

Legislative Council—No 32A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 14 May 2020

South Australia

COVID-19 Emergency Response (Further Measures) Amendment Bill 2020

A BILL FOR

An Act to amend the *COVID-19 Emergency Response Act 2020* and to make related amendments to the *Development Act 1993* and the *Training and Skills Development Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *COVID-19 Emergency Response (Further Measures) Amendment Act 2020*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *COVID-19 Emergency Response Act 2020*

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3—Amendment of section 6—Expiry of Act

- (1) Section 6(1)(b)(i)—after "other than" insert:
 - section 7, section 10A(5) and (6) and

(2) Section 6—after subsection (2) insert:

(2a) Section 7 and the regulations made under that section will expire on 30 September 2020.

4—Substitution of section 7

5 Section 7—delete the section and substitute:

7—Provisions applying to commercial leases—regulations

- 10 (1) The Governor may make such regulations as are necessary or expedient for the purposes of mitigating the adverse impacts on a party to, or any other person with an interest in, a commercial lease resulting from the COVID-19 pandemic.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
- 15 (a) the types or classes of commercial leases to which the regulations may apply;
 - (b) the types of disputes in relation to a commercial lease to which the regulations will apply;
 - (c) modification of the operation of this section or a relevant Act;
 - 20 (d) modification of the operation of a relevant Act consequent on the regulations made under this section;
 - (e) modifying the provisions of a commercial lease or related agreement;
 - (f) the provision of rent relief for a lessee under a commercial lease;
 - 25 (g) exempting a lessee, or a class of lessees, from the operation of a provision of an Act, commercial lease or related agreement;
 - (h) prohibiting or limiting the ability of a lessor to take specified action or seek specified orders or issue proceedings in court under the provisions of a commercial lease or related agreement, or any Act or law;
 - 30 (i) prohibiting or restricting the ability of a lessor to terminate a commercial lease;
 - (j) the circumstances in which a lessor may terminate a commercial lease;
 - 35 (k) prohibiting, limiting or modifying the exercise or enforcement of the rights of a lessor under a commercial lease or other agreement or under any other Act or law or the common law;
 - 40 (l) the circumstances in which a person will be taken to be suffering financial hardship as a result of the COVID-19 pandemic;

- 5
- (m) requiring the parties to a commercial lease or any other person with an interest in a commercial lease to have regard to particular matters or principles, or a prescribed standard, code or other document, in negotiating or disputing a matter under or in relation to the commercial lease;
- (n) provision for the regulations to be deemed to form part of a commercial lease;
- 10 (o) imposing obligations on a party to a commercial lease, or any other person with an interest in a commercial lease, including—
- (i) requiring them to negotiate and agree on modifications to terms and conditions of the commercial lease or a related agreement having regard to specified matters; and
- 15 (ii) requiring a party to a lease or other person with an interest in a commercial lease to pay a specified amount or give a specified benefit to another party to the lease or person with an interest in a commercial lease;
- 20 (p) a requirement that parties to a commercial lease or any other persons with an interest in a commercial lease who are in dispute in relation to the commercial lease participate in mediation arranged by the Commissioner or a court;
- 25 (q) the conduct of a mediation referred to in paragraph (p), including a requirement for the Commissioner to issue a certificate in respect of the mediation setting out specified matters in relation to the mediation;
- 30 (r) conferring jurisdiction on a court to hear and determine disputes between the parties to a commercial lease or any other persons with an interest in a commercial lease;
- (s) the circumstances in which a party to a commercial lease or any other person with an interest in a commercial lease may or may not apply to a court for determination of a dispute relating to a commercial lease;
- 35 (t) a requirement that a party to a commercial lease or any other person with an interest in a commercial lease who are in dispute in relation to the commercial lease to have a mediation certificate before commencing proceedings in a court in relation to the dispute;
- 40 (u) the orders that a court may make in relation to a dispute relating to a commercial lease;

