

SUMMARY

COVID-19 LEGISLATION AMENDMENT (EMERGENCY MEASURES) BILL 2020

PURPOSE OF THE BILL

1. This bill, if passed, will implement urgent, temporary changes to 20 NSW Acts in response to the COVID-19 pandemic.
2. Amendments relate to reducing the risk of transmission by enhancing the enforcement of public health orders, limiting unnecessary human interaction, and introducing flexibility into procedures.
3. The amendments generally have sunset clauses of between 6 and 12 months.

CONTENT OF THE BILL

Constitutional amendments

4. Amend the NSW Constitution to allow the Governor to make regulations enabling:
 - 4.1. bills to be presented to and assented by the Governor electronically; and
 - 4.2. meetings of the Executive Council be held, attended and presided over by alternative measures.

Emergency Regulations relating to criminal procedure

5. Enable the Governor to make regulations that may override the provisions of selected Stronger Communities cluster Acts and any Act administered by the Attorney General to alter arrangements for bail proceedings, criminal proceedings, sentencing procedures, and the administration of sentences. Regulations can only be made if Parliament is not likely to sit within two weeks; the arrangements are, in the portfolio Minister's opinion, consistent with advice issued by the Health Minister or Chief Health Officer and reasonable for health, safety and welfare; and (in most cases) only with the consent of the Chief Justice.

Criminal procedure - general

6. Enable the recording of evidence of sexual assault, domestic violence, and violence complainants, or any witness at a significantly greater risk from the COVID-19 pandemic, including because of their age or health, at pre-trial hearings, and for the recordings to be played as evidence in later criminal trials.
7. Enable the recording of evidence of a witness in an original trial to be tendered as evidence in a new trial if the original trial is discontinued, or a new trial is ordered following a successful appeal.
8. Enable a court, on its own motion, to order that an accused person be tried by a judge alone if the accused person consents and has received legal advice and, if the prosecution objects, if the court considers that it is in the interests of justice.
9. Enhance protections for domestic violence victims by providing that provisional apprehended domestic violence orders (ADVOs) issued by police officers continue in force for 6 months, instead of 28 days. The requirement for the provisional ADVO to be listed at the first available date is not changed.
10. Create a presumption that an accused person will appear by audio-visual link (AVL) in bail proceedings unless the court otherwise directs. Enable an accused person to appear by AVL in summary prosecutions in the Local Court (indictable prosecutions will be excluded by regulation), and enable witnesses and legal practitioners to appear by AVL. Safeguards include that the court must be satisfied that a party is able to have a private conversation with their legal representative and the AVL appearance is in the interests of justice.
11. Enable sheriffs to exempt persons from selection of jurors for trials and coronial inquests if the sheriff considers there is a good cause to do so. A good cause may be established on the basis of the safety and welfare of the person or the community at large.

Correctional centre safety

12. Enable the Commissioner of Corrective Services and the Secretary of the Department of Communities and Justice to restrict any person from entering adult correctional facilities and youth justice detention

centres if satisfied that it is reasonably necessary to protect the health of inmates or the public from the COVID-19 pandemic. The power does not extend to the Inspector of Custodial Services and the Ombudsman.

13. Enable the Commissioner of Corrective Services to grant parole to certain offenders falling within a class of inmates prescribed by regulations before their non-parole period if satisfied that the inmate's release is necessary because of impact of the pandemic on public health or the security of a correctional centre. The Commissioner will not have the power to release certain inmates, including inmates serving a sentence of life imprisonment, or imprisonment for murder, a serious sex offence, or a terrorism offence. The Commissioner must consider the risks to community safety, the protection of domestic violence victims, and the impact on any victim before releasing an inmate.

NSW Civil and Administrative Tribunal (NCAT) procedure

14. Modify NCAT procedure by regulation made by the Governor, and:
 - 14.1. Enable the Guardianship Division (for all matters) and Administrative and Equal Opportunity Division (for Public Health Act matters only) to be constituted by two members instead of three. When they come up for review, any decisions by the 2 member Guardianship Division will be reviewed by 3 members.
 - 14.2. Extend the period of time for providing written reasons for NCAT decisions (when requested) from 28 days to 90 days, except for the Guardianship Division, which must provide an oral statement of reasons for all guardianship matters within 30 days (but is not required to provide written reasons);
 - 14.3. Allow NCAT or a court to extend the period of time for the doing of anything in NCAT's jurisdiction, including applications for reviews or appeals from NCAT decisions, where necessary because of the pandemic.

