Authorised Version No. 068

Public Health and Wellbeing Act 2008

No. 46 of 2008

Authorised Version incorporating amendments as at
1 July 2025

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Authorised Version No. 068

Public Health and Wellbeing Act 2008

No. 46 of 2008

Authorised Version incorporating amendments as at
1 July 2025

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to enact a new legislative scheme which promotes and protects public health and wellbeing in Victoria.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision referred to in subsection (1) does not come into operation before 1 January 2010, it comes into operation on that day.

3 Definitions

(1) In this Act—

abatement when used in relation to nuisance, includes removal and discontinuance;

age appropriately immunised in relation to a child means that—

(a) the child meets the immunisation requirements set out in section 6 of the A New Tax System (Family Assistance) Act 1999 of the Commonwealth; or

S. 3(1) def. of *age appropriately immunised* inserted by No. 55/2015 s. 4, substituted by No. 4/2018 s. 16.

(b) the child meets the immunisation requirements declared by the Secretary under section 3A for the purposes of this definition;

analysis includes any bacteriological, biochemical, biological, chemical, electrical, microscopical, pathological, physical or other test for ascertaining the nature, composition or quality of any substance analysed for the purposes of this Act;

analyst means a person appointed as an analyst under section 32;

approved auditor means an auditor certified by the Secretary under section 94;

approved form means a form approved by the Secretary;

S. 3(1) def. of *attachment of debts direction* inserted by No. 53/2021 s. 20.

attachment of debts direction has the same meaning as it has in the **Fines Reform Act 2014**;

S. 3(1) def. of *attachment of earnings direction* inserted by No. 53/2021 s. 20.

attachment of earnings direction has the same meaning as it has in the **Fines Reform Act 2014**;

S. 3(1) def. of *authorised officer* amended by No. 29/2011 s. 3(Sch. 1 item 75.1).

authorised officer means a person appointed—

(a) by a Council to be an environmental health officer under section 29; or

(b) by the Secretary to be an authorised officer under section 30; or

(c) subject to section 31, by a Council under section 224(1) of the **Local Government Act 1989** to be an authorised officer for the purposes of this Act;

beauty therapy means a procedure, not including any surgical or medical procedure, intended to maintain, alter or enhance a person's appearance, including by—

S. 3(1) def. of *beauty therapy* amended by No. 11/2015 s. 3(a).

(a) facial or body treatment;

* * * * *

(c) manicure or pedicure;

(d) application or mending of artificial nails;

(e) epilation, including by electrolysis or hot or cold wax—

but does not include hairdressing, tattooing or skin penetration;

birth means a birth or stillbirth that is required to be registered under the **Births, Deaths and Marriages Registration Act 1996**;

* * * * *

S. 3(1) def. of *brothel* amended by No. 63/2010 s. 81(Sch. item 9.1), repealed by No. 7/2022 s. 72.

* * * * *

S. 3(1) def. of *brothel proprietor* repealed by No. 7/2022 s. 72.

business includes trade, manufacture, process or occupation;

CCOPMM means the Consultative Council on Obstetric and Paediatric Mortality and Morbidity continued under section 44;

Chief Health Officer means the person appointed as Chief Health Officer under section 20;

child means a person under 18 years of age;

Note

See also subsection (2).

children's services centre means any premises or place where a children's service within the meaning of section 3(1) of the **Children's Services Act 1996** operates;

colonic irrigation means—

(a) a process involving the use of a fluid to cleanse the colon of a person; or

(b) a process involving the insertion of a tube into the colon of a person for the purpose of cleansing the colon;

S. 3(1) def. of *community transmission* inserted by No. 24/2020 s. 3(1), amended by No. 53/2021 s. 4(2).

community transmission, in relation to a pandemic disease or a disease of pandemic potential means transmission of the disease to one or more persons from an infected person or other source, in circumstances where the infected person or other source has not been identified.

S. 3(1) def. of *compliance and enforcement policy* inserted by No. 53/2021 s. 4(1).

compliance and enforcement policy means a policy issued under section 231A;

Consultative Council means—

(a) a Consultative Council established or appointed under section 33 and including the Victorian Perioperative Consultative Council; and

(b) CCOPMM;

S. 3(1) def. of *Consultative Council* amended by No. 4/2022 s. 12(b).

contact tracing information has the meaning given by section 165CB(1);

S. 3(1) def. of *contact tracing information* inserted by No. 53/2021 s. 4(1).

contact tracing purposes—see section 165CB(2);

S. 3(1) def. of *contact tracing purposes* inserted by No. 53/2021 s. 4(1).

cooling tower means a device for lowering—

(a) the temperature of recirculated water by bringing the water into contact with fan forced, or fan induced, atmospheric air; or

(b) the temperature of water, a refrigerant or other fluid in a pipe or other container by bringing recirculated water and fan forced, or fan induced, atmospheric air into contact with the pipe or container—

but does not include an evaporative air cooler or evaporative air conditioner;

cooling tower system means—

(a) a cooling tower, or a number of interconnected cooling towers that use the same recirculating water; and

(b) any machinery that is used to operate the tower or towers; and

(c) any associated tanks, pipes, valves, pumps or controls;

S. 3(1) def. of *Council* amended by No. 9/2020 s. 390(Sch. 1 item 82.1).

Council has the same meaning as in section 3(1) of the **Local Government Act 2020**;

Council Chairperson means the Chairperson of a Consultative Council;

day procedure centre has the same meaning as in section 3(1) of the **Health Services Act 1988**;

denominational hospital has the same meaning as in section 3(1) of the **Health Services Act 1988**;

S. 3(1) def. of *Department* amended by Nos 29/2010 s. 3(a), 22/2019 s. 7(1), 15/2022 s. 4(a).

Department means the Department of Health;

dependant of a deceased person means—

(a) a person who was the spouse or domestic partner of the person at the date of the person's death;

(b) a child of the person;

(c) any other person who—

(i) was, at the date of the person's death, wholly or partially dependant on the person for financial support; or

(ii) would, at the date of the person's death, have been wholly or partially dependant on the person for financial support, but for the incapacity due to the injury which led to the death;

designated health service provider has the same meaning ***health service provider*** has in the Health Practitioner Regulation National Law;

S. 3(1) def. of *designated health service provider* inserted by No. 53/2021 s. 4(1).

Detention Appeals Officer means a person appointed to be a Detention Appeals Officer under section 32A(1);

S. 3(1) def. of *Detention Appeals Officer* inserted by No. 53/2021 s. 4(1).

Detention Appeals Registrar means the person appointed to be the Detention Appeals Registrar under section 32F(1);

S. 3(1) def. of *Detention Appeals Registrar* inserted by No. 53/2021 s. 4(1).

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S. 3(1) def. of *Detention Review Officer* inserted by No. 7/2021 s. 2A, repealed by No. 53/2021 s. 4(2A).

