

# COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5

[2020-5]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

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# COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5



New South Wales

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# COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5



New South Wales

An Act to amend certain legislation to implement further emergency measures as a result of the COVID-19 pandemic.

## 1 Name of Act

This Act is the *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020*.

## 2 Commencement

- (1) This Act, other than Schedule 1.12, commences on the date of assent to this Act.
- (2) Schedule 1.12 commences on the commencement of Schedule 1.1[5] to the *Fair Trading Legislation Amendment (Reform) Act 2018*.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

## Schedule 1 Miscellaneous amendments

### 1.1 Annual Holidays Act 1944 No 31

#### [1] Section 5A

Insert after section 5—

#### **5A COVID-19 pandemic—protection of annual holiday entitlements**

- (1) The annual holidays of a worker who is stood down by an employer without pay during the prescribed period as a direct or indirect result of the COVID-19 pandemic continue to accrue while the worker is stood down during that period.
- (2) This section extends to annual holidays or annual leave under an award,

agreement or contract of employment or any other Act.

(3) In this section—

**prescribed period** means the period—

(a) starting on 25 March 2020, and

(b) ending on—

(i) 26 September 2020, or

(ii) a later day, not later than 26 March 2021, prescribed by the regulations.

## [2] Section 14A

Insert after section 14—

### **14A Annual holidays for local council workers**

(1) This section—

(a) applies to a worker who is an employee of a council (within the meaning of the *Local Government Act 1993*), and

(b) prevails to the extent of any inconsistency with any other provision of this Act.

(2) **Payment in lieu of annual holidays** Despite section 3(5), an employer and worker may agree to a payment in lieu of a period of annual holiday to which the worker is entitled under this Act.

(3) An employer and worker may agree to a payment under subsection (2) only if—

(a) after the payment, the worker will have an accrued annual holiday entitlement of not less than 4 weeks, and

(b) the payment in lieu of a period of annual holiday is not less than the worker's ordinary pay for that period.

(4) **Annual holidays at half pay or double pay** Despite section 3, an employer and worker may agree to the worker taking a specified period of annual holiday at double pay or at half pay.

(5) An employer and worker may agree on a worker taking a specified period of annual holiday at double pay only if, after taking the holiday, the worker will have an accrued annual holiday entitlement of not less than 4 weeks.

(6) For the purposes of this section—

- (a) a worker takes a specified period of annual holiday at double pay if the worker—
  - (i) redeems the specified period of accrued annual holiday entitlement, and
  - (ii) takes leave for half that specified period of time, and
  - (iii) is paid during that period of leave at twice the worker’s ordinary pay, and
- (b) a worker takes a specified period of annual holiday at half pay if the worker—
  - (i) redeems the specified period of accrued annual holiday entitlement, and
  - (ii) takes leave for twice that specified period of time, and
  - (iii) is paid during that period of leave at half the worker’s ordinary pay.

**Explanatory note**

The proposed amendment allows an employee of a local council and the local council to agree, in certain circumstances, to a payment in lieu of an annual holiday or part of an annual holiday or for an annual holiday to be taken at double or half pay.

## **1.2 Associations Incorporation Act 2009 No 7**

### **Schedule 4 Savings, transitional and other provisions**

Insert after Part 5—

## **Part 6 Meetings and voting during COVID-19 pandemic**

### **17 Definition**

In this Part—

***prescribed period*** means the period—

- (a) starting on the commencement of this Part, and
- (b) ending on—
  - (i) 26 September 2020, or
  - (ii) the later day, not later than 26 March 2021, prescribed by the regulations.

### **18 Committee meetings**

- (1) Despite section 30(2), a committee meeting of an association may, during the prescribed period, be held at 2 or more venues using any technology that gives each of the committee members a reasonable opportunity to participate, even if

the association's constitution does not provide for the committee meeting to be held in that way.

- (2) Section 30(3) extends to a committee meeting held in accordance with subclause (1).

## **19 General meetings**

- (1) Despite section 37(3), a general meeting of an association may, during the prescribed period, be held at 2 or more venues using any technology that gives each of the association's members a reasonable opportunity to participate, even if the association's constitution does not provide for the general meeting to be held in that way.
- (2) Section 37(4) extends to a general meeting held in accordance with subclause (1).

## **20 Voting on ordinary resolutions**

- (1) Despite section 38(2), a postal or electronic ballot may, during the prescribed period, be conducted in relation to an ordinary resolution even if the association's constitution does not permit the ordinary resolution to be voted on in that way.
- (2) However, the postal or electronic ballot must still be conducted in accordance with the regulations.

## **21 Voting on special resolutions**

- (1) Despite section 39(3), a postal or electronic ballot may, during the prescribed period, be conducted in relation to a special resolution even if the association's constitution does not permit the special resolution to be voted on in that way.
- (2) However, the postal or electronic ballot must still be conducted in accordance with the regulations.

## **22 Application of Part**

To avoid doubt, this Part—

- (a) extends to an association's constitution that was recorded in the Register of Incorporated Associations immediately before this Part commenced, and
- (b) continues to apply to a meeting, or a ballot, that is begun, but not completed, during the prescribed period.

### **Explanatory note**

The proposed amendment allows an association to hold a meeting at multiple venues using technology (such as audiovisual link

software) that gives a reasonable opportunity for participation in the meeting. The amendment also allows voting on resolutions by the members of an association to be conducted by postal or electronic ballot. These alternative arrangements are permitted, on a temporary basis, even if the association's constitution does not currently allow meetings and votes to take place remotely.

### 1.3 Biodiversity Conservation Act 2016 No 63

#### Section 12.19 Power of authorised officers to require answers

Insert after section 12.19(5)—

- (6) The authorised officer may, in the notice under subsection (4) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the authorised officer.
- (7) If the questions are to be answered by the person using an audio link or audio visual link—
  - (a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that manner at the time nominated under subsection (5), and
  - (b) the person must ensure that the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the authorised officer.
- (8) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

- (9) This subsection and subsections (6)–(8) are repealed on 13 November 2020.

#### Explanatory note

Section 12.19 of the *Biodiversity Conservation Act 2016* permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters. The proposed amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

### 1.4 Children (Community Service Orders) Act 1987 No 56

#### [1] Section 9A

Insert after section 9—

## **9A COVID-19 pandemic—availability of work**

- (1) This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.
- (2) Despite section 9(b)(ii), a court may make a community service order under section 5 in respect of a person if—
  - (a) the court is not satisfied that community service work can be provided for the person under the arrangements referred to in section 9(a) only because those arrangements have been or may be affected by the COVID-19 pandemic, and
  - (b) the court is satisfied that community service work is likely to be provided for the person before the end of the relevant maximum period.
- (3) In this section—

**prescribed period** means the period—

  - (a) starting on the commencement of this section, and
  - (b) ending on—
    - (i) 26 September 2020, or
    - (ii) the later day, not later than 26 March 2021, prescribed by the regulations.

## **[2] Section 14A**

Insert after section 14—

### **14A COVID-19 pandemic—presentation for work**

- (1) This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.
- (2) For the purposes of section 14(1), a person may present himself or herself by audio link or audio visual link.
- (3) In this section—

**audio link** has the same meaning as it has in the *Evidence (Audio and Audio Visual Links) Act 1998*.

**audio visual link** has the same meaning as it has in the *Evidence (Audio and Audio Visual Links) Act 1998*.



**prescribed period** means the period—

- (a) starting on the commencement of this section, and
- (b) ending on—
  - (i) 26 September 2020, or
  - (ii) the later day, not later than 26 March 2021, prescribed by the regulations.

**Explanatory note**

Item [1] of the proposed amendments enables a court to make a children’s community service order if it is satisfied that community service work will become available during the period of the proposed order, even if work is not available when the order is proposed to be made.

Item [2] provides that, during the COVID-19 pandemic period, a person may present himself or herself by audio link or audio visual link for the purpose of enabling the administration of a community service order to be commenced.

## 1.5 Children’s Guardian Act 2019 No 25

### Schedule 4 Savings, transitional and other provisions

Omit “30 June 2020” from clause 2(3). Insert instead “1 March 2021”.

**Explanatory note**

The proposed amendment extends a transitional arrangement that provides for certain provisions of regulations made under the *Adoption Act 2000*, the *Children and Young Persons (Care and Protection) Act 1998*, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and the *Ombudsman Act 1974* to continue in force despite the commencement of the *Children’s Guardian Act 2019* or a regulation under that Act.

## 1.6 Community Land Management Act 1989 No 202

### [1] Section 122A

Insert after section 122—

#### **122A Regulation-making power for COVID-19 pandemic**

- (1) The regulations under this Act may provide for the following matters for the purposes of responding to the public health emergency caused by the COVID-19 pandemic—
  - (a) altered arrangements for convening an association meeting, including arrangements for the issue or service of notices and other documents in relation to the meeting,
  - (b) altered arrangements for the way voting may be conducted at an association meeting, including—

- (i) the circumstances in which the altered arrangements for voting may apply, and
    - (ii) conditions that apply to the way the vote is exercised,
  - (c) an alternative to affixing the seal of the association, including any requirements for witnessing or attesting to the alternative way,
  - (d) extension of a time period in which a thing is required to be done under the Act.
- (2) However, a regulation made under subsection (1)(d) must not result in the total time period within which the thing is required to be done to be extended to be a time period of more than 6 months.
- (3) Regulations made under this section—
- (a) are not limited by the regulation-making power in this Act, and
  - (b) may override a provision of this Act.
- (4) Regulations made under this section expire on—
- (a) the day that is 6 months after its commencement, or
  - (b) the earlier day decided by Parliament by resolution of either House of Parliament.
- (5) This section is repealed on—
- (a) 13 November 2020, or
  - (b) a later day, not later than 13 May 2021, prescribed by the regulations.
- (6) In this section—
- association meeting** means—
- (a) a first annual general meeting of the association, or
  - (b) an annual general meeting of the association, other than the first annual general meeting, or
  - (c) a special general meeting of the association, or
  - (d) a meeting of the executive committee of an association.
- special general meeting**, in relation to an association, means a meeting that is not the first annual general meeting of the association or an annual general meeting of the association.

