

LEGISLATIVE COUNCIL

PUBLIC HEALTH AND WELLBEING AMENDMENT (STATE OF EMERGENCY
EXTENSION AND OTHER MATTERS) BILL 2020

(Amendments and New Clauses to be proposed in Committee by Mr DAVIS)

1. Clause 1, lines 5 to 8, omit all words and expressions on these lines and insert—
 - "(a) to provide for a state of emergency declaration that relates to the COVID-19 pandemic continuing in force for a total period that exceeds 6 months, on a month by month basis; and
 - (ab) to provide for measures to enhance transparency during a state of emergency; and
 - (ac) to provide for restrictions on the making of directions in relation to the Parliamentary precincts; and".
2. Clause 1, page 2, line 9, omit "; and" and insert ".".
3. Clause 1, page 2, lines 10 to 13, omit all words and expressions on these lines.
4. Clause 5, omit this clause.
5. Insert the following New Clause before clause 6—

'5 Declaration of a state of emergency

- (1) In section 198(7)(c) of the **Public Health and Wellbeing Act 2008** for "6 months." **substitute** "6 months, other than in accordance with a resolution of both Houses of the Parliament that approves the total period exceeding 6 months."
- (2) After section 198(7) of the **Public Health and Wellbeing Act 2008** insert—
 - "(7A) A resolution passed by both Houses of the Parliament that approves a state of emergency declaration continuing in force for a total period that exceeds 6 months—
 - (a) must specify the total additional period, not exceeding one month, for which the state of emergency declaration may continue in force in accordance with the resolution; and
 - (b) must be in respect of a state of emergency declaration that relates to the COVID-19 pandemic; and
 - (c) should not be moved until—
 - (i) a statement of the basis on which it is proposed that the declaration continue in force and the objectives of continuing the declaration in force, including as to how these objectives

relate to the objects of the Act has been laid before the House;
and

- (ii) all members of Parliament who so request have received appropriate briefings and appropriate information on the circumstances causing a serious risk to public health out of which the state of emergency arises; and

- (d) may be passed more than one time in respect of the same state of emergency declaration."

(3) After section 198(9) of the **Public Health and Wellbeing Act 2008** insert—

"(10) Despite anything to the contrary in the Subordinate Legislation (Legislative Instruments) Regulations 2011, a declaration under subsection (1) is not an exempt legislative instrument, but the following are not required for any proposed declaration—

- (a) consultation under section 12C of the **Subordinate Legislation Act 1994**;
- (b) the preparation of a regulatory impact statement under section 12E of the **Subordinate Legislation Act 1994**."

6. Insert the following New Clause after clause 5—

'5A New section 198A

After section 198 of the **Public Health and Wellbeing Act 2008** insert—

"198A Measures to enhance transparency during a state of emergency

- (1) This section applies during any period when a declaration of a state of emergency is in force.
- (2) The Leader of the Opposition, the leader of any other political party represented in the Parliament or an independent elected member may request that the Premier provide briefings or specified information in relation to the circumstances causing a serious risk to public health out of which the state of emergency arises, or any other matter relating to the state of emergency.
- (3) The Premier must, as soon as practicable, provide the requested briefings or information to the person who requested it.
- (4) The President of the Legislative Council and the Speaker of the Legislative Assembly must make their best endeavours to summon each House to meet at least once during each month that the declaration is in force."

7. Insert the following New Clause after clause 7—

'8 New sections 200A and 200B

After section 200 of the **Public Health and Wellbeing Act 2008** insert—

"200A Limit on power to give directions

- (1) For the avoidance of doubt, a direction must not be given under subsection 200(1)(d) in relation to the attendance in the Parliamentary

precincts of a member of the Parliament, or any other person engaged in the normal carrying on of business of the Parliament.

Note

Section 19 of the **Constitution Act 1975** provides for the privileges, immunities and powers (parliamentary privilege) of the Council and Assembly respectively and committees and members thereof. The **Public Health and Wellbeing Act 2008** does not expressly override section 19 of the **Constitution Act 1975**.

- (2) In this section—

parliamentary precincts has the same meaning as in the **Parliamentary Precincts Act 2001**.

200B Directions etc. to be laid before Parliament

- (1) If a direction is given under section 200(1)(d) in the exercise of the emergency powers, the Minister must cause to be laid before both Houses of the Parliament, within one business day of the direction being given, a copy of—
- (a) the direction; and
 - (b) all briefings provided, in respect of the giving of the direction, to the Chief Health Officer and the authorised officer who gave the direction (if that was not the Chief Health Officer); and
 - (c) a statement of the basis on which the direction was given, including as to how the giving of the direction relates to the objects of the Act.
- (2) If the Minister proposes to cause a copy of a direction, briefings and a statement to be laid before Parliament at a time when Parliament is not sitting, the Minister must give a copy of the direction, the briefings and the statement to the Clerk of each House within one business day of the direction being given.
- (3) The Clerk of each House must—
- (a) give a copy of the direction, the briefings and the statement to each member of the House as soon as practicable after receiving them under subsection (2); and
 - (c) cause a copy of the direction, the briefings and the statement to be laid before the House on the next sitting day of the House."