Director, Fines Victoria means the person employed as Director, Fines Victoria under section 4 of the **Fines Reform Act 2014**;

S. 3(1) def. of *Director, Fines Victoria* inserted by No. 53/2021 s. 20.

S. 3(1) def. of *disease of pandemic potential* inserted by No. 53/2021 s. 4(1).

disease of pandemic potential see subsection (6);

S. 3(1) def. of *disease vector* inserted by No. 53/2021 s. 4(1).

disease vector means an animal other than a human being, including a bird or insect, that is capable of carrying a pathogen that—

(a) is transmissible to human beings; and

(b) is capable of causing disease in human beings;

domestic partner of a person means—

(a) a person who is in a registered relationship with the person; or

Note

A registered relationship is defined in subsection (3).

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

donor means—

(a) in the case of blood, a person who gives blood—

(i) at the premises of the Society or at a health service; or

(ii) under the supervision of the Society or a health service, at any other premises; or

(b) in the case of tissue, a person, whether living or dead, from whom the tissue is taken;

early childhood service means the following—

S. 3(1) def. of *early childhood service* inserted by No. 55/2015 s. 4, amended by No. 37/2019 s. 21.

(a) an education and care service within the meaning of section 5(1) of the Education and Care Services National Law (Victoria) but does not include—

(i) an outside school hours care service or a school holiday care service; or

(ii) any part of an education and care service that is an outside school hours care service or a school holiday care service;

(b) a children's service that is approved under Part 3 of the **Children's Services Act 1996** and is of a class prescribed to be an early childhood service for the purposes of Division 7 of Part 8 of this Act;

education and care service premises means a place where an education and care service within the meaning of the Education and Care Services National Law (Victoria) educates or cares for children;

S. 3(1) def. of *education and care service premises* inserted by No. 80/2011 s. 79(Sch. item 5.1).

emergency powers means the powers specified in section 200;

enforceable undertaking means an undertaking given by a regulated person under section 197A;

S. 3(1) def. of *enforceable undertaking* inserted by No. 39/2024 s. 103.

enforceable undertaking order means an order made by the Magistrates' Court under section 197F;

S. 3(1) def. of *enforceable undertaking order* inserted by No. 39/2024 s. 103.

S. 3(1) def. of *enforcement agency* inserted by No. 53/2021 s. 20.

enforcement agency has the same meaning as it has in the **Infringements Act 2006**;

environmental health officer means a person appointed as an environmental health officer by a Council under section 29;

S. 3(1) def. of *escort agency* amended by No. 63/2010 s. 81(Sch. item 9.1), repealed by No. 7/2022 s. 72.

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S. 3(1) def. of *escort agency proprietor* repealed by No. 7/2022 s. 72.

* * * * *

examination and testing order means an order made under section 113;

S. 3(1) def. of *family violence* inserted by No. 19/2017 s. 59.

family violence has the same meaning as in section 4 of the **Family Violence Protection Act 2008**;

S. 3(1) def. of *fine* inserted by No. 53/2021 s. 20.

fine has the same meaning as it has in the **Fines Reform Act 2014**;

firm means an unincorporated body of persons associated together for the purposes of carrying on business;

hairdressing means any procedure, not being a surgical or medical procedure, intended to maintain, alter or enhance a person's appearance in relation to their facial or scalp hair including by cutting, trimming,

styling, colouring, treating or shaving the hair;

health information has the same meaning as it has in the **Health Records Act 2001**;

S. 3(1) def. of *health information* inserted by No. 53/2021 s. 4(1).

Health Privacy Principles has the same meaning as it has in the **Health Records Act 2001**;

S. 3(1) def. of *Health Privacy Principles* inserted by No. 53/2021 s. 20.

health service means—

(a) a day procedure centre;

(b) a denominational hospital;

(c) a multi purpose service;

(d) a private hospital;

(e) a public hospital—

and has effect in the context in which the term is used as if each of the services set out above referred to the premises on which the service is conducted or the proprietor of that service as required;

health service provider has the same meaning as in section 3(1) of the **Health Records Act 2001**;

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S. 3(1) def. of *HIV* repealed by No. 15/2022 s. 4(c).

immunisation status certificate means a document specified in section 147;

immunised means immunised as defined by the regulations in respect of each vaccine-preventable disease;

improvement notice means an improvement notice issued under section 194;

S. 3(1) def. of *Independent Pandemic Management Advisory Committee* inserted by No. 53/2021 s. 4(1).

Independent Pandemic Management Advisory Committee means a committee established under section 165CE(1);

infectious disease includes a human illness or condition due to a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal or reservoir to a susceptible person, either directly or indirectly through an intermediate plant or animal host, vector or the inanimate environment;

S. 3(1) def. of *information* amended by No. 60/2014 s. 140(Sch. 3 item 39).

information includes—

(a) personal information within the meaning of the **Privacy and Data Protection Act 2014**; and

(b) health information within the meaning of the **Health Records Act 2001**;

S. 3(1) def. of *information or document production notice* inserted by No. 39/2024 s. 103.

information or document production notice means a notice given under section 197H;

Information Privacy Principles has the same meaning as it has in the **Privacy and Data Protection Act 2014**;

S. 3(1) def. of *Information Privacy Principles* inserted by No. 53/2021 s. 20.

infringement fine has the same meaning as it has in the **Infringements Act 2006**;