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- (v) a requirement that the Commissioner or a court have regard to particular matters or principles, or a prescribed standard, code or other document, in mediating, conciliating, hearing or deciding a matter or proceeding relating to a commercial lease or a dispute between parties to a commercial lease or any other person with an interest in a commercial lease;
- (w) provisions of a saving or transitional nature consequent on the enactment of this section or the making of any regulation under this section;
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- (x) fines, not exceeding \$10 000, for offences against the regulations;
- (y) expiation fees, not exceeding \$5 000, for offences against the regulations;
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- (z) facilitation of proof of the commission of offences and other evidentiary matters;
- (za) any other matter regulating the parties to a commercial lease or any other person with an interest in a commercial lease or the provisions of a commercial lease or related agreement.
- 20
- (3) Regulations made under this section may have retrospective effect to a day not earlier than 30 March 2020 and, to avoid doubt, any regulation that has retrospective effect to a particular day will be taken to have always had effect on or after that day.
- (4) The regulations may—
- 25
- (a) be of general or limited application; and
- (b) make different provision according to the circumstances or entities to which they are expressed to apply; and
- 30
- (c) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body; and
- (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commissioner or any other specified body or person.
- 35
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must—
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- (i) be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; or
- (ii) be made available on a website determined by the Minister or Commissioner that is accessible to the public; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

(6) Regulations made under this section do not limit or derogate from the ability of the Governor to make regulations under section 19.

(7) In this section—

business means an undertaking (whether or not carried on with a view to profit) involving the manufacture, sale or supply of goods or services;

commercial lease means—

(a) a retail shop lease within the meaning of the *Retail and Commercial Leases Act 1995*; or

(b) a lease under the *Landlord and Tenant Act 1936*, including a retail shop lease to which Part 4 of that Act applies; or

(c) any other agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business—

(i) whether or not the right is a right of exclusive occupation; and

(ii) whether the agreement is expressed or implied; and

(iii) whether the agreement is oral or in writing, or partly oral and partly in writing,

but does not include—

(d) a lease under the *Pastoral Land Management and Conservation Act 1989*; or

(e) a lease under the *Crown Land Management Act 2009*;

Commissioner means the person holding or acting in the office of Small Business Commissioner;

lessee means the person who has the right to occupy premises under a commercial lease;

lessor means the person who grants the right to occupy under a commercial lease;

party, to a commercial lease, means the lessor or the lessee under the commercial lease;

relevant Act means—

(a) the *Real Property Act 1886*; and

(b) the *Retail and Commercial Leases Act 1995*; and

(c) the *Landlord and Tenant Act 1936*; and

- (d) any other Act in so far as it relates to or affects lessees and lessors in the State.

5—Insertion of section 10A

After section 10 insert:

10A—Provisions relating to certain community visitors

- (1) A community visitor may perform a function or exercise a power under a prescribed law to visit and inspect premises, or visit a patient, resident or other person contemplated by the prescribed law, by means of audiovisual or other electronic means that do not involve the community visitor physically entering the premises and, in relation to such visits and inspections—
- (a) a requirement under the prescribed law that the community visitor physically attend and inspect premises (however described)—
- (i) if it is reasonably practicable to comply with the requirement by audiovisual or other electronic means—will be taken to be modified to the extent necessary to give effect to this subsection; or
- (ii) if it is not reasonably practicable to comply with the requirement by audiovisual or other electronic means—will be taken to be suspended until the expiry of this section); and
- (b) a requirement under the prescribed law that such visits or inspections be conducted by more than 1 community visitor will be taken to be modified so that the visit or inspection may be conducted by a single community visitor; and
- (c) a reference in the prescribed law that contemplates a community visitor visiting or otherwise being on premises is to be construed accordingly.
- (2) A community visitor may, in relation to a visit or inspection referred to in subsection (1), give such directions as the community visitor considers reasonably necessary to enable the visit or inspection to occur, including—
- (a) directions requiring a person, or person of a class—
- (i) to take reasonable steps to facilitate the visit or inspection (including by making equipment of a specified kind available for use in the course of the visit or inspection); or
- (ii) to grant access to specified parts of the premises, or such parts of the premises as may reasonably be accessed using the relevant audiovisual or other means; or