## [2] Schedule 7 Savings, transitional and other provisions

Insert after clause 6—

### 7 Saving of a variation of a time period prescribed by regulation for COVID-19

A regulation made under section 122A(1)(d) continues to have effect until the end of the time period specified by the regulation, despite the repeal of section 122A or the regulation.

#### Explanatory note

The proposed amendments provide that regulations may be made to provide for the following matters—

- (a) altered arrangements for convening meetings of associations, including for the issue or service of notices and other documents in relation to those meetings,
- (b) altered arrangements for the way a vote may be conducted at meetings,
- (c) an alternative to affixing the seal of the association,
- (d) extending the time period in which a thing is required to be done under the Act.

The proposed amendments also provide that a variation of a time period prescribed by the regulations continues to have effect for the specified time despite the repeal of the section or the expiry of the regulation.

The regulations expire 6 months after commencement, unless earlier resolved by Parliament.

The proposed amendments are repealed on 13 November 2020, unless the regulations prescribe a later date for the repeal, being not later than 13 May 2021.

## 1.7 Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 No 122

### Section 118

Insert after section 117—

#### 118 Special provision for pro rata payment during COVID-19 pandemic

- (1) Section 63(1)(b) and (c) do not apply during the prescribed period.
- (2) During the prescribed period, a reference in this Act to section 63 is to be read as a reference to section 63 as modified by this section.
- (3) In this section—  
**prescribed period** means the period—
  - (a) starting on the commencement of this section, and

(b) ending on the day that is 6 months after the commencement.

**Explanatory note**

The proposed amendment provides that a registered worker for the contract cleaning industry who has 5 years of recognised service and who has permanently left the industry is entitled to payment instead of long service leave during the COVID-19 pandemic. Currently, the registered worker would only be entitled to this payment if 20 weeks had passed since the worker left the industry and the worker had not been credited with service in the Long Service Corporation's workers register for any days during that period.

## **1.8 Crimes (Administration of Sentences) Act 1999 No 93**

### **[1] Section 3 Interpretation**

Insert “, 159” after “158” in the definition of *parole order* in section 3(1).

### **[2] Section 159**

Insert after section 158—

#### **159 Making of parole orders by Parole Authority**

- (1) This section applies to an offender who—
  - (a) is subject to a sentence of 3 years or less, being a sentence for which a non-parole period was set, and
  - (b) is no longer subject to a statutory parole order or a parole order under this section because the order has been revoked.
- (2) The Parole Authority may make a parole order directing the release on parole of an offender to whom this section applies.
- (3) Division 2 applies to an offender to whom this section applies and to the making of a parole order under this section, subject to subsection (4).
- (4) Section 137 or 143 (as the case requires) does not apply to an offender to whom this section applies whose statutory parole order is revoked prior to release under section 130.

### **[3] Schedule 5 Savings, transitional and other provisions**

Insert after Part 25—

## **Part 26 Provision consequent on enactment of COVID-19 Legislation Amendment (Emergency**

## Measures—Miscellaneous) Act 2020

### 137 Parole orders for sentences of 3 years or less

- (1) Anything done or omitted to be done by or on behalf of the Parole Authority in respect of an offender subject to a sentence of 3 years or less during the relevant period is taken to have been validly done or omitted, if it would have been validly done or omitted after the relevant period.
- (2) In this clause, **relevant period** means the period commencing on 26 February 2018 and ending on the date on which section 159 was inserted by the [COVID-19 Legislation Amendment \(Emergency Measures—Miscellaneous\) Act 2020](#).

#### Explanatory note

Item [2] of the proposed amendments applies to an offender who is sentenced to imprisonment for 3 years or less and who is in custody following revocation of the offender's statutory parole order or a parole order under the proposed section. Under the proposed section, the State Parole Authority (the **Parole Authority**) will be able to make an order releasing an offender on parole in the same way as it can for an offender sentenced to more than 3 years of imprisonment. The Parole Authority will also be required to consider releasing an offender on parole at least 60 days before the offender's parole eligibility date, except in the case of an offender whose statutory parole order is revoked prior to release. Item [1] is a consequential amendment.

Item [3] validates anything done by the Parole Authority between 26 February 2018 and the commencement of the proposed amendments if it would have been valid had the proposed amendments been in force.

## 1.9 Crown Land Management Act 2016 No 58

### [1] Section 10.23 Power of authorised officers to require answers

Insert after section 10.23(5)—

- (6) The authorised officer may, in the notice under subsection (4) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the authorised officer.
- (7) If the questions are to be answered by the person using an audio link or audio visual link—
  - (a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that manner at the time nominated under subsection (5), and
  - (b) the person must ensure that the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the authorised officer.
- (8) In this section—

**audio link** means technology that enables continuous and contemporaneous audio

communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

(9) This subsection and subsections (6)–(8) are repealed on 13 November 2020.

## [2] Section 12.18 Preparation of draft State strategic plan for Crown land

Omit “within 2 years of the commencement of this Part” from section 12.18(2).

Insert instead “before 1 July 2021”.

### Explanatory note

Section 10.23 of the *Crown Land Management Act 2016* permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters. Item [1] of the proposed amendments enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

Item [2] extends by 1 year the period during which the Secretary of the Department of Planning, Industry and Environment must prepare a draft State strategic plan for Crown land and submit the draft plan to the Minister for Planning and Public Spaces for approval.

## 1.10 Electricity Supply Act 1995 No 94

### [1] Part 8B

Insert after Part 8A—

## Part 8B Energy security safeguard

### Division 1 Preliminary

#### 98A Definitions

In this Part—

**energy activity**—see section 98C.

**safeguard**—see section 98B.

**scheme object**—see section 98D(1).

### Division 2 Constitution and object of safeguard

#### 98B Constitution of safeguard

The energy security safeguard (the **safeguard**) is constituted by the schemes provided for in Schedule 4A.

### **98C Object of safeguard**

The object of the safeguard is to improve the affordability, reliability and sustainability of energy through the creation of financial incentives that encourage the consumption, contracting or supply of energy in particular ways (that consumption, contracting or supply of energy being an **energy activity**).

## **Division 3 Schemes to give effect to object of safeguard**

### **98D Giving effect to object of safeguard through schemes**

- (1) The object of the safeguard may be given effect to by the establishment, by a regulation that amends Schedule 4A (other than Part 1 of Schedule 4A), of a scheme whose object is to encourage a specified energy activity (the **scheme object**).
- (2) A scheme so established may deal with the following matters—
  - (a) the persons who may or are required to participate in the scheme (**scheme participants**) and the classes of scheme participants,
  - (b) the scheme's annual target or targets in respect of or related to energy activities for each class of scheme participant (the **scheme target** or **scheme targets**),
  - (c) annual individual targets (**individual targets**), which may involve contingencies,
  - (d) the requirement for scheme participants to meet individual targets,
  - (e) the penalty payable per certificate which is not surrendered as required to satisfy an individual target,
  - (f) the carrying forward, to a later year, of an individual target shortfall,
  - (g) exemptions from the scheme, and the effect of those exemptions,
  - (h) the lodging, by a scheme participant, of an annual statement regarding the scheme participant's individual target and the estimated penalty payable in respect of an individual target shortfall,
  - (i) the assessment of a scheme participant's liability for the payment of penalties under the scheme,
  - (j) certificates in respect of energy activities, including the circumstances in which, and terms upon which, certificates may be or are created, allocated, traded, transferred, sold, forfeited, or surrendered (including the specific energy activities in respect of which those certificates may be created, and

the circumstances in which, and terms upon which, the energy activity needs to occur for certificates to be created), the persons by whom certificates may be created (***certificate providers***), offences for the improper creation of certificates, and the surrender of certificates by scheme participants to a scheme regulator to meet an individual target,

- (k) the accreditation of certificate providers and accreditation in respect of energy activities including eligibility and applications for accreditation, duration and conditions of accreditation, the transfer of accreditation, and information and records of accredited certificate providers and accreditation in respect of energy activities,
- (l) the registration, form and duration of certificates,
- (m) transfers and other dealings in certificates, including the purchase, transfer, sale, surrender or forfeiture of certificates and the price of certificates (including by a scheme administrator),
- (n) administration of the scheme, including the appointment, functions (including functions with respect to contracting), entitlements and removal or replacement of a scheme regulator and a scheme administrator, the establishment, custody and keeping of accounts, the maintenance and custody of records, application of funds from the scheme administrator's sale of certificates, novation or transfer of a scheme regulator or administrator's rights, powers and obligations to a replacement scheme regulator or scheme administrator, and the conduct of audits and the provision of information in connection with the scheme (including the requirements made by the scheme regulator or scheme administrator for a person to provide information in connection with the scheme),
- (o) the establishment and keeping of registers in connection with the scheme, including a register of certificates and of accredited certificate providers, and the information in those registers,
- (p) the application of the scheme to a person who ceases to be a scheme participant,
- (q) administrative review under the [Administrative Decisions Review Act 1997](#) of a decision by the scheme regulator or the scheme administrator,
- (r) the periodic review of the scheme by the Minister,
- (s) waiver or suspension by the Minister of a scheme participant's obligations,
- (t) the termination of the scheme,
- (u) the functions of the Minister.