S. 3(1) def. of *infringement fine* inserted by No. 53/2021 s. 20.

infringement notice means an infringement notice issued in accordance with section 209;

infringement penalty has the same meaning as it has in the **Infringements Act 2006**;

S. 3(1) def. of *infringement penalty* inserted by No. 53/2021 s. 20.

isolation means the segregation and separation of persons who are infected or suspected of being infected from other persons;

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S. 3(1) def. of *laboratory service* repealed by No. 15/2022 s. 4(d).

labour hire arrangement means an arrangement between a provider within the meaning of section 3 of the **Labour Hire Licensing Act 2018** and a worker for the provision of labour hire services referred to in sections 7 and 8 of that Act;

S. 3(1) def. of *labour hire arrangement* inserted by No. 15/2022 s. 4(b).

land charge has the same meaning as it has in the **Fines Reform Act 2014**;

S. 3(1) def. of *land charge* inserted by No. 53/2021 s. 20.

licence holder means a person who holds a pest control licence;

S. 3(1) def. of *lower risk prescribed accom-modation* inserted by No. 15/2022 s. 4(b).

lower risk prescribed accommodation means prescribed accommodation that is prescribed as lower risk;

S. 3(1) def. of *midwife* substituted by No. 13/2010 s. 51(Sch. item 44.1(a)).

midwife means a person registered under the Health Practitioner Regulation National Law—

(a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and

(b) in the register of midwives kept for that profession;

multi purpose service has the same meaning as in section 3(1) of the **Health Services Act 1988**;

S. 3(1) def. of *municipal district* amended by No. 9/2020 s. 390(Sch. 1 item 82.1).

municipal district has the same meaning as in section 3(1) of the **Local Government Act 2020**;

notifiable condition means—

(a) an infectious disease that is declared to be a notifiable condition by an Order in Council made under section 126; or

(b) an infectious disease that is prescribed to be a notifiable condition; or

(c) a medical condition that is prescribed to be a notifiable condition;

notifiable micro-organism means a micro-organism that is—

(a) declared to be a notifiable micro-organism by an Order in Council made under section 126; or

(b) prescribed to be a notifiable micro-organism;

notification details means—

(a) in relation to a medical condition, infectious disease or a micro-organism that is prescribed by the regulations to be a notifiable condition or notifiable micro-organism, the prescribed details to be included with a notification of that notifiable condition or micro-organism; and

(b) in relation to an infectious disease or a micro-organism that is declared by an Order in Council made under section 126 to be a notifiable condition or notifiable micro-organism, the details required by the Order in Council to be included with a notification of that infectious disease or micro-organism;

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 44.1(c)).

occupier, in relation to premises, means a person who appears to be of or over 16 years of age and who is, or appears to be, in control of the premises;

online portal means the electronic registration system—

S. 3(1) def. of *online portal* inserted by No. 38/2020 s. 53.

(a) maintained by the Secretary; and

(b) which may be used by a Council to receive and record information relating to the registration of prescribed accommodation or premises upon

which a person conducts a business specified in section 68;

Order in Council means an Order made by the Governor in Council and published in the Government Gazette;

owner, in relation to a cooling tower system, means—

(a) the person who owns, manages or controls the cooling tower system; or

(b) the person in charge of the cooling tower system;

owner, in relation to land—

(a) which has been alienated in fee by the Crown and is under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), means the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land;

(b) which has been alienated in fee by the Crown and is land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means the person who is the owner, or the persons who are the owners, of the fee or equity of redemption;

(c) which is Crown land reserved under the **Crown Land (Reserves) Act 1978** and managed or controlled by a committee of management, means the Minister administering that Act;

(d) which is any other Crown land, means the Minister or public authority that manages or controls the land;

pandemic declaration has the meaning given by section 165AB(1);

S. 3(1) def. of *pandemic declaration* inserted by No. 53/2021 s. 4(1).

pandemic disease—see subsection (5);

S. 3(1) def. of *pandemic disease* inserted by No. 53/2021 s. 4(1).

pandemic information determination has the meaning given by section 165BT(1);

S. 3(1) def. of *pandemic information determination* inserted by No. 53/2021 s. 4(1).

pandemic management area means an area specified in a pandemic declaration to be an area to which the declaration applies;

S. 3(1) def. of *pandemic management area* inserted by No. 53/2021 s. 4(1).

pandemic management general power means a power under 165BA(1)(a) or (b);

S. 3(1) def. of *pandemic management general power* inserted by No. 53/2021 s. 4(1).

pandemic management order power means a power under section 165B(1)(a) or (b);

S. 3(1) def. of *pandemic management order power* inserted by No. 53/2021 s. 4(1).

S. 3(1) def. of *pandemic management power* inserted by No. 53/2021 s. 4(1).

pandemic management power means a pandemic management general power or a pandemic management order power;

S. 3(1) def. of *pandemic order* inserted by No. 53/2021 s. 4(1).

pandemic order has the meaning given by section 165AI(1);

S. 3(1) def. of *Pandemic Order Register* inserted by No. 53/2021 s. 4(1).

Pandemic Order Register means the register established under section 165CS;

parent includes—

(a) a step-parent;

(b) an adoptive parent;

(c) a foster parent;

(d) a guardian;

(e) a person who has custody or daily care and control;

(f) a person who has all the duties, powers and responsibilities and authority (whether conferred by a court or otherwise) which by law parents have in relation to children;

pathology service means a service in which human tissue, human fluids or human body products are subjected to analysis for the purposes of the prevention, diagnosis or treatment of disease in human beings;

person includes a body or association (corporate or unincorporate) and a partnership and, in Division 2 of Part 7, also includes a firm;

personal information has the same meaning as it has in the **Privacy and Data Protection Act 2014**;

S. 3(1) def. of *personal information* inserted by No. 53/2021 s. 4(1).

personal protective equipment includes, but is not limited to, face coverings;

