



2021

**Parliament of Tasmania**  
**JOINT STANDING COMMITTEE**  
**SUBORDINATE LEGISLATION**

**REPORT 17**

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 20 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
(GUARDIANSHIP AND ADMINISTRATION BOARD)**

**SCRUTINY OF NOTICE ISSUED UNDER SECTION 20 OF THE  
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*  
(RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL)**

**Members of the Committee:**

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

**Mr Felix Ellis MP**  
**Ms Janie Finlay MP**  
**Ms Madeleine Ogilvie 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* (Guardianship and Administration Board)**

At its meeting on 28 October 2021, 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 relevant to the Notice is attached to this Report for completeness.

### **Notice under section 20 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Resource Management and Planning Tribunal)**

At its meeting on 28 October 2021, 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 relevant to the Notice is attached to this Report for completeness.

The Minutes of Proceedings related to these Notices are not attached to this Report due to the Committee not scheduled to meet again until 11 November 2021.

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.

Hon Tania Rattray MLC  
**CHAIR**

28 October 2021

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](mailto:bruce.paterson@justice.tas.gov.au) Web [www.justice.tas.gov.au](http://www.justice.tas.gov.au)



8 September 2021

Secretary  
Parliamentary Standing Committee on  
Subordinate Legislation  
Parliament House  
HOBART

By email: [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

**COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 - Notice under section 20**  
**- Guardianship and Administration Board**

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

The notice was signed on 27 August 2021 and was published in the Gazette on Wednesday 1 September 2021.

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  
Assistant Director  
**Strategic Legislation and Policy**

**Attachments –**

- Signed Notice
- Fact Sheet
- CPC Advice

**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 20 August, 2021.



Robyn Webb  
**Chief Parliamentary Counsel**

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 Guardianship and Administration Board established under the *Guardianship and Administration Act 1995* ("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 Board, despite section 12 of the Act, to the extent that it requires that a proceeding must be open to members of the public, such proceedings may be heard in the approved manner determined by the chairperson of the Board 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: 27 August 2021

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) in relation to the Guardianship and Administration Board (the Board). 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 Act.

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

**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)(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 Act, the President requested that a Notice be issued under section 20(1).

Section 12(1) of the *Guardianship and Administration Act 1995* requires all proceedings of the Board to be open to members of the public. The Notice clarifies the Board may approve the manner in which it may convene hearings. 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 Board has implemented measures to reduce the potential risk of exposure to COVID-19 that arise from persons being present at hearings. This includes, amongst other things, that hearing proceedings are now occurring by way of telephone and/or audio visual link.

A person may attend a hearing by telephone if that request is made prior to the hearing. Relevant information is provided in the Board's notices of hearing, and on the Board's website. This measure provides 'open justice' and allows transparency in decision making processes.

While these measures may already fulfil the obligation to provide public hearings, the Notice clarifies the Board is vested with the appropriate discretion, given the current social distancing requirements required due to the pandemic.



### **Effect of Notice**

The Notice will enable the Board to determine the manner of hearing proceedings to facilitate continuation of current arrangements that utilise telephone and audio visual mechanisms.

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

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](mailto:bruce.paterson@justice.tas.gov.au) Web [www.justice.tas.gov.au](http://www.justice.tas.gov.au)



8 September 2021

Secretary  
Parliamentary Standing Committee on  
Subordinate Legislation  
Parliament House  
HOBART

By email: [subleg@parliament.tas.gov.au](mailto:subleg@parliament.tas.gov.au)

**COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 - Notice under section 20**  
**- Resource Management and Appeals Tribunal**

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

The notice was signed on 27 August 2021 and was published in the Gazette on Wednesday 1 September 2021.

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  
Assistant Director  
**Strategic Legislation and Policy**

**Attachments –**

- Signed Notice
- Fact Sheet
- CPC Advice

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**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 20 August, 2021.



Robyn Webb  
**Chief Parliamentary Counsel**

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 chairperson of the Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993* ("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 at the hearing of appeals conducted by the Appeal Tribunal, despite section 18 of the Act, to the extent that it requires that a hearing of an appeal must be held in public, such proceedings may be heard in the approved manner determined by the chairperson of the Appeal 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 *Resource Management and Planning Appeal Tribunal Act 1993* has the same meaning in this notice as it has in that Act.

Dated: 27 August 2021

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) in relation to the Resource Management and Planning Appeal 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 Act.

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

**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)(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 Act, the Chairperson requested that a Notice be issued under section 20(1).

Section 18(1) of the *Resource Management and Planning Appeal Tribunal Act 1993* requires the hearing of an appeal to be held in public. The Notice clarifies the Tribunal may approve the manner in which it may convene hearings. 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 has implemented measures to reduce the potential risk of exposure to COVID-19 that arise from persons being present at hearings. This includes, amongst other things, that hearing proceedings are now occurring as far as possible by way of telephone and/or audio visual link.

The protocols for public participation in hearings of the Tribunal have been set out in the Tribunal's Practice Directions. Importantly, the RMPAT relocated to new premises in July 2020, which affords high level AV technology and allows for greater participation by parties remotely through video and telephone conferencing. A copy of the recording of the proceedings may also be provided if necessary. These measures provide 'open justice' and allow transparency in decision making processes.

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 social distancing requirements required due to the pandemic.

A similar Notice took effect on its Gazettal on the 24 June 2020 and expired 12 months later in accordance with section 8 of the Act.

### **Effect of Notice**

The Notice will enable the Tribunal to determine the manner of hearing proceedings to facilitate continuation of current arrangements that utilise telephone and audio visual mechanisms.

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