### **98E Regulations to amend Schedule 4A**

In establishing a scheme, the regulations may amend Schedule 4A (other than Part 1 of Schedule 4A) to make provision for or with respect to any matter that is necessary or convenient for carrying out or giving effect to the object of the safeguard and, in particular, for or with respect to the following—

- (a) a matter referred to in section 98D,
- (b) any other matter that is consequent on, or ancillary or incidental to, a matter referred to in section 98D,
- (c) the subdelegation, to rules approved by the Minister (***scheme rules***), of provision with respect to a matter referred to in section 98D or paragraph (b) (but only if the scheme rules are not inconsistent with this Act or the regulations),
- (d) the creation of an offence punishable by a penalty not exceeding 10,000 penalty units (in the case of a corporation) and 5,000 penalty units (in any other case).

## **Division 4 Limitations on schemes**

### **98F Schemes must have scheme objects consistent with object of safeguard**

The regulations cannot amend Schedule 4A to establish a scheme unless the scheme includes a scheme object that is consistent with the object of the safeguard.

### **98G No further provision for schemes after 2021**

The regulations cannot amend Schedule 4A after 31 December 2021.

#### **[2] Section 116 Energy savings shortfalls may be carried forward**

Omit “2025” wherever occurring in section 116(6) and the note. Insert instead “2050”.

#### **[3] Section 178, heading**

Omit “2025”. Insert instead “2050”.

#### **[4] Section 178(1) and (3)**

Omit “2025” wherever occurring. Insert instead “2050”.

#### **[5] Section 191 Regulations**

Omit “Part 9” from section 191(1)(h1). Insert instead “Schedule 4A”.

#### **[6] Section 191(1)(h2)**

Omit “the Scheme Regulator or the Scheme Administrator under Part 9”.

Insert instead “a scheme regulator or scheme administrator under Schedule 4A”.

**[7] Schedule 4A**

Insert after Schedule 4—

## **Schedule 4A Energy security safeguard schemes**

**[8] Schedule 4A, Part 1**

Transfer Part 9 (sections 98–178) of the Act (as amended by this Schedule) to Schedule 4A (as inserted by item [7]), and renumber as Part 1 (clauses 1–80) of that Schedule, and amend cross-references in the Part accordingly.

**[9] Schedule 4A, Part 2**

Insert after Part 1 (as transferred by item [8])—

### **Part 2**

(When this Part was inserted it was blank)

**Explanatory note**

Item [1] of the proposed amendments constitutes the energy security safeguard, whose object is to improve the affordability, reliability and sustainability of energy through the creation of financial incentives that encourage the consumption, contracting or supply of energy in particular ways. The safeguard consists of the energy savings scheme under the [Electricity Supply Act 1995](#) and any other schemes that may be created, by regulation, to give effect to the object of the safeguard. Items [5]–[9] make consequential amendments.

Item [4] postpones the date of automatic termination of the energy savings scheme from the end of 2025 to the end of 2050. Items [2] and [3] make consequential amendments.

## **1.11 Environmental Planning and Assessment Act 1979 No 203**

**[1] Section 4.53 Lapsing of consent**

Omit section 4.53(1)–(3A). Insert instead—

- (1) A development consent lapses—
  - (a) 5 years after the date from which it operates if the development consent commences operation after the prescribed period, or
  - (b) 5 years after the date from which it operates if the development consent commences operation during the prescribed period, or
  - (c) 2 years after the date on which the development consent would otherwise have lapsed if the development consent commenced operation before, and has not

lapsed at, the commencement of the prescribed period.

- (2) A consent authority may reduce a period specified in subsection (1)(a) or (b) in granting development consent.
- (3) Subsection (2) does not—
  - (a) apply to development consent granted to a concept development application under Division 4.4 for development that requires a subsequent development application and consent, or
  - (b) authorise a reduction to be made that would cause—
    - (i) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates, or
    - (ii) a development consent that commences operation during the prescribed period to lapse within 5 years after the date from which the consent operates, or
    - (iii) a development consent of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the consent.
- (3A) For a development consent that lapsed after the commencement of the prescribed period and before the commencement of subsection (1)(c)—
  - (a) the development consent is taken not to have lapsed, and
  - (b) subsection (1)(c) applies to the development consent.

**[2] Section 4.53(6)-(6C)**

Omit section 4.53(6). Insert instead—

- (6) Despite any other provision of this section, a development consent that is subject to a deferred commencement condition under section 4.16(3) lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within—
  - (a) 5 years after the grant of consent if the consent is granted after the prescribed period, or
  - (b) 5 years after the grant of consent if the consent is granted during the prescribed period, or
  - (c) 2 years after the date on which the development consent would otherwise have lapsed if—
    - (i) the grant of consent was before the commencement of the prescribed

period, and

(ii) the development consent has not lapsed at that commencement.

(6A) A consent authority may reduce a period specified in subsection (6)(a) or (b) in granting development consent.

(6B) Subsection (6A) does not authorise a reduction to be made that would cause a development consent granted during the prescribed period to lapse within 5 years after the date on which it was granted.

(6C) For a development consent that lapsed after the commencement of the prescribed period and before the commencement of subsection (6)(c)—

(a) the development consent is taken not to have lapsed, and

(b) subsection (6)(c) applies to the development consent.

**[3] Section 4.53(8)**

Insert after section 4.53(7)—

(8) In this section—

***prescribed period*** means the period commencing on 25 March 2020 and ending on 25 March 2022.

**[4] Section 4.66 Continuance of and limitations on existing use**

Insert after section 4.66(3)—

(4) During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.

**[5] Section 4.68 Continuance of and limitations on other lawful uses**

Insert after section 4.68(3)—

(4) During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.

**[6] Section 7.17 Directions by Minister**

Insert at the end of section 7.17(1)(f)—

, and

- (g) how money paid under this Division for different purposes in accordance with the conditions of development consents is to be pooled and applied progressively for those purposes, and
- (h) the time at which a monetary contribution or levy is to be paid.
- (1A) A direction under subsection (1)(h) may be given only during the prescribed period within the meaning of section 10.17.
- (1B) A provision of a development consent granted before and inconsistent with a direction under subsection (1)(h) is taken to be modified so as to be consistent with the direction, but only for a contribution or levy (or a component of a contribution or levy) that has not been paid before the direction is given.

**[7] Section 8.10**

Omit the section. Insert instead—

**8.10 Time within which appeals may be made**

- (1) An appeal under this Division (except by an objector) may be made only within the following periods after the **relevant date** (being the date the decision appealed against is notified or registered on the NSW planning portal or the date of deemed refusal under section 8.11)—
  - (a) 6 months after the relevant date, if the relevant date occurs after the prescribed period, or
  - (b) 12 months after the relevant date, if the relevant date occurs—
    - (i) during the prescribed period, or
    - (ii) during the 6-month period immediately before the prescribed period.
- (2) An appeal under this Division by an objector may be made only within the following periods after the **relevant date** (being the date the objector is notified of the decision appealed against)—
  - (a) 28 days after the relevant date, if the relevant date occurs after the prescribed period, or
  - (b) 56 days after the relevant date, if the relevant date occurs—
    - (i) during the prescribed period, or
    - (ii) during the 28-day period immediately before the prescribed period.
- (3) In this section—

**prescribed period** means the period commencing on 25 March 2020 and ending on 25 March 2022.

**[8] Section 9.23 Power of investigation officers to require answers and record evidence**

Insert after section 9.23(5)—

- (6) An investigation officer may, in the notice under subsection (3) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the investigation officer.
- (7) If the questions are to be answered by the person using an audio link or audio visual link—
  - (a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that manner at the time nominated under subsection (4), and
  - (b) the person must ensure that the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the investigation officer.
- (8) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

- (9) This subsection and subsections (6)–(8) are repealed on 13 November 2020.

**Explanatory note**

Item [1] of the proposed amendments to the *Environmental Planning and Assessment Act 1979* (the **Principal Act**) extends the period for the lapsing of development consents that come into operation during the period of 2 years after 25 March 2020 (the **prescribed period**) or that were already in operation when the prescribed period commenced. The lapsing of those development consents is extended by 2 years. A development consent granted during the prescribed period will now lapse 7 years after it comes into operation unless the consent authority specifies a lesser period when granting consent. However, that lesser period must not be less than 5 years after the development consent comes into operation. Item [2] of the proposed amendments makes similar changes to the lapsing of development consents with deferred commencement provisions. Item [3] makes a consequential amendment.

Items [4] and [5] provide that, during the prescribed period, an existing use, or other lawful use, under the Principal Act is abandoned if that use ceases for a continuous period of 3 years (rather than 12 months as is currently the case).

Item [6] permits the Minister for Planning and Public Spaces (the **Minister**) to give 2 additional directions to a consent authority in relation to local infrastructure contributions. The first relates to the pooling of funds received by the consent authority for different purposes under a contributions plan or under different contributions plans. The second permits the Minister to specify the time at which a monetary contribution or levy is to be paid.

Item [7] extends the period within which a person may appeal against a decision relating to a development consent if the right to the appeal arises during the prescribed period or had arisen before the prescribed period and had not lapsed at the commencement of the prescribed period. In the case of an appeal by an objector, the period is extended from 28 days to 56 days and for any other appeal the period is extended from 6 months to 12 months.