S. 3(1) def. of *personal protective equipment* inserted by No. 53/2021 s. 4(1).

person in charge in relation to an early childhood service means—

S. 3(1) def. of *person in charge* inserted by No. 55/2015 s. 4, amended by No. 13/2022 s. 56.

(a) in the case of an education and care service within the meaning of section 5(1) of the Education and Care Services National Law (Victoria), the approved provider within the meaning of that section;

(b) in the case of a children's service within the meaning of section 3(1) of the **Children's Services Act 1996**, the approved provider within the meaning of that section;

pest includes any animal or other biological entity (not being a human being or a plant) which injuriously affects, or is likely to injuriously affect, a person, a person's property or a person's use or enjoyment of a place;

pest control licence means a licence issued or renewed by the Secretary under section 101;

pest control operator means a person who carries on or holds themselves out in any way as carrying on the business of controlling, destroying or repelling pests;

pesticide means—

(a) any agricultural chemical product within the meaning of the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**; and

(b) any substance prescribed as a pesticide for the purposes of this definition;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 136.1), amended by No. 21/2015 s. 3(Sch. 1 item 43).

police officer has the same meaning as in the **Victoria Police Act 2013**;

premises includes—

(a) land (whether or not vacant);

(b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature);

(c) a pontoon;

(d) a vehicle;

(e) a caravan or camper-trailer;

prescribed means prescribed by the regulations;

S. 3(1) def. of *prescribed accom-modation* amended by No. 15/2022 s. 4(e).

prescribed accommodation means any of the following which is prescribed, or is of a class which is prescribed, to be prescribed accommodation—

(a) any area of land which a person or persons are frequently, intermittently or

seasonally permitted to use for camping on payment of consideration and any facilities provided on the land for the use of that person or those persons;

(b) any premises used as a place of abode, whether temporary or permanent, fixed or mobile, where a person or persons can be accommodated on payment of consideration;

(c) any accommodation provided to an employee in accordance with a term of an award governing the employment of the employee, or a term of the employee's contract of service, for use by the employee during that employment or service;

(d) any accommodation provided to a worker under, or in connection with, a labour hire arrangement with that worker, whether or not that worker pays for the accommodation;

prescribed Consultative Council means—

(a) a Consultative Council which is prescribed to be a prescribed Consultative Council for the purposes of Division 2 of Part 4; and

(b) CCOPMM;

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S. 3(1) def. of *prescribed disease* repealed by No. 22/2019 s. 4(1).

S. 3(1) def. of *prescribed senior officer* amended by No. 53/2021 s. 4(3).

prescribed senior officer means a person who is of a prescribed class of persons, being a person who is employed under Part 3 of the **Public Administration Act 2004** other than as an executive within the meaning of section 4(1) of that Act or is an employee of a health service;

primary school means a registered school wholly or partly attended by children between 5 and 11 years of age;

private hospital has the same meaning as in section 3(1) of the **Health Services Act 1988**;

prohibition notice means a prohibition notice issued under section 194;

S. 3(1) def. of *proprietor* amended by No. 15/2022 s. 4(f).

proprietor, in respect of—

(a) accommodation referred to in paragraphs (a), (b) and (c) of the definition of ***prescribed accommodation***, means the person providing the prescribed accommodation;

(ab) accommodation referred to in paragraph (d) of the definition of ***prescribed accommodation***, means—

(i) the person providing the accommodation to a worker under, or in connection with, a labour hire arrangement with that worker; or

(ii) if a person referred to in subparagraph (i) cannot be identified and located, a person who has leased, rented or legally occupied the premises from which

the worker is provided accommodation; or

(iii) if a person referred to in subparagraphs (i) and (ii) cannot be identified and located, the owner of the premises from which the worker is provided accommodation—

whether or not the person receives rent or a fee from the worker or under, or in connection with, a labour hire arrangement;

(b) a day procedure centre or a private hospital, means—

(i) if the day procedure centre or private hospital is run on a not-for-profit basis, the authority or body of persons conducting the day procedure centre or private hospital;

(ii) in any other case, the owner (whether a natural person or a body corporate) of the day procedure centre or private hospital;

(c) a denominational hospital, multi purpose service or public hospital, means the body corporate that conducts the denominational hospital, multi purpose service or public hospital;

protective services officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *protective services officer* inserted by No. 53/2021 s. 4(1).

S. 3(1) def. of *public authority* inserted by No. 53/2021 s. 4(1).

public authority has the same meaning as it has in the Charter of Human Rights and Responsibilities;

public health order means an order made under section 117;

public health risk powers means the powers specified in section 190;

public hospital means—

(a) a public health service within the meaning of the **Health Services Act 1988**;

(b) a public hospital within the meaning of the **Health Services Act 1988**;

public inquiry means a public inquiry conducted under section 50;

S. 3(1) def. of *registered health practitioner* substituted by Nos 13/2010 s. 51(Sch. item 44.1(d)), 27/2012 s. 22.

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise a health profession other than as a student;

S. 3(1) def. of *registered medical practitioner* substituted by No. 13/2010 s. 51(Sch. item 44.1(d)).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *registered nurse* repealed by No. 13/2010 s. 51(Sch. item 44.1(b)).

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registered pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);

S. 3(1) def. of *registered pharmacist* substituted by No. 13/2010 s. 51(Sch. item 44.1(e)).

registered premises means premises registered under section 69 or 69A;

S. 3(1) def. of *registered premises* amended by No. 11/2015 s. 3(b).

registration holder means the holder of a registration issued, transferred or renewed under Division 4 of Part 6;

regulated person means a person who is—

S. 3(1) def. of *regulated person* inserted by No. 39/2024 s. 103.

(a) the owner of a cooling tower system; or

(b) the owner of any land on which there is a cooling tower system; or

(c) a person who owns, manages or controls a water delivery system located at premises—

(i) where residential aged care services are provided; or

(ii) where health services are provided (other than health services provided at a day procedure centre); or

(iii) that is a prison; or

(iv) where inpatient forensic mental health services are provided by the Victorian Institute of Forensic Mental Health established by section 610 of the **Mental Health and Wellbeing Act 2022**; or

(v) where a business at which cars, trucks and other vehicles are washed is operated; or

(d) a pest control operator;

regulations means regulations made under this Act;

risk management plan means a risk management plan prepared in accordance with section 91;

risk management plan audit means an audit, carried out in accordance with section 93, of a risk management plan that was prepared under section 91;

risk management requirements includes requirements made under this Act or the regulations that relate to—

(a) the preparation, content, review and audit of a risk management plan;

(b) the construction, installation, operation, maintenance, repair, service and testing of a cooling tower system;

(c) control measures used in respect of a cooling tower system;

sample includes part of a sample;

S. 3(1) def. of *Secretary* substituted by No. 29/2010 s. 3(b).

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 3(1) def. of *Secretary body corporate* inserted by No. 29/2010 s. 3(c).

