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

1. I refer to the COVID-19 Emergency Response (Further Measures) Amendment Bill 2020 introduced into the Parliament on 12 May 2020 (“the Amendment Bill”).

2. The Society notes the Amendment Bill makes a number of changes to the COVID-19 Emergency Response Act 2020 (“the Act”).

3. The Society has recently made comment with respect to the provisions of the Amendment Bill which relate to commercial leases in a letter to the Treasurer which was also copied to you on 12 May 2020.

4. The Society makes some further brief comment below with respect to the proposed amendments that relate to the removal of children.

Removal of children

5. The Society notes that the Amendment Bill contains the following amendment to Act with respect to the removal of children:

   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 (an may, in doing so, use force as reasonably necessary).

6. The Society notes section 25(2)(3) of the Emergency Management Act 2004 (SA) (“the Emergency Management Act”) provides that the State Coordinator or an authorised officer may remove, or cause to be removed, to such place as the State Coordinator or authorised officer sees fit, any person or animal, or direct the evacuation or removal of any person or animal.

7. Furthermore, the Act also gives the State Coordinator or an authorised officer the power to use such force as is reasonably necessary in the exercise or discharge of a power or function under section 25 of the Emergency Management Act.
8. The Society questions the need for the amendment, not just because such powers already exist under the Emergency Management Act, but why these specific (albeit temporary) powers with respect to children are being sought by the State Coordinator.

9. In particular, the Society questions the need for such provisions, i.e. have police been having to frequently physically remove groups of children and young people away from public areas? If so, is there data that can be provided to justify the need for specific powers to remove children? Or is this a measure that police anticipate they may need to exercise as restrictions start to lift in South Australia?

10. Overall, insufficient information has been provided with respect to the need for these provisions and the Society has number of questions around them. For example, as children and young people are a vulnerable group in our society, what safeguards are in place, given that police may use reasonable force to remove? Will subsequent reporting requirements also be put in place – particularly where children are not returned home to their families but taken to hospitals or quarantine facilities? How will an authorised officer determine a child’s place of residence? Also, how are these powers likely to impact Aboriginal children or children under the care of the Guardian? Will children who are removed under these powers also be subject to fines/penalties for breach of relevant SAPOL directions relating to public gatherings?

11. Given the significant breadth of the current emergency powers in South Australia the Society questions the need for these specific powers. While it is anticipated that the powers are sought to remove children congregating in large groups and not complying with social distancing requirements (which can already be done under the Emergency Management Act), it is concerning that specific provisions that relate to children, including the use of force to remove them have been introduced, with little information to justify why such measures are necessary and proportionate.

Yours sincerely

Stephen Hodder
CHIEF EXECUTIVE
T: (08) 8229 0200
E: stephen.hodder@lawsocietysa.asn.au