Section 9.23 of the Principal Act permits an investigation officer under that Act to require a person to answer questions about certain matters if the investigation officer suspects on reasonable grounds that the person has knowledge of the matter. Item [8] enables the investigation officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

## **1.12 Fair Trading Act 1987 No 68 (as amended by the Fair Trading Legislation Amendment (Reform) Act 2018)**

### **Section 70 Remedy provisions of ACL that extend to local matters**

Insert “to the extent that it relates to a provision of Part 3-1 (other than section 47(1)) of that Law” after “(Pecuniary penalties)” in section 70(3)(a).

#### **Explanatory note**

The proposed amendment specifies which pecuniary penalties in the ACL apply to a contravention of proposed sections 47A and 47B of the *Fair Trading Act 1987* that are to be inserted by Schedule 1.1[3] of the *Fair Trading Legislation Amendment (Reform) Act 2018*. Proposed section 47A requires a supplier, before supplying a consumer with goods or services, to take reasonable steps to ensure the consumer is aware of any term or condition relating to the supply that may substantially prejudice the consumer’s interests. Proposed section 47B applies to an intermediary who, under an arrangement that provides for the intermediary to receive a financial incentive, arranges contracts for the supply of goods or services as an agent or refers consumers to another supplier of goods and services. The intermediary is required, before acting under the arrangement, to take reasonable steps to ensure the consumer who will be supplied with the goods or services to which the financial incentive relates is aware of the arrangement.

## **1.13 Fair Trading Legislation Amendment (Reform) Act 2018 No 65**

### **[1] Section 2 Commencement**

Omit “Schedule 2.7[2]” from section 2(2).

Insert instead “Schedules 2.13, 4.1 and 4.2[2]”.

### **[2] Section 2(3)**

Insert after section 2(2)—

- (3) Schedules 2.13, 4.1 and 4.2[2] commence on a day or days to be appointed by proclamation.

#### **Explanatory note**

The proposed amendments provide for the commencement of amendments to the *Home Building Act 1989* and the *Surveying and Spatial Information Act 2002* relating to—

- (a) the terms of authorities, licences, registrations and certificates (the **relevant authorities**), and the periods within which the relevant authorities may be restored, under those Acts to commence on a day or days to be appointed by proclamation to

enable the registration system to be updated to facilitate the new terms, and

(b) the amount of the fee that must accompany an application for the continuation of particular relevant authorities.

## **1.14 Fisheries Management Act 1994 No 38**

### **[1] Section 256 Production of records relating to commercial fishing activities and fish receivers**

Insert after section 256(2A)(c)—

(d) that the answer be given by audio link or audio visual link.

### **[2] Section 256(5) and (6)**

Insert after section 256(4)—

(5) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

(6) This subsection and subsections (2A)(d) and (5) are repealed on 13 November 2020.

#### **Explanatory note**

Section 256 of the *Fisheries Management Act 1994* permits a fisheries officer under that Act to require a person to answer questions about certain matters. The proposed amendments enable the fisheries officer to specify that the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

## **1.15 Human Tissue Act 1983 No 164**

### **[1] Section 34 Act does not prevent specified removals of tissue**

Insert after section 34(1)(b4)—

(b5) the use of any tissue that is lawfully removed from the body of a person (whether living or deceased) for the purpose of carrying out any test, analysis, investigation or research that—

(i) is required in connection with managing or monitoring the risks to public health arising from COVID-19, and

(ii) is approved, either generally or in a particular case or class of cases, by the



Health Secretary.

**[2] Section 34(3)-(5)**

Insert after section 34(2)—

- (3) Information relating to any test, analysis, investigation or research carried out under subsection (1)(b5) may not be published in a generally available publication (within the meaning of the *Health Records and Information Privacy Act 2002*) if it is in a form that could reasonably be expected to identify any person the subject of the test, analysis, investigation or research.
- (4) The use of any tissue (other than blood or blood products) for the purpose of carrying out any test, analysis, investigation or research ceases to be authorised under subsection (1)(b5) on the date specified by the Minister by notice published in the Gazette.
- (5) In determining that date, the Minister must—
  - (a) be reasonably satisfied that the date is the earliest possible day that a vaccine for COVID-19 is generally available to members of the public, and
  - (b) consult with the Chief Health Officer of the Ministry of Health.

**Explanatory note**

Item [1] of the proposed amendments permits any test, analysis, investigation or research required in response to the risks to public health arising from COVID-19 to be carried out, with the approval of the Secretary of the Ministry of Health, on tissue that has been lawfully removed from a person without requiring the person's consent to the use of the tissue for that purpose. Item [2] provides that use of tissue other than blood or blood products for that purpose ceases to be authorised on the earliest possible day that a vaccine for COVID-19 is generally available.

Item [2] also provides that information relating to a test, analysis, investigation or research must not be published in a generally available publication if it could reasonably be expected to identify any person the subject of the test, analysis, investigation or research.

## **1.16 Industrial Relations Act 1996 No 17**

### **Section 412**

Insert after section 411—

#### **412 Special provision for COVID-19 pandemic**

- (1) This section applies if this Act or the rules of a State organisation provide for a period in relation to—
  - (a) the term of office for an officer in the organisation, or
  - (b) when an election for an office of the organisation must be held.

- (2) The regulations may provide for the modification of the period.
- (3) A regulation under subsection (2)—
  - (a) may modify the period to extend it to a day that is no later than 12 months after the commencement of this section, and
  - (b) prevails to the extent of any inconsistency with any provision of this Act or the rules.
- (4) The Minister may recommend the making of a regulation under this section only if—
  - (a) the Minister considers the regulation is necessary for the purposes of responding to the public health emergency caused by the COVID-19 pandemic, and
  - (b) the Electoral Commissioner has agreed to the making of the regulation.
- (5) This section is repealed on 30 June 2021.

#### **413 COVID-19 pandemic—deferral of elections**

Despite section 412 but without limiting the operation of that section, the Industrial Registrar may, on application by a State organisation, defer an election for an office of the organisation for a period of up to 12 months if the Electoral Commission is unable to conduct the election because of the COVID-19 pandemic.

#### **Explanatory note**

The proposed amendment allows regulations to be made that will permit an election of officers in State organisations to be postponed for up to 12 months from the commencement of the amendment.

### **1.17 Interpretation Act 1987 No 15**

#### **Part 12**

Insert after section 83—

### **Part 12 Special provisions for COVID-19 pandemic**

#### **84 Power of person to modify statutory time periods**

- (1) This section applies if a person is authorised or required under an Act to take any of the following actions—
  - (a) modify, on any ground, a period within which the person, or another person, is authorised or required to do a thing or omit to do a thing,

- (b) modify, on any ground, a period at the end of which a thing expires,
  - (c) waive, on any ground, a period within which a thing must be done or omitted to be done,
  - (d) agree that a thing may be done or omitted to be done despite the expiry of a period.
- (2) The power of the person to take the action referred to in subsection (1) is taken to include a power to take the action on the ground the person is satisfied the modification, waiver or agreement is reasonable for the purposes of responding to the public health emergency caused by the COVID-19 pandemic.
- (3) If a period is extended, suspended or waived under subsection (2), the period may only be extended, suspended or waived to a day that is no later than 31 December 2020.
- (4) If it is agreed under subsection (2) that a thing may be done or omitted to be done despite the expiry of a period, the day by which it is agreed the thing may be done or omitted to be done may be no later than 31 December 2020.
- (5) A reference in this section to a period within which a person is authorised or required to do a thing or omit to do a thing includes a reference to any expression of time provided for under a provision for doing or omitting to do the thing.

**Note—**

Examples of an expression of time include a requirement for a person to do a thing immediately or promptly.

- (6) The power of a person to take the action referred to in subsection (1) operates retrospectively to the extent it applies to a period that ends on or after 16 March 2020.

## **85 Regulation-making power to modify or suspend limitation and other statutory time periods**

- (1) This section applies if an Act (a **relevant Act**) provides for a period—
- (a) within which a person is authorised or required to do a thing or omit to do a thing, or
  - (b) at the end of which a thing expires.

**Note—**

Examples of periods for which an Act may provide include—

- (a) time limits for civil and criminal procedures and processes, including limitation periods and time

- limits for giving notices, lodging applications and filing documents, and
- (b) the expiry of a document at the end of a period.
- (2) A regulation may be made under either of the following to provide for the modification or suspension of the period—
- (a) the relevant Act,
  - (b) this section.
- (3) Subsection (2) does not provide power for a regulation to be made in relation to—
- (a) a period under the *Constitution Act 1902* relating to—
    - (i) the duration of the Legislative Assembly, or
    - (ii) the date of a general election for Members of the Legislative Assembly, or
    - (iii) the date of a periodic Council election, or
  - (b) a period under the *Electoral Act 2017* relating to a State election, or
  - (c) a period under the *Biodiversity Conservation Act 2016*.
- (4) To remove any doubt, for the purposes of subsection (2)(a), the relevant Act is taken to include a power to make a regulation as provided in this section.
- (5) Without limiting subsection (2), a regulation under a relevant Act or this section may—
- (a) expressly modify or suspend the period, or
  - (b) authorise a person having a function under the relevant Act to modify or suspend the period, or
  - (c) authorise a person mentioned in paragraph (b) to delegate or subdelegate a power given under paragraph (b) to suspend or modify the period.
- (6) However, a regulation under a relevant Act or this section may not—
- (a) modify the period to shorten the period, or
  - (b) extend or suspend the period to a day that is later than 31 December 2020, or
  - (c) authorise a person mentioned in subsection (5)(b), or a person to whom a power is delegated or subdelegated as mentioned in subsection (5)(c), to—

- (i) shorten the period, or
- (ii) extend or suspend the period to a day that is later than 31 December 2020.