Secretary body corporate means the body corporate established by section 16;

serious risk to public health means a material risk that substantial injury or prejudice to the health of human beings has occurred or may occur having regard to—

S. 3(1) def. of *serious risk to public health* amended by No. 53/2021 s. 4(4).

(a) the number of persons likely to be affected;

(b) the location, immediacy and seriousness of the threat to the health of persons;

(c) the nature, scale and effects of the harm, illness or injury that may develop;

(d) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings;

seven-day notice has the same meaning as it has in the **Fines Reform Act 2014**;

S. 3(1) def. of *seven-day notice* inserted by No. 53/2021 s. 20.

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S. 3(1) def. of *sex worker* repealed by No. 7/2022 s. 72.

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S. 3(1) def. of *sexual services* amended by No. 63/2010 s. 81(Sch. item 9.1), repealed by No. 7/2022 s. 72.

skin penetration means any procedure performed on a living human being, not being a surgical or medical procedure, involving piercing, cutting, scarring,

branding, scraping, puncturing or tearing of their skin or mucous membrane using an instrument but does not include tattooing;

Society means the Society incorporated by Royal Charter under the name of Australian Red Cross Society;

S. 3(1) def. of *specified infectious disease* amended by No. 15/2022 s. 4(g).

specified infectious disease means—

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* * * * *

(c) an infectious disease prescribed to be a specified infectious disease;

spouse of a person means a person to whom the person is married;

state of emergency means a state of emergency declared under section 198;

stillbirth means the birth of a stillborn child;

substance includes any article or compound;

S. 3(1) def. of *surgical or medical procedure* amended by No. 13/2010 s. 51(Sch. item 44.2).

surgical or medical procedure means a surgical or medical procedure performed—

(a) by a registered medical practitioner or a nurse or midwife; or

(b) by a person under the supervision of a registered medical practitioner or a nurse or midwife;

tattooing means any process involving penetrating a person's skin for the purpose of inserting colour pigments—

(a) to make a permanent mark, pattern or design on the skin; or

(b) to make a semi-permanent mark, pattern or design on the skin including the process of applying semi-permanent make-up or cosmetic tattooing;

test, in Part 8, means diagnostic procedure;

tissue has the same meaning as in section 3(1) of the **Human Tissue Act 1982**;

vaccine-preventable disease means a vaccine-preventable disease prescribed for the purposes of Division 7 of Part 8;

vehicle means any means of transport, whether self-propelled or not, and whether used on land or sea or in the air;

S. 3(1) def. of *vehicle* amended by No. 4/2022 s. 12(c).

vehicle seizure and sale notice has the same meaning as it has in the **Fines Reform Act 2014**;

S. 3(1) def. of *vehicle seizure and sale notice* inserted by No. 53/2021 s. 20.

Victorian Perioperative Consultative Council means the Consultative Council established by Order of the Minister dated 6 June 2019 under section 33, notice of which was published in the Government Gazette on 18 June 2019;

S. 3(1) def. of *Victorian Perioperative Consultative Council* inserted by No. 4/2022 s. 12(a).

worker, in relation to a labour hire arrangement, has the same meaning as in section 3 of the **Labour Hire Licensing Act 2018**;

S. 3(1) def. of *worker* inserted by No. 15/2022 s. 4(b).

Worksafe inspector means an inspector within the meaning of the **Occupational Health and Safety Act 2004**.

S. 3(1) def. of *Worksafe inspector* inserted by No. 53/2021 s. 4(1), amended by No. 39/2024 s. 118(1).

(2) In this Act, a reference to a ***child*** of a deceased person is a reference to a child of the deceased person or of the deceased person's surviving spouse or domestic partner.

(3) For the purposes of the definition of ***domestic partner*** in subsection (1)—

(a) registered relationship has the same meaning as in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

S. 3(4) inserted by No. 24/2020 s. 3(2), substituted by No. 53/2021 s. 4(5).

(4) Without limiting the definition of ***serious risk to public health*** in subsection (1), for the purposes of this Act, a pandemic disease or a disease of pandemic potential may pose a material risk of substantial injury or prejudice to the health of human beings, even when—

(a) the rate of community transmission of the disease in Victoria is low; or

(b) there have been no cases of the disease in Victoria for a period of time.

S. 3(5) inserted by No. 53/2021 s. 4(6).

(5) For the purposes of this Act, an infectious disease is a ***pandemic disease*** at a particular time if, at that time, there is a pandemic outbreak of that infectious disease.

S. 3(6) inserted by No. 53/2021 s. 4(6).

(6) For the purposes of this Act, an infectious disease is a ***disease of pandemic potential*** at a particular time if—

(a) at that time, the infectious disease has the potential to give rise to a pandemic, but is not yet a pandemic disease; or

(b) all of the following apply—

(i) before that time, the infectious disease was a pandemic disease;

(ii) at that time, the infectious disease is no longer a pandemic disease;

(iii) at that time, the infectious disease has the ongoing potential to give rise to a pandemic.

3A Secretary may declare immunisation requirements

S. 3A inserted by No. 4/2018 s. 17.

(1) For the purposes of the definition of ***age appropriately immunised*** in section 3(1), the Secretary may declare immunisation requirements by notice published in the Government Gazette.

(2) The Secretary may vary or revoke the declaration at any time by notice published in the Government Gazette.

