

LOCAL GOVERNMENT AMENDMENT (COVID-19 RESPONSE) BILL 2020

EXPLANATORY MEMORANDUM

OVERVIEW OF THE BILL

The *Local Government Amendment (COVID-19 Response) Bill 2020* (the Bill) amends the *Local Government Act 1995* (the Act) to provide a power to the Minister to waive or suspend the operation of any provision of the Act, during a declared state of emergency, to allow local governments to continue to operate and make critical decisions.

The Bill also allows a local government to suspend local laws, in whole or part, for the purpose of responding to the direct or indirect impacts of the COVID-19 pandemic.

CLAUSE NOTES

Contained below is a brief description of each clause contained in the *Local Government Amendment (COVID-19 Response) Bill 2020*.

Clause 1 – Short title

Clause 1 cites the short title as the *Local Government Amendment (COVID-19 Response) Act 2020*.

Clause 2 – Commencement

This clause provides this Act comes into operation as follows –

- (a) sections 1 and 2 on the day of Royal Assent;
- (b) section 5 on a day fixed by proclamation;
- (c) the rest of the Act on the day after Royal Assent.

Section 5 will provide the means to delete these amendments from the *Local Government Act 1995* when they cease to have effect.

Clause 3 – Act amended

This clause provides this Act amends the *Local Government Act 1995*.

Clause 4 – Part 10 inserted

Part 10 – Provisions for COVID-19 pandemic

These amendments will form a standalone part of the *Local Government Act 1995*.

10.1 Term Used: COVID emergency declaration

Proposed section 10.1 provides definitions of terms used in this Part –

“**COVID emergency declaration**” means a state of emergency declaration made under the *Emergency Management Act 2005* section 56 in relation to the COVID-19 pandemic.

This definition recognises that there may be more than one declaration made in relation to the COVID-19 pandemic.

10.2 Part overrides other provisions of Act

This proposed section provides the provisions of this new Part have effect despite any other provisions of the *Local Government Act 1995*.

10.3 Modification or suspension of provisions of Act or regulations

The intention of proposed section 10.3 is to enable the Minister to address legislative restrictions in the *Local Government Act 1995* or regulations made under that Act, to facilitate a quick and agile response by the local government sector to consequences arising from the COVID emergency declaration.

Proposed section 10.3(1) empowers the Minister with a discretion to issue an order to modify or suspend the operation of specified provisions of the Act or regulations made under the Act.

Under proposed section 10.3(2), the Minister can only exercise this power if a COVID emergency declaration is in force and the Minister considers that the order is necessary to deal with the consequences of the COVID-19 pandemic.

This power could, for example be used to defer an election or modify provisions relating to in-person elections.

Proposed section 10.3(3) provides three ways for an order to cease to operate. The Minister for Local Government may revoke the order under section 9.65(2) of the *Local Government Act 1995* or may specify a date in the order made under proposed section 10.3(1). Otherwise, an order ceases to operate three months after the COVID-19 emergency declaration is revoked or ceases to have effect.

Proposed section 10.3(4) provides the *Interpretation Act 1984* section 42 applies to an order made under subsection (1) as if the order were regulations made under this Act.

Section 42 of the *Interpretation Act 1984* deals with the rules relating to laying regulations (and other types of subsidiary legislation) before Parliament and possible disallowance. In practical terms, this section means an order made and issued by the Minister under proposed section 10.3(1), will be published in the *Government Gazette* and subject to scrutiny by the Joint Standing Committee on Delegated Legislation. This ensures there is transparency, accountability and adequate controls in place to govern the use of this new power.

Proposed section 10.3(5) provides an order made by the Minister under subsection (1) can apply to a single local government, a class of local governments or all local governments across the State. An order could apply to a single local government, for example, if there was an extraordinary vacancy on that council necessitating an extraordinary election during the emergency.

In accordance with section 43(7) of the *Interpretation Act 1984*, the order could apply conditionally or unconditionally.

10.4 Suspension of local law

The intention is to provide local government with a discretion, exercisable with a resolution of council, to suspend the operation of a local law or part of local law, to reduce red-tape and to quickly respond to local consequences in their district of the COVID-19 pandemic. This power could readily be applied to areas such as parking, local business operations and cemeteries.

Proposed section 10.4(1) enables a local government to suspend the operation of a specified local law, or specified provisions made by the local government under the *Local Government Act 1995* or any other Act. This is to be an absolute majority decision of council.

Proposed section 10.4(2) provides that 10.4(1) has effect despite any contradictory provision in another Act relating to that local law.

Under proposed section 10.4(3) a local government can only make a resolution under section 10.4(1) if a COVID emergency declaration is in force, and the local government considers that the resolution is necessary to deal with the consequences of the COVID-19 pandemic.

Proposed section 10.4(4) provides a local government may, by further resolution of council, revoke a resolution made under subsection (1). Again, an absolute majority is required.

To ensure transparency, section 10.4(5) provides that a resolution under subsections (1) or (4) must be published on the local government's official website; and a copy of it must be given to the Minister.

Proposed section 10.4(6) governs when a resolution to suspend a local law under subsection (1) or a resolution to revoke that suspension under subsection (4) takes effect. This will be the day after it is first published on the local government's website or a later date as specified in the resolution.

Proposed section 10.4(7) deals with when a resolution made by a local government under subsection (1) ceases to have effect. In summary, the resolution is revoked at the end of 6 months after the COVID-19 emergency declaration ceases to have effect; or any earlier day as specified in the resolution, or by a revocation resolution under section 10.4(4).

Clause 5 – Part 10 deleted

The intention of this clause is to delete these provisions from the Local Government Act when they cease to have effect. This recognises that these extraordinary measures and powers identified as necessary to stimulate business and support households and the community during the challenging time of the COVID-19 emergency declaration will not continue on indefinitely past the end of the epidemic.

To achieve this objective the commencement provision provides for the repeal to be effective on a day fixed by proclamation.