- 5 (b) directions requiring a person or, or person of a class, to provide the community visitor with access to a specified patient or resident of the premises, or patients or residents of a specified class, and for an appropriate area within the premises to be made available to enable confidential communication with the community visitor.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (2).
Maximum penalty: \$5 000.
- 10 (4) Nothing in this section limits any functions or powers that a community visitor has under a prescribed law in relation to a visit or inspection.
- (5) A community visitor must ensure that the following information is reported on a publicly accessible website and updated on at least a monthly basis:
- 15 (a) the number of visits or inspections by the community visitor that have occurred by audiovisual or other electronic means in accordance with this section;
- 20 (b) the name and location of any premises subject to such a visit or inspection;
- (c) the date on which, and time at which, each such visit or inspection occurred;
- 25 (d) the reasons why each such visit or inspection occurred by audiovisual or other electronic means in accordance with this section;
- (e) if a visit or inspection by audiovisual or other electronic means in accordance with this section was not possible for any reason—the reasons why such a visit or inspection was not possible.
- 30 (6) A report under subsection (5)—
- (a) must identify, by reference to paragraphs (a) to (d) of the definition of *community visitor* in subsection (7), which category of community visitor the report relates to; and
- 35 (b) must, in a case where the report relates to a category of community visitor referred to in paragraph (a), (b) or (c) of that definition, be made by the Principal Community Visitor (within the meaning of the Act to which that paragraph relates).
- (7) In this section—
- 40 *community visitor* means—
- (a) a community visitor within the meaning of the *Mental Health Act 2009*;

- (b) a community visitor within the meaning of the *Disability Services (Community Visitor Scheme) Regulations 2013*;
- (c) a community visitor under the *COVID-19 Emergency Response (Schedule 1) Regulations 2020*;
- 5 (d) the Chief Psychiatrist within the meaning of the *Mental Health Act 2009*;

prescribed law means—

- (a) the *Mental Health Act 2009*;
- 10 (b) the *Disability Services (Community Visitor Scheme) Regulations 2013*;
- (c) the *COVID-19 Emergency Response (Schedule 1) Regulations 2020*;
- (d) the *Health Care Act 2008*.

6—Amendment of section 19—Regulations

- 15 (1) Section 19(2)(b)—delete paragraph (b)
- (2) Section 19(6), definition of *tenancy provision*—delete "7" and substitute:

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7—Amendment of section 20—Savings and transitional matters

Section 20—after subsection (3) insert:

20 (4) If—

- (a) a regulation made under section 14 postpones any time or extends any period; and
- (b) the regulation is revoked by operation of section 19(5) before that time or before the expiration of that period,

25 the postponement or extension continues to have effect according to its terms (as in force immediately before the revocation).

8—Amendment of Schedule 2—Temporary modification of particular State laws

(1) Schedule 2—after the heading to Schedule 2 insert:

Part AA1—Aboriginal Lands Parliamentary Standing Committee Act 2003

AA1—Modification of Aboriginal Lands Parliamentary Standing Committee Act 2003

Part 2 Division 3 of the *Aboriginal Lands Parliamentary Standing Committee Act 2003* applies with the following modification:

After section 12 insert:

12A—Meetings during COVID-19 pandemic

Despite any other provision of this Act—

- (a) a requirement for the Committee to hold any meeting will be taken to be satisfied if the meeting is held remotely using 1 or more of (including a combination of) the following means of communication:
 - (i) audio visual;
 - (ii) audio; and
- (b) a requirement for members of the Committee to attend or be present at any meeting will be taken to be satisfied if—
 - (i) each participating member is able to communicate contemporaneously with each other participating member when making any deliberation, or taking part in any vote, during the meeting; and
 - (ii) when a witness gives oral evidence to the Committee, the members of the Committee constituting a quorum are able to hear the witness contemporaneously and question the witness within the hearing of each other Committee member constituting the quorum.

- (2) Schedule 2—after Part A1 insert:

Part B1—*Development Act 1993*

B1—Modification of *Development Act 1993*

The *Development Act 1993* applies with the following modifications:

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- (b) section 49(6)—delete "two months" and substitute:

15 business days

- (c) section 49(7d)—delete "\$4 000 000" and substitute:

\$10 million

- (3) Schedule 2, clause 1—after paragraph (e) insert:

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- (ea) after section 25 insert:

25A—Removal of children

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- (1) Without derogating from section 25, an authorised officer may, for the purpose of ensuring compliance with any direction under that section, remove a child from any premises, place, vehicle or vessel to a place of residence of the child or to a hospital or quarantine facility, as the authorised officer thinks fit (and may, in doing so, use such force as is reasonably necessary).

