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2022

Parliament of Tasmania

JOINT STANDING COMMITTEE SUBORDINATE LEGISLATION

ANNUAL REPORT 2021-2022

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INTRODUCTION

The Joint Parliamentary Standing Committee on Subordinate Legislation (the Committee) is a statutory committee of the Tasmanian Parliament. The Committee is established under the provisions of section 3 of the [Subordinate Legislation Committee Act 1969](#) (the Act). Members are appointed at the beginning of each Parliamentary session, and vacancies are filled as when required.

The Committee's function is to examine every regulation, by-law and rule made by an entity under a power delegated to the entity by the Parliament. Section 2 of the Act provides that regulation means a regulation, rule, or by-law that is made under an Act and is required by law to be laid before both Houses of Parliament, but does not include rules of court made by the judges, or by a majority of them, under the authority of an Act. Essentially, regulations comprise all subordinate legislation made by the Governor-in-Council, but do not include Orders, Proclamations or Rules of the Supreme Court. By-laws are those made by municipal councils, marine boards and other semi-government authorities. The Committee also examines other instruments referred to it by Acts.

By virtue of section 8 of the Act the Committee is required to conduct its examination of regulations with particular reference to the question of whether or not —

- (a) 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 was made;
- (b) the form or purport of the regulation calls for elucidation;
- (c) the regulation unduly trespasses on personal rights and liberties;
- (d) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions;
- (e) the regulation contains matters that, in the opinion of the Committee, should be properly dealt with by an Act and not by regulation; or
- (f) whether the requirements of the [Subordinate Legislation Act 1992](#) have been met.

Notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*

Arising from the COVID-19 pandemic, the Parliament of Tasmania passed the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* on 26 March 2020. The Act prescribed a role for the Committee to scrutinize certain notices under the Act.

In response to this new scrutiny role, the Committee gave 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 agreed to —

- 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.

COMMITTEE ACTIVITY

General Overview

During the reporting period the Committee held a total of nine (9) meetings in relation to the scrutiny of regulations and scrutiny of notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* with the exception of the period from 6 April 2022 to 3 May 2022 whilst Parliament was prorogued following the Premier's resignation.

The Committee examined ninety-six (96) instruments published in the Government Gazette (this figure does not include notices, detail in relation to notices is provided separately in this Report). A breakdown of the examined instruments is provided as follows:

- twelve (12) by-laws;
- one (1) order;
- seventy-five (75) regulations; and
- eight (8) rules.

As part of the examination of these instruments, the Committee requested information from Ministers in writing, in relation to explanations of some provisions and other issues of concern. The majority of queries were resolved to the Committee's satisfaction using this mechanism to obtain further information.

The Committee has from time to time encountered some issues in the timeliness of receiving information or the adequacy of information from Departments. The Committee works to remind Departments and Authorities of their respective obligations to ensure that explanatory materials are adequate and that the requirements of the Act and the [Acts Interpretation Act 1931](#) and [Subordinate Legislation Act 1992](#) are met.

The Committee continues to monitor the timeliness of the preparation for and provision of supporting documentation to the Committee and timely tabling of legislative instruments.

During the year the Committee also received briefings from Departmental officers in relation to the following instruments –

1. COMMISSIONS OF INQUIRY REGULATIONS 2021 (S.R. 2021, No. 52);
2. POISONS AMENDMENT REGULATIONS (No. 2) 2021 (S.R. 2021, No. 45);
3. CRIME (CONFISCATION OF PROFITS) AMENDMENT REGULATIONS 2021 (S.R. 2021, No. 67);
4. MAJOR INFRASTRUCTURE DEVELOPMENT APPROVALS REGULATIONS 2021 (S.R. 2021, No. 55);
5. FISHERIES (COMMERCIAL DIVE) RULES 2021 (S.R. 2021, No. 119);
6. FISHERIES (PROCESSING AND HANDLING) RULES 2021 (S.R. 2021, No. 120);
7. POLICE POWERS (ASSUMED IDENTITIES) (CORRESPONDING LAWS) REGULATIONS 2021 (S.R. 2021 No. 25);
8. POLICE POWERS (CONTROLLED OPERATIONS) (CORRESPONDING LAWS) REGULATIONS 2021 (S.R. 2021, No. 126);
9. POLICE POWERS (SURVEILLANCE DEVICES) (CORRESPONDING LAWS) REGULATIONS 2021 (S.R. 2021, No. 127); AND
10. WILDLIFE (DEER FARMING) REGULATIONS 2021 (S.R. 2021, No. 94).