(7) A reference in this section to a period within which a person is authorised or required to do a thing or omit to do a thing includes a reference to any expression of time provided for under a provision for doing or omitting to do the thing.

**Note—**

Examples of an expression of time include a requirement for a person to do a thing immediately or promptly.

(8) A regulation may operate retrospectively to the extent that it applies to a period that ends on or after 16 March 2020.

## **86 Regulation-making power relating to altered arrangements for physical attendance and meetings**

- (1) This section applies if an Act (a **relevant Act**), or a statutory rule made under a relevant Act, requires or permits a person to—
- (a) physically attend a place or meeting for a particular purpose or particular matter, or
  - (b) call or hold a meeting for a particular purpose or particular matter.
- (2) A regulation may be made under either of the following to provide for altered arrangements for undertaking the particular purpose or matter or calling or holding the meeting—
- (a) the relevant Act,
  - (b) this section.
- (3) To remove any doubt, for the purposes of subsection (2)(a), the relevant Act is taken to include a power to make a regulation as provided in this section.
- (4) Without limiting subsection (2), a regulation under a relevant Act or this section may provide for the following—
- (a) a meeting to be held—
    - (i) using communication technology, or
    - (ii) on the papers or out of session,
  - (b) modified procedures and requirements relating to meetings, including procedures and requirements about quorums, voting, decision-making and

the recording of decisions,

- (c) alternative ways that a person may produce information or a stated thing for the purposes of a meeting,
- (d) the suspension of a requirement for a meeting to be held or for a person to attend a meeting,
- (e) alternatives for an attendance or inspection, including requiring information to be shared or provided in other ways or communication technology to be used in place of a physical visit,
- (f) the empowerment of a decision-maker under a relevant Act to exercise discretion about whether, when or how attendance is to be required, to suspend a requirement for a person to call or hold a meeting or to issue guidelines regarding the altered arrangements.

(5) In this section—

***altered arrangements*** includes—

- (a) modified arrangements, permissions or requirements, and
- (b) suspended arrangements, permissions or requirements.

## **87 Regulation-making powers**

- (1) The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) A regulation mentioned in this Part may be made—
  - (a) only for the purposes of responding to the public health emergency caused by the COVID-19 pandemic, and
  - (b) if made under another Act—only on the recommendation of the Minister administering that Act.
- (3) Also, a Minister may recommend a regulation mentioned in section 85 be made only if Parliament is not sitting and, due to the COVID-19 pandemic or the response to it, is not likely to be sitting within 2 weeks after the day the regulation is made.

## **88 Application of regulations**

Regulations mentioned in this Part—

- (a) are not limited by the regulation-making power in another Act, and
- (b) if the regulation is made under this Part—may override the provisions of any Act, regulation or other law, and
- (c) if the regulation is made under a relevant Act—may override the provisions of that Act or a regulation made under that Act.

## 89 Expiry of regulations

Regulations mentioned in this Part expire on the earliest of the following days—

- (a) the day the provision of this Part that provides power for the making of the regulation is repealed,
- (b) the day that is 6 months after the regulations commence,
- (c) the day decided by Parliament by resolution of either House of Parliament.

## 90 Repeal of provision of Part

A provision of this Part is repealed on—

- (a) 26 September 2020, or
- (b) the later day, no later than 31 December 2020, prescribed by the regulations as being the day on which that provision is repealed.

## 91 Saving provision

(1) This section applies if—

- (a) under a provision of this Part or a regulation mentioned in this Part, the period (the **modified period**) to do a thing or to omit to do a thing is modified, and
- (b) at the time the provision or the regulation is repealed, the modified period has not yet ended.

(2) Despite the repeal of the provision or the regulation, the modified period continues to apply to doing the thing or omitting to do the thing.

(3) In this section—

**modified**, in relation to a period to do a thing or to omit to do a thing, includes—

- (a) suspended, and
- (b) waived, and

- (c) agreement that the thing may be done or omitted to be done despite the period having expired.

**Explanatory note**

The proposed amendment inserts a regulation-making power into the *Interpretation Act 1987* to provide power for modification of legislative requirements across the statute book dealing with statutory timeframes and attendance at places or meetings. These special arrangements apply for the purposes of responding to the public health emergency caused by the COVID-19 pandemic and apply only for a limited period.

## **1.18 Landlord and Tenant Regulation 2015**

### **Repeal of regulation**

The *Landlord and Tenant Regulation 2015* is repealed.

**Explanatory note**

The proposed amendment repeals the *Landlord and Tenant Regulation 2015*.

## **1.19 Local Government Act 1993 No 30**

### **[1] Section 511 Catching up of shortfall in general income**

Omit “either or both of the next 2 years” from section 511(1).

Insert instead “any 1 or more of the next 10 years”.

### **[2] Section 511(1), note**

Insert after section 511(1)—

**Note—**

For example, a council that had a shortfall referred to in subsection (1) of \$100,000 in a particular year could recover that amount by increasing the amount of rates and charges—

- (a) in 1 of the next 10 years to recover an additional \$100,000 in that year, or
- (b) in 4 of the next 10 years to recover an additional \$25,000 in each of those years, or
- (c) in each of the next 10 years to recover an additional \$10,000 in each of those years.

### **[3] Chapter 18, Part 1A and section 747AA**

Insert before section 747A—

## **Part 1A COVID-19 pandemic—special provisions**

### **747AA Definition**

In this Part—



**prescribed period** means the period—

- (a) starting on 25 March 2020, and
- (b) ending on—
  - (i) 26 September 2020, or
  - (ii) the later day, not later than 26 March 2021, prescribed by the regulations.

**[4] Section 747A, heading**

Omit “**special provisions**”. Insert instead “**meetings**”.

**[5] Section 747A(3)**

Omit the subsection.

**[6] Section 747AB**

Insert after section 747A—

**747AB COVID-19 pandemic—recovery of unpaid rates**

During the prescribed period, proceedings for the recovery of a rate or charge may not be commenced against a person by or on behalf of a council under section 712 unless the council has considered each of the following—

- (a) whether the payment of the rate or charge could be made in instalments or by way of some other financial arrangement,
- (b) whether the person should be referred to a financial counsellor,
- (c) whether mediation or alternative dispute resolution should be attempted first,
- (d) whether interest on the unpaid amount should be deferred or waived.

**Explanatory note**

Item [2] of the proposed amendments to the *Local Government Act 1993* provides for a council to recover shortfalls in rates and charges in a particular year by increasing rates and charges in later years. Item [3] inserts a note giving examples of how this could be done.

Item [8] contains 3 new sections. Proposed section 747AB requires a council to consider certain matters before commencing proceedings for the recovery of a rate or charge during the prescribed period relating to the COVID-19 pandemic. Proposed section 747AC prevents, for 2 years, a council from undertaking major building work involving certain council buildings. Proposed section 747AD permits the Minister, during the prescribed period relating to the COVID-19 pandemic, to set the maximum amount of general income that a particular council may derive from rates and charges in the year ending 30 June 2021. Item [5] inserts a missing heading and a definition of **prescribed period**. Items [1], [4], [6] and [7] make consequential amendments.

## 1.20 Long Service Leave Act 1955 No 38

### Sections 15B and 15C

Insert after section 15A—

#### **15B COVID-19 pandemic—taking long service leave**

- (1) This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.
- (2) Despite section 4(3)(b), an employer and worker may agree to the worker taking long service leave during the prescribed period in 2 or more separate periods of not less than 1 day.
- (3) In this section—

***prescribed period*** means the period—

- (a) starting on the commencement of this section, and
- (b) ending on—
  - (i) the day that is 6 months after the commencement, or
  - (ii) the later day, not more than 12 months after the commencement, prescribed by the regulations.

#### **15C COVID-19 pandemic—accrual of long service leave**

- (1) If, during the prescribed period, a worker is stood down without pay by an employer as a direct or indirect result of the COVID-19 pandemic—
  - (a) the service of the worker with the employer is, despite that break, taken to be continuous service, and
  - (b) the worker continues to accrue long service leave while stood down.
- (2) This section extends to long service leave entitlements under any other Act.
- (3) In this section—

***prescribed period*** means the period—

- (a) starting on 11 March 2020, and
- (b) ending on—
  - (i) 12 September 2020, or

(ii) a later day, not later than 12 March 2021, prescribed by the regulations.

**worker** includes any person who may access long service leave entitlements under this or any other Act.

**Explanatory note**

The proposed amendment inserts 2 new provisions into the *Long Service Leave Act 1955*. Proposed section 15B allows an employer and worker to agree to accrued long service leave being taken over multiple periods of not less than 1 day (for example, 4 periods, each being 2 days, in consecutive weeks) during the prescribed period.

Proposed section 15C ensures that a worker's long service leave continues to accrue during any period in the specified COVID-19 pandemic period during which the worker is stood down without pay as a direct or indirect result of the COVID-19 pandemic.