(3) A declaration, or variation or revocation of a declaration, has effect from the day notice of the declaration, or its variation or revocation, is published in the Government Gazette or any later day specified in the notice.

Pt 1A (Heading and ss 3B–3F) inserted by No. 17/2023 s. 61.

Part 1A—Statement of Recognition and Statement of Recognition principles

S. 3B inserted by No. 17/2023 s. 61.

3B Statement of Recognition

(1) The Parliament recognises that Aboriginal people in Victoria are First Nations people of Australia and acknowledges their enduring connection to Country, kin, land and culture.

(2) The Parliament acknowledges the following—

(a) that Aboriginal self-determination serves as a foundational principle to improve health and wellbeing outcomes of Aboriginal people in Victoria;

(b) the lasting impact of laws, practices and policies on the health and wellbeing outcomes of Aboriginal people since colonisation and enduring to this day;

(c) cultural dislocation, oppression, intergenerational trauma, lack of healing, systemic racism, institutionalised inequality and the loss of land, lore and language continue to harm the health and wellbeing of Aboriginal people in Victoria today;

(d) the strength of Aboriginal people, culture, kinship and communities in the face of historical and ongoing injustices;

(e) Aboriginal people's ongoing connection to culture, community and Country and the importance of this connection for the health and wellbeing of Aboriginal people in Victoria.

(3) It is the intention of Parliament that the health sector recognises, respects and supports the distinct cultural rights of Aboriginal people and their right to receive culturally-safe holistic health care throughout Victoria.

(4) The Parliament supports initiatives which address the ongoing health inequalities experienced by Aboriginal people in Victoria.

(5) The Parliament recognises the essential role of Aboriginal community controlled health organisations in meeting the health, wellbeing and care needs of Aboriginal people in Victoria.

(6) The Parliament supports the development of future reforms which further Aboriginal self-determination within health services in Victoria.

3C Acknowledgement of treaty process

S. 3C inserted by No. 17/2023 s. 61.

The Parliament acknowledges Victoria's treaty process and the aspiration of Aboriginal people to achieve increased autonomy, Aboriginal decision-making and control of planning, funding and administration of services for Aboriginal people, including through self-determined Aboriginal representative bodies established through treaty.

3D Statement of Recognition principles

S. 3D inserted by No. 17/2023 s. 61.

(1) Aboriginal health and wellbeing extends beyond physical health, encompassing the social, emotional and cultural wellbeing of the whole community in which each individual is able to achieve their full potential, thereby supporting the total wellbeing of the community.

(2) Aboriginal people in Victoria have the right to self-determination in health care and wellbeing services.

(3) Delivering culturally-safe health care and wellbeing services to Aboriginal people is fundamentally important.

(4) It is essential to partner with Aboriginal communities, including Aboriginal community controlled health organisations and Aboriginal representative groups, to support the development of health care and wellbeing services, advance Aboriginal self-determination and embed cultural safety.

(5) Historic and ongoing biases and racism that contribute to health inequalities for Aboriginal people in Victoria are to be addressed.

(6) Aboriginal community controlled health organisations play an important and key role in meeting the health and wellbeing needs of Aboriginal people in Victoria.

(7) The resources required by Aboriginal community controlled health organisations to meet the health and wellbeing needs of Aboriginal people in Victoria are recognised.

S. 3E inserted by No. 17/2023 s. 61.

3E Effect of this Part

(1) The Parliament does not intend by this Part to affect in any way the interpretation of this Act or of any other law in force in Victoria.

(2) The Parliament does not intend by this Part to create in any person any legal right or to give rise to any civil cause of action, or to provide any ground for review of an administrative act or omission.

(3) The Parliament does not intend by this Part to alter or affect an existing entitlement to compensation or create an entitlement to compensation arising from any matter referred to in section 3B, 3C or 3D.

3F References to Aboriginal people include Torres Strait Islanders

S. 3F inserted by No. 17/2023 s. 61.

In this Part, a reference to Aboriginal people includes a reference to Torres Strait Islanders.

Part 2—Objective, principles and application

4 Objective

(1) The Parliament recognises that—

(a) the State has a significant role in promoting and protecting the public health and wellbeing of persons in Victoria;

(b) public health and wellbeing includes the absence of disease, illness, injury, disability or premature death and the collective state of public health and wellbeing;

(c) public health interventions are one of the ways in which the public health and wellbeing can be improved and inequalities reduced;

(d) where appropriate, the State has a role in assisting in responses to public health concerns of national and international significance.

(2) In the context of subsection (1), the objective of this Act is to achieve the highest attainable standard of public health and wellbeing by—

(a) protecting public health and preventing disease, illness, injury, disability or premature death;

(b) promoting conditions in which persons can be healthy;

(c) reducing inequalities in the state of public health and wellbeing.

S. 4(3) amended by No. 66/2015 s. 3.

(3) It is the intention of Parliament that in the administration of this Act and in seeking to achieve the objective of this Act, regard should be given to the guiding principles set out in sections 5 to 11A.

5 Principle of evidence based decision-making

Decisions as to—

(a) the most effective use of resources to promote and protect public health and wellbeing; and

(b) the most effective and efficient public health and wellbeing interventions—

should be based on evidence available in the circumstances that is relevant and reliable.

6 Precautionary principle

If a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.

7 Principle of primacy of prevention

(1) The prevention of disease, illness, injury, disability or premature death is preferable to remedial measures.

(2) For that purpose, capacity building and other health-promotion activities are central to reducing differences in health status and promoting the health and wellbeing of the people of Victoria.

8 Principle of accountability

(1) Persons who are engaged in the administration of this Act should as far as is practicable ensure that decisions are transparent, systematic and appropriate.

(2) Members of the public should therefore be given—

(a) access to reliable information in appropriate forms to facilitate a good understanding of public health issues; and

(b) opportunities to participate in policy and program development.

9 Principle of proportionality

Decisions made and actions taken in the administration of this Act—

(a) should be proportionate to the public health risk sought to be prevented, minimised or controlled; and

(b) should not be made or taken in an arbitrary manner.