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- (2) In this section—

child means a person under 18 years of age;

place of residence includes, in the case of a child who is in the custody, or under the guardianship, of the Chief Executive under the *Children and Young People (Safety) Act 2017*, any place directed by that Chief Executive.

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- (4) Schedule 2, clause 1—after paragraph (f) insert:

- (fa) section 27A(1), definition of *market participant*—after paragraph (c) insert:

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- (d) any person who engages in the transmission or distribution of electricity;

- (fb) section 27C(2)(b)—delete paragraph (b) and substitute:

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- (b) require a market participant to give any directions of a kind that the market participant may lawfully give (which may include, for example, requiring a market participant to give directions to, or to exercise authority over, another person or body, whether or not that other person or body is also a market participant);

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- (fc) section 27C—after subsection (2) insert:

- (2a) A direction to a market participant may—
- (a) require the performance of specific acts or omissions; or
 - (b) require the exercise of specific powers or functions; or
 - (c) require specific outcomes or performance standards.

- (5) Schedule 2—after Part 2 insert:

**Part 2A—National Electricity (South Australia)
Act 1996**

**2A—Modification of National Electricity (South Australia)
Act 1996**

Part 5 of the *National Electricity (South Australia) Act 1996* applies with the following modification:

After section 15A insert:

**15B—Regulations varying rules under the
National Electricity Law**

- (1) The Governor may, for the purpose of protecting the reliability and security of the South Australian power system, make regulations modifying the operation of the rules under the National Electricity Law (insofar as they apply as part of the law of South Australia).
 - (2) Section 21 of the *COVID-19 Emergency Response Act 2020* applies to a regulation made under this section as if it were a regulation made under that Act.
- (6) Schedule 2, clause 3—after the present contents of clause 3 (now to be designated as paragraph (a)) insert:
- (b) Part 6 Division 2 of the *Parliamentary Committees Act 1991* applies with the following modification:

After section 24 insert:

**24A—Meetings during COVID-19
pandemic**

Despite any other provision of this Act—

- 5
- (a) a requirement for a committee to hold any meeting will be taken to be satisfied if the meeting is held remotely using 1 or more of (including a combination of) the following means of communication:
- 10
- (i) audio visual;
- (ii) audio; and
- 15
- (b) a requirement for members of a committee to attend or be present at any meeting will be taken to be satisfied if—
- 20
- (i) each participating member is able to communicate contemporaneously with each other participating member when making any deliberation, or taking part in any vote, during the meeting; and
- 25
- (ii) when a witness gives oral evidence to the committee, the members of the committee constituting a quorum are able to hear the witness contemporaneously and question the witness within the hearing of each other committee member constituting the quorum.
- 30
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(7) Schedule 2—after Part 3 insert:

Part 3A—*Planning, Development and Infrastructure Act 2016*

3A—Modification of *Planning, Development and Infrastructure Act 2016*

The *Planning, Development and Infrastructure Act 2016* applies with the following modifications:

- (b) section 131(8)—delete "4 weeks" and substitute:
15 business days

Schedule 1—Related amendments

Part 1—Related amendments of *Development Act 1993*

1—Amendment of section 35—Special provisions relating to assessment against Development Plan

- (1) Section 35(3) and (3a)—delete subsections (3) and (3a)
(2) Section 35(4)(a)—delete "or concurrence"

Part 2—Related amendments of *Training and Skills Development Act 2008*

2—Amendment of section 65—Other matters to be dealt with by SAET

Section 65—after subsection (2) insert:

- (2a) Despite subsection (2)(c), SAET may suspend the employment of an apprentice/trainee for a period exceeding 4 weeks if—
(a) SAET is satisfied that the suspension is necessary having regard to the circumstances of the COVID-19 pandemic; and
(b) the period of suspension will end on or before 1 January 2021.