



2020

Parliament of Tasmania

JOINT PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

REPORT 10

**SCRUTINY OF NOTICE ISSUED UNDER SECTIONS 14 AND 16 OF THE
COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020
(BUILDING ACT 2016)**

Members of the Committee

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

Ms Alison Standen MP
Mr Nic Street MP
Mr John Tucker 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:

- Meet weekly until further notice (as resolved by the Committee on 2 July 2020);
- Publish a list of the notices to be discussed by the Committee, and documentation relating to notices to be examined by the Committee, to be published on the Committee website prior to each meeting; and
- Present regular reports to Parliament, which will contain further information in relation to the completed examinations of notice.

Notice under sections 14 and 16 of the Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Building Act 2016)

At its meeting on 2 July 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 Minister for Building and Construction and Minutes of Proceedings relevant to the Notice are attached to this Report for completeness.

A handwritten signature in black ink, reading "Tania Rattray". The script is cursive and fluid, with the first name "Tania" and last name "Rattray" clearly distinguishable.

Tania Rattray MLC
CHAIR

7 July 2020

Attorney-General
Minister for Justice
Minister for Corrections
Minister for Building and Construction
Minister for the Arts
Minister for Heritage

Level 10 15 Murray Street HOBART TAS 7000 Australia
GPO Box 123 HOBART TAS 7001 Australia
Ph: +61 3 6165 7739
Email Minister.Archer@dpac.tas.gov.au



26 JUN 2020

Hon Tania Rattray MLC
Chair
Parliamentary Standing Committee on Subordinate Legislation
Parliament House
HOBART TAS 7000

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

Tania

Dear Ms Rattray

Please find enclosed a copy of a Notice (the Notice) issued by the Premier pursuant to section 14 and 16 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The Notice was signed on 17 June 2020 and was published in *Gazette* No 21999 on 19 June 2020.

The Notice:

- amends the provision of a permit to extend the period specified in the permit so that the period ends six months after the day on which, but for the Notice, the period would end relevant to:
 - a current permit issued under section 143, 169, 193 or 260 of the *Building Act 2016* or that is contained in a permit that is taken to be issued under the Building Act by virtue of clause 6 of Part 3 of Schedule 2 to that Act; and
- extends the expiry period of a current permit to six months after the day on which, but for the Notice, the period would end relevant to:
 - a permit issued under section 143, 169, 193 or 260 of the Building Act 2016 or that is taken to be issued under the Building Act by virtue of clause 6 of Part 3 of Schedule 2 to the Building Act.

The Notice will assist those within the building sector that have experienced disruption to projects during the emergency period as a result of restrictions in place. The Notice will allow further time for owners and permit authorities that have been affected by the emergency period to undertake necessary work and inspections.

I enclose a fact sheet to provide further information on the Notice and the Advice provided by the Office of Parliamentary Counsel (OPC) under section 7(2) of the *Subordinate Legislation Act 1992*.

Yours sincerely



Hon Elise Archer MP
Minister for Building and Construction

Attachments –

- Signed Notice
- Fact Sheet
- OPC Advice

TASMANIA

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

NOTICE UNDER SECTIONS 14 AND 16

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 14 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, amend, for the period for which this notice has effect under that Act, each provision that specifies the period for which a permit is in effect, that –

- (i) is contained in a permit that is issued under section 143, 169, 193 or 260 of the *Building Act 2016* ("the Act") or is contained in a permit that is taken to be issued under the Act by virtue of clause 6 of Part 3 of Schedule 2 to the Act; and
- (ii) is in effect immediately before the day on which the making of this notice is published in the *Gazette* –

by extending the period specified in the provision so that the period ends 6 months after the day on which, but for this notice, the period would end; and

(b) in pursuance of section 16 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, extend, for the period of 6 months after the day on which, but for this notice, the period would end, the period for which a permit that –

- (i) is issued under section 143, 169, 193 or 260 of the Act or is taken to be issued under the Act by virtue of clause 6 of Part 3 of Schedule 2 to the Act; and
- (ii) is in effect immediately before the day on which the making of this notice is published in the *Gazette* –

is in effect by virtue of a provision of the Act.

Dated: 17-6-20

Signed: _____

Premier

MINISTERIAL NOTICE - FACT SHEET

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

The attached Ministerial Notice is issued pursuant to section 14 and 16 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID-19 Act) in relation to the *Building Act 2016*. The Premier 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)(c) and (d) of the COVID-19 Act.

Approval of the Emergency Manager (the State Controller) has been obtained in accordance with section 6 of the COVID-19 Act.

Reason for Notice

Section 14 of the COVID-19 Act allows the Minister (Premier) to, by Notice, amend or revoke, for the period specified in the notice, a provision, specified in the notice, of:

- (a) a permit that is specified in the notice; or
- (b) any permit that is within a class of permits specified in the notice.

Section 16 of the COVID-19 Act allows the Minister (Premier) to, by Notice, extend for a specified period –

- (b) the period during which an authority, under a relevant legislative instrument, to carry out an activity –
 - (i) on behalf of the Crown; or
 - (ii) under a provision, of a relevant statutory instrument, specified in the notice; or
 - (iii) under a document issued under a provision, of a relevant legislative instrument, specified in the notice –

is to remain in force.

