel

MINISTERIAL NOTICE - FACT SHEET

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

The attached Ministerial Notice is issued pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID-19 Act) in relation to the Tasmanian Civil and Administrative Tribunal (the Tribunal). The Attorney-General has issued the Notice, being of the opinion it was necessary and desirable to do so due to the presence of emergency circumstances set out in section 5(2)(b) of the COVID-19 Act.

Approval of the emergency manager (the Director of Public Health) has been obtained in accordance with section 6 of the COVID-19 Act.

Reason for Notice

Section 20 of the COVID-19 Act allows the Attorney-General to, by Notice, authorise courts, tribunals and other entities to conduct proceedings in an 'approved manner', where requested by that court, tribunal or other entity, despite any legislative instrument to the contrary. Section 20(2)(c) provides that in this case the 'approved manner' means 'the manner determined from time to time by' the President, Chair, or other Head, of the Tribunal.

In accordance with section 20(3)(c) of the COVID-19 Act, the President of the Tribunal requested that a Notice be issued under section 20(1).

The Tribunal has obligations to convene public hearings under the following provisions:

- Section 81 of the *Tasmanian Civil and Administrative Tribunal Act 2020*;
- Section 12(1) of the *Guardianship and Administration Act 1995*;
- Section 30 of the *Health Practitioners Tribunal Act 2010*; and
- Section 12(7) of the *Motor Accidents (Liabilities and Compensation) Act 1973* – which refers to Section 13 of the *Commissions of Inquiry Act 1995*.

Section 12(1) of the *Guardianship and Administration Act 1995* and section 12(7) of the *Motor Accidents (Liabilities and Compensation) Act 1973* were repealed as part of consequential amendments that were made with the commencement of the Tribunal's operations in November 2021. However, due to the transitional provisions under section 152(4)(b) of the *Tasmanian Civil and Administrative Tribunal Act 2020*, there may be matters that were commenced prior to those consequential amendments and which continue to be heard and dealt with by the Tribunal in accordance with the repealed provisions.

The Notice clarifies the Tribunal may approve the manner in which it may convene hearings, including those conducted in accordance with the transitional provisions.

Alternative arrangements to the usual approach to public hearings have been necessary in the emergency circumstance, to reduce the risk of spread of COVID-19 in Tasmania, while maintaining the principles of open justice.

The Tribunal undertakes a significant proportion of hearings that relate to vulnerable people, in both the Mental Health and Guardianship Streams. It is important for the Tribunal to have the necessary discretion to vary any public hearing obligations to reduce the risk of transmission of COVID-19 to vulnerable persons who may need to appear before the Tribunal at its premises.

The Tribunal will adopt a series of protocols to address participation remotely, both by parties and members of the public:

- Parties will ordinarily be required to appear remotely at a hearing, but will be given leave to apply to the Tribunal to be able to appear in person where there are appropriate circumstances that require an in-person attendance.
- Members of the public may attend any open hearing of the Tribunal remotely if they request to be connected to the proceedings prior to the listing. In the event of any technical difficulties with their attendance, the Tribunal can provide a copy of the audio recording of the proceedings on written request by the relevant person who was unable to attend. Directions are issued to any person who receives a recording of proceedings that the recording is not to be published, distributed or modified in any way.

The Tribunal already regulates recording of proceedings remotely through the provisions of the *Court Security Act 2017* and the Media Protocols it has issued, which replicate those restrictions (i.e. persons are not permitted to record proceedings of the Tribunal).

While these measures may already fulfil the obligation to provide public hearings, the Notice clarifies the Tribunal is vested with the appropriate discretion, given the current circumstances of the pandemic.

Similar Notices took effect on their Gazettal on 1 September 2021 in relation to the former Guardianship and Administration Board and the Resource Management and Planning Appeal Tribunal (RMPAT), prior to their disestablishment with the commencement of the Tasmanian Civil and Administrative Tribunal.

Previously, a similar Notice in relation to RMPAT took effect on its Gazettal on 24 June 2020 and expired 12 months later in accordance with section 8 of the COVID-19 Act.

Effect of Notice

The Notice will enable the President of the Tribunal to determine the manner of hearing proceedings to facilitate arrangements that utilise remote participation mechanisms.

The measures requested by the President are considered proportionate in the circumstances and provide adequate safeguards to protect the principle of open justice.



PREMIER OF TASMANIA

Received - 7/4/2022

. 7 APR 2022

Ms Julie Thompson
Secretary
Joint Standing Committee on Subordinate Legislation
Parliament House
Email: subleg@parliament.tas.gov.au

Dear Ms Thompson

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 2022, 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 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

A handwritten signature in black ink, appearing to read 'P. Gutwein'.

Peter Gutwein MP
Premier

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 30 March 2021 and published in the Gazette No. 22 073 on 1 April 2021.

Dated: 30.3.21

Signed: 

Premier

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*.
-
-

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 30 March 2021 and published in the *Gazette* No. 22 073 on 1 April 2021.

