



2020

## **Parliament of Tasmania**

**JOINT PARLIAMENTARY STANDING COMMITTEE**

# **SUBORDINATE LEGISLATION**

## **REPORT 13**

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 13 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
(EXTENSION OF STATUTORY DEADLINE FOR COUNCILS TO HOLD THEIR  
AGMs BY THREE MONTHS)**

### **Members of the Committee**

**Ms Tania Rattray MLC (*Chair*)**  
**Ms Ruth Forrest MLC (*Deputy Chair*)**  
**Ms Meg Webb MLC**

**Mr Felix Ellis MP**  
**Ms Alison Standen MP**  
**Mr Nic Street 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 13 of the *Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (extension of statutory deadline for Councils to hold their AGMs by three months)**

At its meeting on 19 November 2020, 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 is attached to this Report for completeness.

*Tania Rattray*

Tania Rattray MLC  
**CHAIR**

19 November 2020



PREMIER OF TASMANIA

29 October 2020

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

Dear Mr Wright

**Notice under Section 13 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* for the consideration of the Joint Standing Committee on Subordinate Legislation.**

On 16 October 2020, I issued a Notice under Section 13 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act). The Notice extends the statutory timeframe (under section 72B(1) of the *Local Government Act 1993*) for councils to hold their Annual General Meetings by three months.

Section 7(3) of the COVID-19 Act specifies that if a Minister issues a notice under the COVID-19 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.

Section 7(4) of the COVID-19 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-19 Act as if the Notice were Regulations.

Please find attached copies of the following documents:

- Notice under Section 13 of the Act (refer to Attachment 1);
- Ministerial Notice Statement outlining the rationale for and effect of, the Notice (refer to Attachment 2); and
- the advice given by the Chief Parliamentary Counsel in respect to the Notice (refer to Attachment 3).

Yours sincerely

Peter Gutwein MP

**Premier**

Attachments:

- 1 Notice under Section 13 of the Act
- 2 Ministerial Statement Notice
- 3 Advice of Chief Parliamentary Counsel regarding the Notice under Section 13 of the Act

TASMANIA

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

**NOTICE UNDER SECTION 13**

I, PETER CARL GUTWEIN, the Premier, in pursuance of section 13 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, 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 the period by which a council must hold an Annual General Meeting under section 72B(1)(a) of the *Local Government Act 1993* is extended by a period of 3 months.

Dated: 16.10.20 .....

Signed: .....

Premier

# MINISTERIAL NOTICE FACT SHEET

The attached Ministerial Notice has been issued pursuant to section 13 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

## Reasons for the Notice

The COVID-19 pandemic has had a significant impact on the Tasmanian Audit Office (TAO)'s annual work program. Specifically, the TAO's local government final audit program has been delayed owing to:

- the requirement for work being performed remotely for several months;
- reduced accessibility to some physical client sites;
- the need to prioritise the completion of audits for the Treasurer's Annual Financial Report (TAFR);
- human resource issues (disruptions in the process to fill vacant positions); and
- delays in councils submitting their 30 June 2020 financial statements to the TAO.

With these delays in mind, the TAO has advised that it will not in a position to commence the majority of its local government audits until November 2020.

Under the *Local Government Act 1993*, councils are required to include a copy of the TAO's audit opinion in their Annual Reports (s72(1)(d)). Councils are required to make copies of their Annual Reports publicly available and must invite submissions on the report for discussion at their Annual General Meetings (AGMs) (s72(2)).

Councils must publish a notice in a daily newspaper the date, time and place of the AGM. This must be done at least 14 days prior to the AGM which must be held no later than 15 December each year (s72B).

The Tasmanian Government has been working closely with the local government sector (via the Local Government Association of Tasmania) and the TAO to identify options to ensure Tasmanian councils can comply with the Local Government Act.

A three month extension of the statutory deadline for councils to hold their AGMs is considered appropriate given the impacts of the COVID-19 pandemic. This will provide sufficient time for the TAO to complete the required audits and will ensure that individual councils have enough time to advise their communities of the change. The three month extension will also allow AGMs can be scheduled outside of the Christmas break and the school holiday period.

The Government considers that the issuing of the attached Notice is necessary to effectively manage statutory compliance.

## Effect of the Notice

The Ministerial Notice will extend the statutory deadline (under s72B(1) of the *Local Government Act 1993*) for councils to hold their AGMs by three months. This means that councils will need to hold their AGMs by no later than 15 March 2021.



**ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL*****Notice under section 13 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 7 October, 2020.



Katherine Woodward  
**Deputy Chief Parliamentary Counsel**