## **1.21 Mental Health Act 2007 No 8**

### **Section 203**

Insert after section 202—

#### **203 COVID-19 pandemic—examination by audio visual link for purpose of detention**

- (1) This section applies to an examination of a person or observation of a person's condition during the prescribed period for the purpose of determining under section 27 whether the person is a mentally ill person or a mentally disordered person.
- (2) Despite section 27A(1), an examination of a person or observation of a person's condition may be carried out using an audio visual link by—
  - (a) a medical practitioner, or
  - (b) an accredited person authorised by the medical superintendent of the mental health facility to do so.
- (3) An examination or observation may be carried out under subsection (2) only if the medical practitioner or accredited person is satisfied that—
  - (a) carrying out the examination or observation by audio visual link is necessary because of the COVID-19 pandemic, and
  - (b) the examination or observation can be carried out with sufficient skill or care using an audio visual link so as to form the required opinion about the person.
- (4) Section 27A(2), (4) and (5) of this Act applies to an examination or observation carried out under this section in the same way as it applies to an examination or observation carried out under section 27A.

(5) In this section—

**prescribed period** means the period—

(a) starting on the commencement of this section, and

(b) ending on—

(i) 26 September 2020, or

(ii) the later day, not later than 26 March 2021, prescribed by the regulations.

**Explanatory note**

The proposed amendment enables an assessment of a person detained in a mental health facility to be carried out by a medical practitioner or accredited person via audio visual link, for the purposes of determining whether the person is a mentally ill person or mentally disordered person.

Assessments may be done by audio visual link only if it is necessary because of the COVID-19 pandemic and if the assessment can be effectively carried out by audio visual link.

## 1.22 Mining Act 1992 No 29

### Section 248L Power of inspectors to require answers

Insert after section 248L(5)—

(6) The inspector may, in the notice under subsection (4) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the inspector.

(7) If the questions are to be answered by the person using an audio link or audio visual link—

(a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that manner at the time nominated under subsection (5), and

(b) the person must ensure that the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the inspector.

(8) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different

places, including video conferencing.

(9) This subsection and subsections (6)–(8) are repealed on 13 November 2020.

**Explanatory note**

Section 248L of the *Mining Act 1992* permits an inspector under that Act to require a person to answer questions about certain matters if the inspector suspects on reasonable grounds that the person has knowledge of those matters. The proposed amendment enables the inspector to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

## **1.23 Private Health Facilities Act 2007 No 9**

### **Section 12A**

Insert after section 12—

#### **12A Special conditions during COVID-19 pandemic**

- (1) A licence may be subject to any conditions that the Secretary considers necessary, having regard to the COVID-19 pandemic, to protect the health and safety of the public, manage resources or ensure the provision of balanced and coordinated health services throughout the State.
- (2) A condition referred to in this section may be—
  - (a) specified in a licence when the licence is issued by the Secretary, or
  - (b) attached to a licence when the licence is amended by the Secretary under section 17(3)(c).
- (3) This section is repealed, and any conditions referred to in this section are revoked, on—
  - (a) 26 March 2021, or
  - (b) the later day, not later than 26 March 2022, prescribed by the regulations.

**Explanatory note**

The proposed amendment permits the Secretary of the Ministry of Health to impose any conditions on a licence for a private health facility that the Secretary considers necessary, having regard to the COVID-19 pandemic, to protect the health and safety of the public, manage resources or ensure the provision of balanced and coordinated health services. The proposed amendment is repealed on 26 March 2021 unless the regulations prescribe a later date for the repeal, not being later than 26 March 2022. Any condition imposed by the Secretary is also revoked on the same day that the proposed amendment is repealed.

## **1.24 Property and Stock Agents Act 2002 No 66**

### **[1] Section 232**

Insert after section 231—

## **232 Use of Property Services Compensation Fund to assist residential landlords and tenants suffering hardship**

- (1) Parliament recommends that this Act be amended to allow the Secretary to establish a scheme to provide financial assistance from money held in the Property Services Compensation Fund to landlords who are suffering financial hardship caused directly or indirectly by the COVID-19 pandemic, being a scheme that provides for the following—
- (a) the landlord demonstrating that a tenant—
    - (i) has suffered a loss of income of 25% or more, and
    - (ii) has less than \$5,000 in savings, and
    - (iii) is paying more than 30% of the tenant's income in rent to the landlord,
  - (b) a maximum payment of \$2,500 per landlord per tenancy is available to a landlord,
  - (c) the landlord being required to reduce the tenant's rent by the amount of any payment under the scheme.
- (2) Terms used in this section that are not defined in this Act have the same meanings as they have in the *Residential Tenancies Act 2010*.

### **[2] Schedule 1 Savings, transitional and other provisions**

Insert at the end of the Part inserted by Schedule 2.12 to the *Fair Trading Legislation Amendment (Reform) Act 2018*, with appropriate clause numbering—

#### **Expired or cancelled certificates of registration**

Section 26B(1) does not apply to an application for a certificate of registration if—

- (a) the application is made within 1 year after the commencement day, and
- (b) the applicant previously held a certificate of registration that expired or was cancelled within 1 year before the commencement day.

#### **Explanatory note**

The proposed amendment provides that, despite a general prohibition on applying for a certificate of registration under the *Property and Stock Agents Act 2002* within 1 year of the expiry or cancellation of a previous certificate of registration, an application of that kind may be made, if—

- (a) the application is made within 1 year after the commencement of section 26B(1) of the Act, and
- (b) the applicant previously held a certificate that expired or was cancelled within 1 year before the commencement of section

26B(1) of the Act.

## 1.25 Protection of the Environment Operations Act 1997 No 156

### Section 203 Power of authorised officers to require answers

Insert after section 203(6)—

- (7) The authorised officer may, in the notice under subsection (5) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the authorised officer.
- (8) If the questions are to be answered by the person using an audio link or audio visual link—
  - (a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that manner at the time nominated under subsection (6), and
  - (b) the person must ensure that the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the authorised officer.
- (9) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

- (10) This subsection and subsections (7)–(9) are repealed on 13 November 2020.

#### Explanatory note

Section 203 of the *Protection of the Environment Operations Act 1997* permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters. The proposed amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

## 1.26 Public Health Act 2010 No 127

### [1] Section 53 Notification of death arising from scheduled medical condition

Omit the section.

### [2] Section 62 Making of public health orders relating to person with Category 4 or 5

**condition or contact order condition**

Omit section 62(3)(g). Insert instead—

(g) to undergo a specified kind of medical examination or test.

**[3] Section 98 Public health and disease registers**

Insert “or class of persons” after “a person” where firstly occurring in section 98(6).

**[4] Section 98(6A)**

Insert after section 98(6)—

(6A) The Secretary may authorise the following classes of persons, or a subclass of persons from the following classes, for the purposes of subsection (6)—

(a) health practitioners,

**Note—**

For example, medical practitioners are a subclass of health practitioners.

(b) health organisations within the meaning of the *Health Care Complaints Act 1993*,

(c) public authorities,

(d) any other class of persons prescribed by the regulations.

**[5] Section 129A**

Insert after section 129—

**129A Notification of deaths by Registrar of Births, Deaths and Marriages**

The Registrar of Births, Deaths and Marriages must, immediately after registering the death of a person under the *Births, Deaths and Marriages Registration Act 1995*, provide the Secretary with notice of the death in the form and manner, and containing the particulars, determined by the Secretary from time to time.

**Explanatory note**

Item [2] of the proposed amendments enables a public health order, being an order made under the *Public Health Act 2010* (the **Act**) in relation to a person who has a Category 4 or 5 medical condition such as COVID-19, to require the person subject to the order to undergo a specified kind of medical examination or test.

Items [3] and [4] provide for the Secretary of the Ministry of Health to approve certain classes of persons to provide personal information to a health records linkage organisation for the purpose of a public health or disease register established under the Act.



Item [5] requires the Registrar of Births, Deaths and Marriages to notify the Secretary of all deaths registered under the *Births, Deaths and Marriages Registration Act 1995*. Currently, the Registrar is only required to notify the Secretary of the death of a person if the apparent cause of death involves a scheduled medical condition within the meaning of the Act. Item [1] makes a consequential amendment.

## 1.27 Registered Clubs Act 1976 No 31

### Section 77

Insert after section 76—

#### **77 Special provision for COVID-19 pandemic**

- (1) This section applies if this Act or the rules of a registered club provide for a period in relation to the election of the governing body of the club responsible for the management of the business and affairs of the club.
- (2) The regulations may provide for the modification of the period.
- (3) A regulation under subsection (2)—
  - (a) may modify the period to extend it to a day that is no later than 12 months after the commencement of this section, and
  - (b) prevails to the extent of any inconsistency with any provision of this Act or the rules.
- (4) The Minister may recommend the making of a regulation under this section only if—
  - (a) the Minister considers the regulation is necessary for the purposes of responding to the public health emergency caused by the COVID-19 pandemic, and
  - (b) the Electoral Commissioner has agreed to the making of the regulation.
- (5) This section is repealed on 30 June 2021.

#### **Explanatory note**

The proposed amendment allows regulations to be made that will permit an election of the governing body of a registered club to be postponed for up to 12 months from the commencement of the amendment.

## 1.28 Residential Tenancies Act 2010 No 42

### **[1] Sections 228A-228C**

Insert before section 229—

## 228A Definitions

In this Part—

**formal rent negotiation process** means a dispute resolution process between a landlord and an impacted tenant, facilitated by NSW Fair Trading, to negotiate the rent payable under a residential tenancy agreement having regard to the specific circumstances of the landlord and the impacted tenant.

**household** means any tenants or other persons living together in the same residential premises.

**impacted tenant** means a tenant who is a member of a household impacted by the COVID-19 pandemic.

**moratorium period** means the period ending at the end of 15 October 2020.

**rent-paying member** of a household means any member of the household who regularly contributes towards the rent payable under a residential tenancy agreement for the residential premises in which the household resides.

