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COVID-19 Legislation Alert

NSW GOVERNMENT | Crown Solicitor's Office

Amendments to the *Interpretation Act 1987* to allow modification of statutory time periods

A new Part 12 (ss. 84-91), entitled Special provisions for COVID-19 Pandemic, has been inserted into the *Interpretation Act 1987* by the *COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020*, which commenced on assent yesterday.

KEY POINTS

- The amendments authorise certain persons to modify statutory time periods and authorise regulation-making, via the *Interpretation Act 1987* and other Acts, to provide power for modification of legislative requirements dealing with statutory timeframes and attendance at places or meetings.
- These special arrangements apply only for a limited period and only for the purposes of responding to the public health emergency caused by the COVID-19 pandemic. They have some retrospective application.

SUMMARY:

As the Explanatory Note states, the amendments insert a regulation-making power into the *Interpretation Act 1987* to provide power for modification of legislative requirements "across the statute book". Examples of legislative requirements relevant to agencies include limitation periods for commencing criminal and civil proceedings, appeals, administrative and judicial review and for the giving of and compliance with statutory notices. It is noted that some legislative amendments have already been made to address the COVID-19 pandemic, e.g., cl. 28(3) in Sch. 1 of the *Civil and Administrative Tribunal Act 2013* which authorises the Tribunal or a court hearing an appeal from a decision of the Tribunal to extend a period of time "only if it considers that it is necessary or just to do so because of the COVID-19 pandemic".

As this is a COVID-19 Legislation Alert, following is a link to the latest order made under s. 7 of the *Public Health Act 2010*, the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020*, which commenced today.

THE NEW PROVISIONS

Power of person to modify statutory time periods

New s. 84 provides that, 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, or (d) agree that a thing may be done or omitted to be done despite the expiry of a period, the power of the person to take such action 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. The period includes a reference to any expression of time and may only be modified, waived or agreed to a day that is no later than 31 December 2020 and the power of a person to take action operates retrospectively to the extent it applies to a period that ends on or after 16 March 2020.

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

New s. 85 provides that, if an Act (the 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, a regulation may be made under the relevant Act or s. 85 itself to provide for the modification or suspension of the period. Excluded are periods 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*. A regulation under s. 85 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 (b) to delegate or sub delegate such power. However, such a regulation may not— (i) modify the period to shorten the

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period, or (ii) extend or suspend the period to a day that is later than 31 December 2020, or (iii) authorise a person mentioned in (b) or (c) to— (i) shorten the period, or (ii) extend or suspend the period to a day that is later than 31 December 2020. Again, the period includes a reference to any expression of time and a regulation may operate retrospectively to the extent that it applies to a period that ends on or after 16 March 2020.

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

New s. 86 provides that, if an Act or a statutory rule made thereunder requires or permits a person to physically attend a place or meeting, or call or hold a meeting, for a particular purpose or particular matter, a regulation may be made under the relevant Act or s. 86 itself to provide for altered arrangements for undertaking the particular purpose or matter or calling or holding the meeting. In particular, a regulation 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.

Regulation-making powers

New s. 87 authorises the Governor to make regulations, not inconsistent with Part 12, but (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. Also, a Minister may recommend that a s. 85 regulation 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.

Application of regulations

New s. 88 provides that Part 12 regulations— (a) are not limited by the regulation-making power in another Act, and (b) if the regulation is made under Part 12— 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.

Expiry of regulations

New s. 89 provides that Part 12 regulations expire on the earliest of (a) the day the provision of Part 12 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.

Repeal of provision of Part

New s. 90 provides that a provision of Part 12 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.

Saving provision

New s. 91 provides that 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, the modified period continues to apply to doing the thing or omitting to do the thing.

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