Working with children checks

15. Provide the Children's Guardian with the discretion to extend the period for which a working with children check clearance is in force.

Enforcement of public health orders

16. Remove the requirement for a public health order in respect of persons exposed to COVID-19 to be confirmed by NCAT within 3 working days of the order being served. A person subject to a contact order public health order will still have right to seek review by NCAT.
17. Allow a police officer to arrest a person who the officer reasonably suspects of contravening a public health order in relation to COVID-19 and returning the person to their usual place of residence or their place of detention.
18. Allow a police officer to be an authorised officer for the purpose of issuing a penalty infringement notice and for the purpose of allowing police officers to require a person to give their name and address in relation to COVID-19.

Private health facilities and pharmacy premises

19. Allow the Secretary of the Ministry of Health to exempt a private health facility from the conditions of a licence or requirements relating to a medical advisory committee if the Secretary is satisfied that it is reasonably necessary to do so because of the pandemic and at both patient care and safety at the facility will be properly maintained.
20. Allow the Secretary of the Ministry of Health to exempt premises being used as the State Vaccine Centre from the provisions in the National Law relating to pharmacy premises.

Mental Health Review Tribunal (MHRT) procedures

21. Allow the MHRT, if considered necessary because of the pandemic:
 - 21.1. to approve a person appearing before the tribunal by telephone,

- 21.2. To extend Community Treatment Orders by up to three months, even if that results in the order being in force for more than 12 months (currently, the maximum period for an order is 12 months); and
- 21.3. To adjourn mental health inquires for up to 28 days (instead of 14 days).

Retail trading hours

22. Permit supermarkets to trade on Good Friday, Easter Sunday and Anzac Day in 2020, if they choose, subject to the condition that the supermarkets can only be staffed by persons who have freely elected to work on that day.

Certificates of fitness and capacity

23. Enable the making of regulations and the amendment of guidelines to enable certain allied health practitioners to issue subsequent certificates of capacity in the workers compensation system and subsequent certificates of fitness in the compulsory third party (CTP) scheme, instead of only medical practitioners.

Local government

24. Enable the Minister for Local Government to postpone a local government election for up to 12 months if the Minister believes that it is reasonable.
25. Enable council members to attend a meeting by AVL and, enable meetings that are required to be open to members of the public to be held by webcast. The regulations may provide that these measures do not apply to a particular council or a particular class of meeting.
26. Enable the Minister for Local Government to recommend that the Governor make a regulation that modifies the application of the Local Government Act 1993, where Parliament is not sitting and unlikely to sit within two weeks after the regulations are made, and where, in the Minister's opinion the regulations are in accordance with health advice and reasonable to protect the health, safety and welfare of persons.

Planning approvals

27. Enable the Minister for Planning and Public Spaces to identify development that can be carried out without the need for any approval under the Act (subject to development standards) and allow this development to integrate back into the planning system. The Minister may only make an order if the Minister has consulted the Minister Health and Medical Research, and the order is necessary to protect the health, safety and welfare of the members of the public during the pandemic.
28. Provide that requirements for documents to be available in hard copy or for inspection in premises can be met by being available online.

Altered arrangements for the signature and witnessing of documents – emergency regulation

29. Enable the making of regulations that may override the provisions of existing acts to prescribe altered arrangements for the signature and witnessing of documents. The regulations may only be made where Parliament is not sitting and is unlikely to sit within two weeks after the regulations are made, and where, in the Minister's opinion, the regulations are in accordance with health advice and reasonable to protect the health, safety and welfare of persons.

Continuation of subordinate legislation

30. Allow 13 regulations, scheduled for automatic repeal on 1 September 2020, to stay in force until 1 March 2021 or alternatively 1 September 2021.