10 Principle of collaboration

Public health and wellbeing, in Victoria and at a national and international level, can be enhanced through collaboration between all levels of Government and industry, business, communities and individuals.

11 Principles applying to Part 8

Section 111 specifies the principles that are to apply for the purposes of the application, operation and interpretation of Part 8.

S. 11A inserted by No. 66/2015 s. 4.

11A Principles applying to Part 9A

Section 185C specifies the principles that are to apply for the purposes of the application, operation and interpretation of Part 9A.

12 Application of Part 6 to areas outside a municipal district

(1) Part 6 applies to an area outside a municipal district in accordance with this section.

(2) The Governor in Council on the recommendation of the Minister may by Order in Council specify—

(a) an area outside a municipal district for the purposes of this section;

(b) which Division or Divisions of Part 6 are to apply in that area;

(c) unless paragraph (d) applies, the Council which is to have the specified functions, duties and powers under this Act and the regulations for the purposes of the application of the specified Division or Divisions of Part 6 in respect of that area;

(d) that the Secretary is to have the specified functions, duties and powers under this Act and the regulations for the purposes of the application of the specified Division or Divisions of Part 6 in respect of that area.

(3) For the purposes of subsections (2)(c) and (2)(d), functions, duties and powers may be specified—

(a) specifically; or

(b) by reference to a provision of this Act in which the functions, duties and powers are specified.

S. 12(4) amended by No. 9/2020 s. 390(Sch. 1 item 82.2).

(4) If the Minister proposes to recommend to the Governor in Council that an Order in Council under this section specifies a Council for the purposes of subsection (2)(c), the Minister must consult with the Minister administering the **Local Government Act 2020** before making the recommendation.

(5) If an Order in Council under this section specifies a Council for the purposes of subsection (2)(c), then, for the purposes of the application of the specified Division or Divisions of Part 6 in the specified area to which the Order relates, that area is taken to be part of the municipal district of the Council specified in the Order.

(6) If an Order in Council is made in relation to the Secretary under subsection (2)(d), then, for the purposes of the application of the specified Division or Divisions of Part 6 in the specified area to which the Order relates, a reference in a provision of that Division or those Divisions to a Council is taken to be a reference to the Secretary.

(7) Any provisions of this Act that are necessary to give effect to the application of the specified Division or Divisions of Part 6 in the specified area to which the Order relates, extend and apply by virtue of this section with any modifications as are necessary.

13 Act binds the Crown

(1) This Act binds the Crown—

(a) in right of the State of Victoria; and

(b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

14 Extra-territorial operation of Divisions 2 and 8 of Part 8

(1) It is the intention of the Parliament that the operation of Divisions 2 and 8 of Part 8 should, so far as possible, include operation in relation to the following—

(a) land situated outside Victoria, whether in or outside Australia;

(b) things situated outside Victoria, whether in or outside Australia;

(c) acts, omissions and transactions done, entered into or occurring outside Victoria, whether in or outside Australia;

(d) things, acts, omissions and transactions (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

(2) Nothing in this section limits the operation of any other provision in this Act.

Part 3—Administration

Division 1—The Minister and the Secretary

15 Delegation by Minister

(1) The Minister by instrument may delegate to any person or class of persons employed under Part 3 of the **Public Administration Act 2004** any power, duty or function of the Minister under this or any other Act or under the regulations under this or any other Act, other than this power of delegation.

(2) A delegation under subsection (1) may be made—

(a) in relation to a person or class of persons specified in the instrument of delegation; or

(b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

S. 16 substituted by No. 29/2010 s. 4.

16 Secretary body corporate

S. 16(1) amended by Nos 22/2019 s. 7(2), 15/2022 s. 20.

(1) The person who is for the time being the Department Head of the Department and the successors in office of that person are a body corporate under the name "Secretary to the Department of Health".

(2) The body corporate under subsection (1) by the name given to it under that subsection—

(a) has perpetual succession and a corporate seal; and

(b) is capable in law—

(i) of suing and being sued; and

(ii) of acquiring, holding and disposing of real and personal property; and

(iii) of doing and suffering all such acts and things as bodies corporate may by law do and suffer and that are necessary for or incidental to the purposes of this or any other Act.

17 Role and functions of the Secretary

(1) For the purposes of this Act, the role of the Secretary is to—

(a) initiate, support and manage public health planning processes at the state level;

(b) develop and implement policies and programs to achieve the objective of this Act;

(c) perform the functions and exercise the powers conferred on the Secretary under this Act or any other Act, or the regulations made under this or any other Act;

(d) administer this Act in accordance with the objectives and guiding principles specified in this Act.

(2) Without limiting the generality of subsection (1), the Secretary has the following functions—

(a) to promote awareness and understanding of public health and wellbeing issues within the community;

(b) to develop public health and wellbeing policies;

(c) to assist persons who have an impact on public health to enhance opportunities for protecting public health;

(d) to support, equip and empower communities to address local public health issues and needs;

(e) to establish and maintain a comprehensive information system which includes information in respect of—

(i) the health status of persons and classes of persons in Victoria, including information about the extent and effects of disease, illness, injury, disability or premature death;

(ii) the determinants of individual health and public health and wellbeing;

(iii) the effectiveness of health interventions to improve public health in Victoria;

(f) to make recommendations and reports to the Minister with respect to matters relating to public health and wellbeing and to advise the Minister on the operation of this Act and the regulations.

18 Secretary subject to direction of Minister

In the exercise of the powers, discretions, functions and authorities and in the exercise of the duties conferred or imposed upon the Secretary by or under this or any other Act, the Secretary is subject to the direction and control of the Minister.

19 Delegation by Secretary

(1) The Secretary by instrument may delegate to—

(a) any employee or class of employees employed under Part 3 of the **Public Administration Act 2004**; or

(ab) any prescribed senior officer; or

S. 19(1)(ab) inserted by No. 53/2021 s. 5(1).

(b) any public authority or the chief executive officer (however described) of any public authority; or

(c) any Council or officer of a Council—

any power, duty or function of the Secretary under this or any other Act or under the regulations under this or any other Act, other than this power of delegation or the power conferred by section 50.