During the COVID-19 pandemic, a number of council offices have been closed, and building projects have been disrupted, put on hold, or their completion delayed due to restrictions in place. It is anticipated that these delays will not only have an impact during the COVID-19 emergency period, but will extend beyond that time.

The building sector has requested that certain statutory time periods in the *Building Act 2016* (Building Act) be extended, to give more flexibility to industry and councils during the pandemic period.

The Notice will extend current building, plumbing, demolition and partial completion permits issued under the current Building Act for a further six months. The Notice also extends permits issued for historical “pre-2012” permits granted under the former *Building Act 2000* that are deemed to expire on 30 June 2020. This will allow further time for owners and permit authorities that have been affected by the emergency period to undertake necessary work.

Effect of Notice

The Notice:

- amends the provision of a permit to extend the period specified in the permit so that the period ends six months after the day on which, but for the Notice, the period would end relevant to:
 - a current permit issued under section 143, 169, 193 or 260 of the Building Act 2016 or that is contained in a permit that is taken to be issued under the Building Act by virtue of clause 6 of Part 3 of Schedule 2 to that Act; and
- extends the expiry period of a current permit to six months after the day on which, but for the Notice, the period would end relevant to:
 - a permit issued under section 143, 169, 193 or 260 of the Building Act 2016 or that is taken to be issued under the Building Act by virtue of clause 6 of Part 3 of Schedule 2 to the Building Act.

ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL***Notice under sections 14 and 16 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 9 June, 2020.



Kate Woodward
Deputy Chief Parliamentary Counsel

JOINT PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

TUESDAY 23 JUNE 2020

COMMENCEMENT

The Committee met at 1.33 pm in Committee Room 2, Parliament House, Hobart and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Rattray (*Chair*)
Ms Forrest (*Deputy Chair*)
Ms Meg Webb

House of Assembly

Ms Standen (*via Webex*)
Mr Street
Mr Tucker

NOTICES UNDER
COVID-19 DISEASE
EMERGENCY
(MISCELLENEOUS
PROVISIONS)
ACT 2020
(additional since
last meeting)

That the following Notices be held-over —

2. Notice under Sections 14 and 16 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Building Act 2016)*.

JOINT PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

FRIDAY 26 JUNE 2020 & MONDAY 29 JUNE 2020

COMMENCEMENT

The Committee met at 11.03 am in Committee Room 2, Parliament House, Hobart.

MEMBERS PRESENT

Legislative Council

Ms Rattray (*Chair*)
Ms Forrest (*Deputy Chair*)
Ms Meg Webb

House of Assembly

Ms Standen
Mr Street
Mr Tucker

NOTICES UNDER
COVID-19 DISEASE
EMERGENCY
(MISCELLENEOUS
PROVISIONS)
ACT 2020
(held-over)

That the following Notices be held-over —

2. Notice under Sections 14 and 16 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Building Act 2016)*.

MONDAY 29 JUNE 2020

COMMENCEMENT

The Committee met at 2.03 pm in Committee Room 2, Parliament House, Hobart and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Rattray (*Chair*) (via Webex)
Ms Forrest (*Deputy Chair*)
Ms Meg Webb

House of Assembly

Ms Standen (via Webex)
Mr Street
Mr Tucker

SUPPORTING CORRESPONDENCE (NOTICES)

RESOLVED, the following supporting correspondence be received —

1. Letter dated 26 June 2020 from the Attorney-General regarding Notice under Sections 14 and 16 under Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Building Permit Extension),

JOINT PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

THURSDAY 2 JULY 2020

COMMENCEMENT

The Committee met at 11.03 am via Webex and in Committee Room 2, Parliament House, Hobart.

MEMBERS PRESENT

Legislative Council

Ms Rattray (*Chair*) (via Webex)
Ms Forrest (*Deputy Chair*) (via Webex)
Ms Webb (CR2)

House of Assembly

Ms Standen (via Webex)
Mr Street (via Webex)
Mr Tucker (via Webex)

COVID-19 DISEASE EMERGENCY (MISCELLEANEOUS PROVISIONS) ACT 2020 (examined)

That the following Notice be examined —

1. Notice under Sections 14 and 16 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Building Act 2016)*.

The Committee **AGREED** that the Secretary prepare a draft report.

JOINT PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

TUESDAY 7 JULY 2020 AND WEDNESDAY 8 JULY 2020

COMMENCEMENT

The Committee met at 1.32 pm via Webex and in Committee Room 2, Parliament House, Hobart.

MEMBERS PRESENT

Legislative Council

Ms Rattray (*Chair*) (*via Webex*)
Ms Forrest (*Deputy Chair*) (*via Webex*)
Ms Webb (*CR2*)

House of Assembly

Ms Standen (*via Webex*)
Mr Street (*via Webex*)
Mr Tucker (*via Webex*)

DRAFT REPORT

No. 10

SCRUTINY OF

NOTICE

UNDER THE

COVID-19 DISEASE

EMERGENCY

(MISCELLEANEOUS

PROVISIONS)

ACT 2020

(BUILDING ACT 2016)

The Committee considered Draft Report No. 10.

The Committee **RESOLVED** —

1. Draft Report No 10. be adopted with all relevant attachments including today's Minutes (once confirmed); and
2. Presented to the President out of session by Ms Webb.