Dated: 30 3 22

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 2022, 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 re-issued Notices were due to expire on the anniversary of their gazettal of 1 April 2022. 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.

Recent consultation with councils, conducted by the Director of Local Government, indicates that the flexibility provided by the Notices continues to be an important tool for the sector in response to COVID-19. For example, being able to work from home in response to COVID-19 infections among staff, which is facilitated by the Notice permitting authorised persons to sign documents electronically, has enabled councils to limit the spread of cases while supporting the continuity of the important services they provide. Responses also show that most councils have held remote council meetings, when necessary, since the opening of the State's borders on 15 December 2021.

Councils are not required to observe the practices in the Notices and may switch between the practices permitted in the Notices or the ordinary statutory requirements according to the relevant circumstances. The Director of Local Government is working with councils to ensure their practices for recording and streaming open council meetings meet community expectations about transparency.

The re-issued Notices will have effect for a further 12 months from their Gazettal on 31 March 2022.

Effect of the Notices

The Ministerial Notices provide for the following:

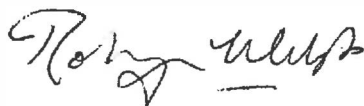
- **Matters that would ordinarily require a physical action to either support the conduct of a council meeting, or in relation to certain approvals, may be done electronically (Section 17 of the Act).** Significant aspects of councils' statutory functions require physical signatures of authorised individuals. In the event of a COVID-19 case out-break among council staff, work from home arrangements or working across separate offices makes physical authorisations 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.** The Notice provides the discretion for all or some councillors to participate in meetings remotely, subject to the relevant circumstances. Recordings of council meetings must, as far as practicable, be live streamed to the public.
- **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.

ADVICE OF CHIEF PARLIAMENTARY COUNSEL***Notice under sections 11 and 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 24 March, 2022.



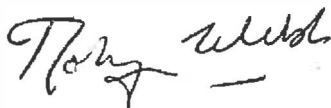
Robyn Webb
Chief Parliamentary Counsel

ADVICE OF 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 24 March, 2022.



Robyn Webb
Chief Parliamentary Counsel

Department of Justice
STRATEGIC LEGISLATION AND POLICY

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19 May 2022

RECEIVED

19 MAY 2022

Secretary
Parliamentary Standing committee on Subordinate Legislation
Parliament House
HOBART TAS 7000

By email: subleg@parliament.tas.gov.au

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 – Notice under section 20 – Supreme Court

Please find enclosed a copy of a notice issued by the Attorney General pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous provisions) Act 2020*.

The Notice is identical to an earlier notice issued in May 2021 which was gazetted on 12 May 2021 and expired on 12 May 2022. The notice was signed on 11 May 2022 and published in the Gazette on 12 May 2022.

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

Yours sincerely

Bruce Paterson
Acting Director
Strategic Legislation and Policy

Attachments –

- Signed Notice for s20
- Fact Sheet
- CPC Advice for notice under s20

DOC/22/48844

ADVICE OF CHIEF PARLIAMENTARY COUNSEL***Notice under section 20 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 5 May, 2022.



Robyn Webb
Chief Parliamentary Counsel

TASMANIA

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

NOTICE UNDER SECTION 20

I, ELISE ARCHER, the Attorney-General, in pursuance of section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* ("the Act"), at the request of the Chief Justice of the Supreme Court of Tasmania, being of the opinion that the relevant emergency circumstances exist in relation to this notice, declare that –

- (a) despite section 411(1) of the *Criminal Code*, to the extent that it entitles an appellant to be present at an appeal being heard by the Supreme Court, an appellant is entitled to be present at the appeal by being present in the approved manner determined by the Chief Justice in accordance with section 20(2) of the Act; and
- (b) despite section 12A(2) of the *Criminal Code Act 1924*, to the extent that it requires sittings of the criminal jurisdiction of the Supreme Court of Tasmania and sittings of the Court of Criminal Appeal to be held at the places at which the registries of the Court are established and at other places determined by the Chief Justice, such sittings may be held in the approved manner determined by the Chief Justice in accordance with section 20(2) of the Act; and
- (c) despite section 90(1) of the *Sentencing Act 1997*, to the extent that it provides that a sentence may be imposed in open court, a sentence for an offence, imposed by one or more judges of the Supreme Court, may be imposed in the approved manner determined by the Chief Justice in accordance with section 20(2) of the Act; and
- (d) despite section 14 of the *Supreme Court Civil Procedure Act 1932*, to the extent that it requires a Full Court consisting of two or more judges to sit

together as one court or a single judge to sit in court as a court, such sittings may be held in the approved manner determined by the Chief Justice in accordance with section 20(2) of the Act.

Dated: 11 May 2022

Signed: 

Attorney- General

MINISTERIAL NOTICE - FACT SHEET

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

The attached Ministerial Notice is issued pursuant to section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act). The Attorney-General has issued the Notice, being of the opinion it was necessary and desirable to do so because of the emergency circumstances set out in section 5 of the Act.