**termination notice** has the same meaning as in section 80.

**termination order** has the same meaning as in section 80.

## 228B When a household is impacted by COVID-19 pandemic

- (1) For the purposes of this Part, a household is impacted by the COVID-19 pandemic if—
- (a) any 1 or more rent-paying members of the household have—
    - (i) lost employment or income as a result of the impact of the COVID-19 pandemic, or
    - (ii) had a reduction in work hours or income as a result of the impact of the COVID-19 pandemic, or
    - (iii) had to stop working, or materially reduce the member's work hours, because of—
      - (A) the member's illness with COVID-19, or
      - (B) another member of the household's illness with COVID-19, or
      - (C) the member's carer responsibilities for a family member ill with COVID-19, and
  - (b) as a result of any of the matters stated in paragraph (a), the weekly household income for the household has been reduced by at least 25%

compared to the weekly household income for the household before the occurrence of any of the matters.

(2) In this section—

**weekly household income** means the total of the weekly income, including any government payments, received by each rent-paying member of the household.

### **228C Termination by Tribunal on application by impacted tenants**

(1) The Tribunal may, on application by an impacted tenant, make a termination order if satisfied that, during the moratorium period—

(a) the impacted tenant has, by written notice given to the landlord or landlord's agent, asked the landlord to participate in a formal rent negotiation process and the landlord—

(i) has not responded to the notice within 7 days of the impacted tenant making the request, or

(ii) has refused to participate in a formal rent negotiation process, or

(iii) has agreed to participate in, but has subsequently failed to respond to or participate in the process, or

(b) the landlord—

(i) does not respond to notice of any part of the formal negotiation process given by NSW Fair Trading within 7 days of the giving of the notice, or

(ii) fails to participate in, or stops participating in, the formal rent negotiation process, or

(c) the impacted tenant and the landlord have participated in a formal rent negotiation process in good faith but are not able to reach an agreement that would avoid financial hardship for the impacted tenant because of—

(i) the amount of rent that would be payable under an arrangement the landlord could agree to, or

(ii) the amount of unpaid rent that has accrued, or will accrue, if the agreement is not terminated.

(2) For the purposes of determining any of the matters stated in subsection (1), the Tribunal may have regard to the following—

(a) any advice provided by NSW Fair Trading relating to the participation of the landlord or impacted tenant in the formal rent negotiation process, including

- whether the landlord or impacted tenant refused, or refused to make, a reasonable offer about rent,
- (b) whether the impacted tenant has continued to make any payments towards the rent,
  - (c) the nature of any financial hardship experienced by the landlord or impacted tenant, including the general financial position of each party,
  - (d) any special vulnerability of the impacted tenant,
  - (e) any other matter the Tribunal considers relevant.
- (3) An impacted tenant may make an application under this section without giving the landlord a termination notice.
- (4) An impacted tenant must give a copy of the application to the landlord or landlord's agent.
- (5) If the Tribunal makes the termination order, the Tribunal may also order the impacted tenant pay compensation to the landlord of an amount of not more than 2 weeks rent.

**[2] Section 230**

Insert at the end of Part 13—

**230 Repeal of Part**

This Part is repealed—

- (a) on 26 September 2020, or
- (b) on a later day, no later than 26 March 2021, prescribed the regulations.

**[3] Schedule 2 Savings, transitional and other provisions**

Insert in alphabetical order in clause 22—

**1899 Act** means the *Landlord and Tenant Act 1899*.

**[4] Schedule 2, clause 24(4) and (5)**

Insert after clause 24(3)—

- (4) Despite its repeal by Schedule 3 to the *Statute Law (Miscellaneous Provisions) Act 2020*, the *Landlord and Tenant Regulation 2015* continues to apply to prescribed

premises as if the Regulation had not been repealed until the 1948 Act ceases to apply to the premises under this clause.

- (5) Despite the repeal of the 1899 Act by section 1D of that Act, the 1899 Act continues to apply, but only to the extent and for the period necessary for the continuation of the 1948 Act under this clause.

#### **Explanatory note**

Item [1] of the proposed amendments insert provisions into Part 13 of the *Residential Tenancies Act 2010* (the **Act**) to—

- (a) enable the NSW Civil and Administrative Tribunal (the **Tribunal**), on application by a tenant who is a member of a household financially impacted by the COVID-19 pandemic (an **impacted tenant**), to terminate a residential tenancy agreement if satisfied—
- (i) the impacted tenant has asked the landlord to formally negotiate the rent payable under the agreement and the landlord has not responded to the request within 7 days, has refused to negotiate the rent, or has agreed to negotiate but the negotiations have not started within 7 days of the landlord's agreement, or
  - (ii) the impacted tenant and landlord are not able, after negotiating in good faith, to reach an agreement about the rent that would avoid financial hardship for the impacted tenant, and
- (b) if the Tribunal makes a termination order—require the impacted tenant to pay to the landlord compensation of an amount equal to 2 weeks rent.

Item [2] repeals Part 13 of the Act on 26 September 2020 or a later day (no later than 26 March 2021) prescribed by the regulations.

Item [4] of the proposed amendments extends the application of the *Landlord and Tenant Regulation 2015* to certain premises to which the repealed *Landlord and Tenant (Amendment) Act 1948* continues to apply. The *Landlord and Tenant Regulation 2015* is repealed by Schedule 1.18 to this Act. Item [4] also continues the application of the *Landlord and Tenant Act 1899* to the extent necessary for the continuation of the *Landlord and Tenant (Amendment) Act 1948*. Section 1D of the *Landlord and Tenant Act 1899* provides for the repeal of that Act 5 years after the commencement of that section (which was 29 June 2015).

Item [3] makes a consequential amendment.

## **1.29 Residential Tenancies Regulation 2019**

### **[1] Clause 41A Definitions**

Omit the definitions of ***formal rent negotiation process, household, impacted tenant, moratorium period*** and ***rent-paying member***.

### **[2] Clause 41B When a household is impacted by the COVID-19 pandemic**

Omit the clause.

#### **Explanatory note**

The proposed amendments omit redundant definitions.

## **1.30 Retirement Villages Act 1999 No 81**

### **Sections 204 and 205**

Insert after section 203—

## 204 COVID-19 pandemic—Ministerial exemptions

- (1) During the prescribed period, the Minister may, by order published in the Gazette, exempt any of the following from a specified provision of this Act or the regulations—
  - (a) a retirement village or a class of retirement villages,
  - (b) a resident of a retirement village or a class of residents,
  - (c) an operator of a retirement village or a class of operators,
  - (d) the Secretary.

### Note—

Power to make an order includes power to amend or repeal the order—see section 43(2) of the [Interpretation Act 1987](#).

- (2) An exemption granted under this section is subject to any conditions specified in the order.
- (3) In particular, an order may specify that the exemption operates only to the extent that alternative requirements, specified in the order, are complied with instead of the provision from which the exemption is granted.
- (4) The Minister must not grant an exemption under this section unless the Minister is satisfied that the exemption is necessary because the provision from which the exemption is granted requires non-compliance with a specified order under section 7 of the [Public Health Act 2010](#) that relates to COVID-19.
- (5) An application to the Tribunal for an order under another provision of this Act cannot be made in respect of a person's failure to comply with a provision from which the person has been granted an exemption under this section if the failure is in compliance with the exemption.
- (6) However, an application may be made to the Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision to grant an exemption under this section.
- (7) In this section—

**prescribed period** means the period—

  - (a) starting on the commencement of this section, and
  - (b) ending on—

- (i) 26 September 2020, or
- (ii) the day, not later than 26 March 2021, prescribed by the regulations.

### **205 COVID-19 pandemic—non-compliance with conditions of Ministerial exemptions**

- (1) If the Minister reasonably believes a person is failing to comply with a condition of an exemption granted under section 204, the Minister may give the person a notice (a **compliance notice**) requiring the person to comply with the condition within the period specified in the notice.
- (2) A person must comply with a compliance notice given to the person.

Maximum penalty—100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

#### **Explanatory note**

The proposed amendment enables the Minister for Better Regulation and Innovation to grant, by order published in the Gazette, exemptions from provisions of or under the *Retirement Villages Act 1999* that require non-compliance with an order under section 7 of the *Public Health Act 2010* relating to COVID-19. The amendment also enables the Minister to require, by the giving of a compliance notice, compliance with a condition of an exemption.

## **1.31 Strata Schemes Management Act 2015 No 50**

### **[1] Section 271A**

Insert after section 271—

#### **271A Regulation-making power for COVID-19 pandemic**

- (1) The regulations under this Act may provide for the following matters for the purposes of responding to the public health emergency caused by the COVID-19 pandemic—
  - (a) altered arrangements for convening a relevant strata meeting, including arrangements for the issue or service of notices and other documents in relation to the meeting,
  - (b) altered arrangements for the means of voting at a relevant strata meeting, including—
    - (i) the circumstances in which the altered arrangements for voting may apply, and
    - (ii) conditions that apply to the way the vote is exercised,
  - (c) an alternative to affixing the seal of the owners corporation, including any requirements for witnessing or attesting to the alternative way,

- (d) extension of a time period in which a thing is required to be done under the Act.
- (2) However, a regulation made under subsection (1)(d) must not result in the total time period within which the thing is required to be done to be extended to be a time period of more than 6 months.
- (3) Regulations made under this section—
  - (a) are not limited by the regulation-making power in this Act, and
  - (b) may override a provision of this Act.
- (4) Regulations made under this section expire on—
  - (a) the day that is 6 months after the day on which the regulation commences, or
  - (b) the earlier day decided by Parliament by resolution of either House of Parliament.
- (5) This section is repealed on—
  - (a) 13 November 2020, or
  - (b) a later day, not later than 13 May 2021, prescribed by the regulations.
- (6) In this section—
  - relevant strata meeting*** means—
    - (a) an annual general meeting or other general meetings of an owners corporation for a strata scheme, or
    - (b) a meeting of the strata committee of an owners corporation.