The briefings provided Members with further details and clarification of specific issues.

In addition, to the abovementioned mechanisms used by the Committee to clarify specific issues and obtain further information, the Committee resolved to commence inquiries to scrutinize instruments in more detail through the inquiry process. The Committee initiated inquiries into the following instruments as follows.

CROWN LANDS REGULATIONS 2021 (S.R. 2021, No. 87)

On 1 February 2022 the Committee resolved to commence an inquiry into the CROWN LANDS REGULATIONS 2021 (S.R. 2021, No. 87) (the Regulations) to enable information received in relation to the Regulations to be placed on the public record. The Committee held a public hearing with the Department of Natural Resources and Environment Tasmania on 10 March 2022.

The Departmental Officers provided clarity around the seven-day inclusion rules, use of drones and carrying of firearms. The Committee sought further information in relation to vehicles disposed of on Crown Land.

The Regulations were resolved as “examined” on 10 March 2022.

The reporting process of the Inquiry was interrupted due to the prorogation of the Parliament on 6 April 2022 following the Premier’s resignation.

A Report regarding the Committee’s findings was tabled in the Legislative Council on 2 June 2022 and tabled in the House of Assembly on 14 June 2022.

NATURE CONSERVATION (WILDLIFE) REGULATIONS 2021 (S.R. 2021, No. 93)

On 10 March 2022 the Committee resolved to commence an Inquiry into the NATURE CONSERVATION (WILDLIFE) REGULATIONS 2021 (S.R. 2021, No. 93) (the Regulations). The Committee held Public Hearings on 29 June 2022.

The prorogation of the Parliament on 6 April 2022 following the Premier’s resignation interrupted the inquiry process.

The Regulations are still currently under consideration by the Committee.

Notices issued under the *COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020*

General Overview

The Committee examined sixteen (16) Notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*. In this reporting year 12 (twelve) notices have been reported upon.

As part of the examination of these notices, the Committee requested information from Ministers in writing, seeking clarification of specific issues and requesting further information. In all instances, queries were resolved to the Committee’s satisfaction using this mechanism to obtain further information. Another mechanism used to obtain further information and clarification of specific issues was to follow an inquiry process.

The Committee reported upon all notices issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* in this reporting period.

The Committee resolved to commence an inquiry into the following Notices issued under the Act as follows.

NOTICES UNDER SECTIONS 13, 15 AND 19 OF THE COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 (LAND USE PLANNING AND APPROVALS ACT 1993)

On 28 October 2021 the Committee resolved to commence an inquiry into the Notices issued under sections 13, 15 and 19 of the Act (*Land Use Planning and Approvals Act 1993*) in relation to the rationale for reissuing these Notices. The Committee held a public hearing on 25 November 2021 with the Department of Premier and Cabinet.

The Notice was resolved as 'examined' on 25 November 2021.

A report regarding the Committee's findings was presented to the President of the Legislative Council on 2 February 2022 and tabled in the House of Assembly on 1 March 2022.

COMMITTEE MEMBERSHIP

First Session - Fiftieth Parliament

Legislative Council

Hon Tania Rattray MLC (Chair)
Hon Ruth Forrest MLC
Hon Meg Webb MLC (Deputy Chair)

House of Assembly

Ms Lara Alexander MP (*from 01/03/22*)
Mr Felix Ellis MP (*to 25/02/22*)
Ms Janie Finlay MP
Ms Madeleine Ogilvie MP
Mr John Tucker (*from 01/03/22*)

Second Session - Fiftieth Parliament

Legislative Council

Hon Tania Rattray MLC (Chair)
Hon Ruth Forrest MLC
Hon Leonie Hiscutt MLC (*from 25/05/2022*)
Hon Meg Webb MLC (Deputy Chair) (*to 18/05/2022*)

House of Assembly

Ms Lara Alexander MP
Ms Janie Finlay MP
Ms Madeleine Ogilvie MP (*to 28/05/22*)
Mr John Tucker MP (*to 22/04/22*)



Hon Tania Rattray MLC
Chaira

25 August 2022