As the Notice is issued under section 20 in relation to the Supreme Court and Court of Criminal Appeal, it was not required to have the emergency manager's approval under section 6.

Reason for Notice

Section 20 of the Act allows the Attorney-General to, by notice, authorise courts, tribunals and other entities to conduct proceedings in an 'approved manner', where requested by that court, tribunal or other entity, despite any legislative instrument to the contrary. Section 20(2) provides that in this case the 'approved manner' means 'the manner determined from time to time by' the Chief Justice of the Supreme Court.

In response to the COVID-19 pandemic, the Supreme Court of Tasmania implemented measures in April 2020 to reduce the potential risk of exposure to COVID-19 through persons being present at the court.

On 16 April 2020 at the request of the Chief Justice of the Supreme Court of Tasmania and in accordance with section 20(3)(b) of the Act, the Attorney-General issued a Notice under section 20(1) as alternative arrangements were necessary and desirable in the emergency circumstances (to the requirements of section 90(1) of the *Sentencing Act 1997*, sections 12A(2) and 411(1) of the *Criminal Code*, and section 14 of the *Supreme Court Civil Procedure Act 1932*).

The Notice issued on 16 April 2020 enabled the Court to operate in a way which reduces the risk of spread of COVID-19 in Tasmania, with regard to the principles of open justice.

Pursuant to section 8(2) of the Act, that Notice expired on 16 April 2021.

On 12 May 2021 at the request of the Chief Justice of the Supreme Court of Tasmania, and in accordance with section 20(3)(b) of the Act, the Attorney-General issued a second Notice under section 20(1) of the Act.

The second Notice was an identical reissue of the Notice that was issued on 16 April 2020, save for reordering of the paragraphs.

Pursuant to section 8(2) of the Act, the second Notice expired on 12 May 2022.

The Chief Justice requested that a third Notice be reissued to ensure that the Court has the capacity to operate safely in the event that Tasmania, or parts of it, return to further COVID restrictions or lockdown during the remainder of the emergency declaration. Again, it has been reissued in identical terms. It was considered that the risk of interruption to Supreme Court sittings is sufficient to warrant a renewal at this time.

Section 90(1) of the Sentencing Act 1997

This provision provides that “[t]he sentence for an offence may be imposed in open court at any time and at any place in Tasmania.”

His Honour has expressed the view that this subsection implies that a sentence may only be imposed in open court. This may not be possible in all of the circumstances identified above. The Notice provides that, despite this subsection, sentences may be imposed in accordance with the approved manner.

Sections 12A(2) and 411(1) of the Criminal Code

Section 12A(2) provides that “[s]ittings of the criminal jurisdiction of the Supreme Court and sittings of the Court of Criminal Appeal are to be held from time to time as requested at the places at which the registries of the Court are established and at such other places as may be determined by the Chief Justice from time to time.”

His Honour indicated that, when operating remotely, the Court is unlikely to sit at the places where the registries of the Court are established.

Section 411(1) provides that “[a]n appellant, notwithstanding that he is in custody, shall be entitled to be present if he so desires, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone.”

Arrangements have been made for appeals to the Court of Criminal Appeal to be held, when necessary, without participants (counsel, prisoners, appellants etc.) attending Court. In the circumstances identified above it may not be possible for an appellant to present if so desired. The Notice provides that, despite this subsection, the Court of Criminal Appeal may determine an appeal without any appellant being present, in accordance with the approved manner.

Section 14 of the Supreme Court Civil Procedure Act 1932

This section provides that subject to the provisions of this Act, the jurisdiction of the Court which is subject to this Act shall be exercised by –

- (a) a Full Court consisting of two or more judges of the Court sitting together as one court, either with or without a jury or an assessor or assessors;
- (b) single judges sitting in court as a court, either with or without a jury or an assessor or assessors;

(c) *single judges sitting in chambers, or in court or elsewhere as in chambers, either with or without an assessor or assessors.*

His Honour noted that due to the remote working arrangements, when put in place, it is likely that judges comprising a Full Court will not be in a position to sit in one place and single judges sitting as a Court will not be present at the court (rather, they will be connected remotely).

Effect of Notice

The Notice will enable the Supreme Court of Tasmania to:

- despite section 90(1) of the *Sentencing Act 1997*, to the extent that it provides for sentences to be imposed in open court, impose a sentence for an offence in the approved manner determined by the Chief Justice;
- despite section 12A(2) of the *Criminal Code*, sittings of the criminal jurisdiction of the Supreme Court and the Court of Criminal Appeal may be held in the approved manner determined by the Chief Justice in accordance with section 20(2) of the Act;
- despite section 411(1) of the *Criminal Code*, to the extent that it entitles an appellant to be physically present at an appeal being heard by the Supreme Court, provide for an appellant to be present at the appeal in the approved manner determined by the Chief Justice; and
- despite section 14 of the *Supreme Court Civil Procedure Act 1932*, judges may sit in the approved manner determined by the Chief Justice in accordance with s20(2) of the Act.

These measures are considered proportionate in the circumstances.