**[2] Schedule 3 Savings, transitional and other provisions**

Insert after section 16—

**17 Saving of a variation of a time period prescribed by regulation for COVID-19**

A regulation made under section 271A(1)(d) continues to have effect until the end of the time period specified by the regulation, despite the repeal of section 271A or the expiry of the regulation.

**Explanatory note**

The proposed amendments provide that regulations may be made to provide for the following matters—



- (a) altered arrangements for convening meetings of an owners corporation for a strata scheme and meetings of the strata committee of an owners corporation, including for the issue or service of notices and other documents in relation to those meetings,
- (b) altered arrangements for the way a vote may be conducted at the meetings,
- (c) an alternative to affixing the seal of the owners corporation,
- (d) extending the time period in which a thing is required to be done under the Act.

The proposed amendments also provide that a variation of a time period prescribed by the regulations continues to have effect for the specified time despite the repeal of the section or the expiry of the regulation.

The regulations expire 6 months after commencement, unless earlier resolved by Parliament.

The proposed amendments are repealed on 13 November 2020, unless the regulations prescribe a later date for the repeal, being not later than 13 May 2021.

## **1.32 Waste Avoidance and Resource Recovery Act 2001 No 58**

### **Section 53A**

Insert after section 53—

#### **53A COVID 19 response—exemptions by EPA**

- (1) The EPA may exempt a person, or class of persons, from any specified provision of this Act or the regulations or from any agreement or arrangement made under the Act, if the EPA is satisfied the exemption is reasonable for the purposes of responding to the COVID-19 pandemic.
- (2) The exemption may be granted by the EPA on its own motion or on the application of a person.
- (3) The regulations may prescribe the manner in which a person must apply for an exemption under this section.
- (4) An exemption—
  - (a) is effected by order made by the EPA and published in the Gazette, and
  - (b) takes effect from the date the order is published or a later date specified in the order, and
  - (c) has effect for the period specified in the order or until the repeal of this section (whichever occurs first).
- (5) If the exemption is granted in an emergency, the order—
  - (a) may take effect when it is made or on a later date specified in the order, and
  - (b) is to be published in the Gazette as soon as practicable after it is made.

- (6) An exemption may be unconditional or may be subject to conditions specified in the order.
- (7) An exemption may be revoked, varied or renewed by a further order made and published in accordance with this section.
- (8) If an exemption is granted, any person may make a written request to the EPA for the reasons for the exemption and the EPA is to provide a written statement of the reasons to the person.
- (9) The regulations may make provision with respect to any such statement of reasons, including—
  - (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
  - (b) the matters to be set out in a statement of reasons, and
  - (c) the cases in which a statement of reasons is not required to be provided.
- (10) This section is repealed on—
  - (a) 26 September 2020, or
  - (b) the later day, no later than 26 March 2021, prescribed by the regulations.

**Explanatory note**

The proposed amendment to the *Waste Avoidance and Resource Recovery Act 2001* (the **principal Act**) permits the Environment Protection Authority (the **EPA**) to exempt a person, or class of persons, from provisions of the principal Act or regulations or agreements or arrangements made under the principal Act if the EPA is satisfied the exemption is reasonable for the purposes of responding to the COVID-19 pandemic. The exemption is granted by order published in the Gazette. The provisions authorising the granting of exemptions are repealed on 26 September 2020 or a later day prescribed by regulations under the principal Act. The later day prescribed by the regulations cannot be later than 26 March 2021.

### **1.33 Water Management Act 2000 No 92**

**Section 338B Power of authorised officers to require answers**

Insert after section 338B(5)—

- (6) The authorised officer may, in the notice under subsection (4) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the authorised officer.
- (7) If the questions are to be answered by the person using an audio link or audio visual link—
  - (a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that manner at the

time nominated under subsection (5), and

- (b) the person must ensure that the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the authorised officer.

(8) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

(9) This subsection and subsections (6)–(8) are repealed on 13 November 2020.

**Explanatory note**

Section 338B of the [Water Management Act 2000](#) permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters. The proposed amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).

## 1.34 Workers Compensation Act 1987 No 70

### [1] Section 19B

Insert after section 19A—

#### **19B Presumptions relating to certain employment in relation to COVID-19**

- (1) If a worker, during a time when the worker is engaged in prescribed employment, contracts the disease COVID-19 (also known as Novel Coronavirus 2019), then for the purposes of this Act, it is presumed (unless the contrary is established)—
  - (a) that the disease was contracted by the worker in the course of the employment, and
  - (b) the employment—
    - (i) in the case of a person to whom clause 25 of Part 19H of Schedule 6 applies—was a substantial contributing factor to contracting the disease, or
    - (ii) in any other case—was the main contributing factor to contracting the disease.
- (2) A worker is taken to have contracted COVID-19 for the purposes of this Act if the

result of a medical test—

- (a) that complies with requirements prescribed by the regulations in relation to the disease, and
- (b) that was carried out for the purpose of determining if the worker has contracted the disease,

is a result prescribed by the regulations in respect of the disease.

- (3) A worker is taken to have contracted COVID-19 for the purposes of this Act if the worker is classified by a medical practitioner as having COVID-19, having satisfied the epidemiological or clinical criteria (or both) prescribed by the regulations for the purpose of making that classification.
- (4) For the purposes of this Act, the date of the injury in relation to COVID-19 is the date of whichever of the following occurs first—
  - (a) the worker is diagnosed by a medical practitioner as having COVID-19 following a prescribed test result, as referred to in subsection (2),
  - (b) the worker is classified by a medical practitioner as having COVID-19, as referred to in subsection (3),
  - (c) the worker dies as a result of COVID-19.
- (5) For the purposes of this Act, it is presumed (unless the contrary is established) that a worker the subject of a presumption under subsection (1) is incapable of work as a result of COVID-19 for the period starting on the date of the injury and ending (unless sooner ended by the death of the worker)—
  - (a) on a date established in accordance with the regulations, or
  - (b) if no regulations are made under paragraph (a)—on a date that is 7 days after the date on which a medical practitioner certifies that the worker no longer has the disease.
- (6) This section applies to a casual worker in prescribed employment only if the worker has performed casual work in the employment on 1 or more of the 21 days preceding the date of the injury.
- (7) The regulations may make provision for or with respect to any matter relating to the application of this Act to or in respect of workers who have or are suspected of having COVID-19.
- (8) In particular, the regulations may make provision for or with respect to the following matters—
  - (a) the modification of the provisions of this Act in their application to or in

respect of workers who have COVID-19,

- (b) (without limitation) the application of the Act to workers who suffer permanent impairment as a result of COVID-19,
- (c) the use of employers' claims histories relating to COVID-19-related claims in calculating premiums payable under the Act,
- (d) the sharing of the financial risk arising out of COVID-19 between all insurers under the Act, including through the imposition and enforcement of risk equalisation arrangements for that purpose,
- (e) (without limiting clause 1 of Part 20 of Schedule 6) transitional provisions for or with respect to claims relating to confirmed or cases of COVID-19 arising before the commencement of this section.

(9) In this section—

***prescribed employment*** means employment in any of the following—

- (a) the retail industry (other than businesses providing only on-line retail),
- (b) the health care sector, including ambulance officers and public health employees,
- (c) disability and aged care facilities,
- (d) educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services),
- (e) police and emergency services (including fire brigades and rural fire services),
- (f) refuges, halfway houses and homeless shelters,
- (g) passenger transport services,
- (h) libraries,
- (i) courts and tribunals,
- (j) correctional centres and detention centres,
- (k) restaurants, clubs and hotels,
- (l) the construction industry,
- (m) places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos),

- (n) the cleaning industry,
- (o) any other type of employment prescribed by the regulations for the purposes of this definition.

**[2] Schedule 6 Savings, transitional and other provisions**

Insert before Part 20, with appropriate Part numbering—

**Part Provisions consequent on enactment of COVID-19  
Legislation Amendment (Emergency  
Measures—Miscellaneous) Act 2020**

**1 Definition**

In this Part—

**amending Act** means the *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020*.

**2 Application of amendments**

- (1) The amendments made to this Act by the amending Act extend to a worker who has confirmed COVID-19 before the commencement of the amending Act and, in that case, subclause (3) applies in substitution for section 19B(2) and (3) (as inserted by the amending Act) and references to those subsections in section 19B are taken to be modified accordingly.
- (2) Subclause (3) also applies in substitution for section 19B(2) and (3) (with necessary modifications to section 19B) until such time as regulations are made under those subsections.
- (3) For the purposes of this Act, a worker is taken to have contracted COVID-19 if the worker is determined to have the disease on the basis of medical opinion.

**Explanatory note**

Item [1] of the proposed amendments establishes presumptive rights to compensation under the *Workers Compensation Act 1987* in respect of the disease COVID-19 for workers in certain prescribed employment that involves an elevated risk of exposure to COVID-19.

Item [2] of the proposed amendments inserts consequential provisions of a savings or transitional nature.