(2) Despite subsection (1), any power, duty or function delegated to a person under paragraph (b) of that subsection may be sub-delegated by that person to an officer or employee of that person.

(3) A delegation under subsection (1) may be made—

(a) in relation to a person or class of persons specified in the instrument of delegation; or

(b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

(4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by subsection (2) in the same way as they apply to a delegation.

S. 19(5) amended by No. 53/2021 s. 5(2).

(5) Despite subsection (1), the Secretary by instrument may delegate the power conferred on the Secretary by section 50 to a person who is—

(a) an executive within the meaning of section 4(1) of the **Public Administration Act 2004**; or

(b) a prescribed senior officer.

S. 19A inserted by No. 29/2010 s. 5.

19A Delegation by Secretary body corporate

The Secretary body corporate may, by instrument, delegate to any employee or class of employees employed under Part 3 of the **Public Administration Act 2004**, any power, duty or function of the Secretary body corporate under this Act (other than this power of delegation) or any other Act, or under the regulations made under this Act or any other Act.

S. 19B inserted by No. 29/2010 s. 5.

19B Committee of management

The Secretary body corporate may be a committee of management under the **Crown Land (Reserves) Act 1978**.

S. 19C inserted by No. 29/2010 s. 5.

19C Powers of the Secretary body corporate in relation to intellectual property

Without limiting the powers conferred on the Secretary body corporate under section 16, the Secretary body corporate may on behalf of the Crown—

(a) acquire (whether by creation, lease, licence, receiving the assignment or grant of, or otherwise), hold, accept as security, or otherwise deal with any intellectual property right (for example, a trade mark, patent, design, copyright (including an associated moral right), plant breeder's right, circuit layout right, trade secret, or right arising from confidential information);

(b) assign, grant, lease, licence, sell or dispose of, any intellectual property right;

(c) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit, any intellectual property right;

(d) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit any Crown copyright.

Division 2—The Chief Health Officer

20 Chief Health Officer

(1) Subject to the **Public Administration Act 2004**, there is to be appointed by the Secretary as the Chief Health Officer a person who is a registered medical practitioner.

(2) Subject to the general direction and control of the Secretary, the Chief Health Officer has the powers, duties, functions and immunities that are conferred or imposed on the Chief Health Officer by or under this or any other Act.

(3) For the purposes of this Act, the Chief Health Officer has and may exercise all the powers conferred on an authorised officer by this Act.

(4) The Secretary must issue an identity card to the Chief Health Officer.

(5) The identity card issued to the Chief Health Officer under this section must—

(a) contain a photograph of the Chief Health Officer; and

(b) contain the signature of the Chief Health Officer; and

(c) be signed by the Secretary.

(6) Part 9 applies to the Chief Health Officer when exercising the powers of an authorised officer under this Act.

S. 20A inserted by No. 24/2020 s. 4.

20A Chief Health Officer's exercise of certain powers

To avoid doubt, if the Chief Health Officer authorises authorised officers to exercise—

S. 20A(aa) inserted by No. 53/2021 s. 6.

(aa) any of the public health risk powers and the pandemic management powers under section 165AW(2)(a); or

(a) any of the public health risk powers under section 189(a); or

(b) any of the public health risk powers and emergency powers under section 199(2)(a)—

the Chief Health Officer may, if the Chief Health Officer has been appointed as an authorised officer under section 30, personally exercise any of those powers in accordance with the authorisation.

21 Functions and powers of the Chief Health Officer

The functions and powers of the Chief Health Officer are—

(a) to develop and implement strategies to promote and protect public health and wellbeing;

S. 21(b) amended by No. 53/2021 s. 7.

(b) to provide advice to the Premier, the Minister or the Secretary on matters relating to public health and wellbeing;

(c) to publish on a biennial basis and make available in an accessible manner to members of the public a comprehensive report on public health and wellbeing in Victoria;

(d) to perform any other functions or exercise any powers specified under this Act or any other Act or under any regulations made under this or any other Act.

22 Power of delegation

(1) The Chief Health Officer by instrument may delegate to a registered medical practitioner—

(a) who is an executive within the meaning of section 4(1) of the **Public Administration Act 2004**; or

(b) who is a prescribed senior officer—

any power, duty or function of the Chief Health Officer other than this power of delegation.

(1A) The Chief Health Officer by instrument may delegate any power, duty or function of the Chief Health Officer under section 165AW, 189, or 199 to—

S. 22(1A) inserted by No. 53/2021 s. 8(1).

(a) an executive within the meaning of section 4(1) of the **Public Administration Act 2004**; or

(b) a prescribed senior officer.

(2) A delegation under subsection (1) or (1A) may be made—

S. 22(2) amended by No. 53/2021 s. 8(2).

(a) in relation to a person or class of persons specified in the instrument of delegation; or

(b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

23 Provision of staff and contractors

(1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary to assist the Chief Health

Officer in the performance of his or her powers, duties and functions under this Act or any other Act or under any regulations made under this or any other Act.

(2) The Chief Health Officer may enter into agreements or arrangements with a person for the purpose of obtaining appropriate expertise to assist the Chief Health Officer in the performance of powers, duties and functions under this Act or any other Act or under any regulations made under this or any other Act.

Division 3—Councils

24 Function of Councils

The function of a Council under this Act is to seek to protect, improve and promote public health and wellbeing within the municipal district by—

(a) creating an environment which supports the health of members of the local community and strengthens the capacity of the community and individuals to achieve better health;

(b) initiating, supporting and managing public health planning processes at the local government level;

(c) developing and implementing public health policies and programs within the municipal district;

(d) developing and enforcing up-to-date public health standards and intervening if the health of people within the municipal district is affected;

(e) facilitating and supporting local agencies whose work has an impact on public health and wellbeing to improve public health and wellbeing in the local community;

(f) co-ordinating and providing immunisation services to children living or being educated within the municipal district;

(g) ensuring that the municipal district is maintained in a clean and sanitary condition.

25 Secretary may require report from Council

(1) The Secretary by notice in writing may require a Council to report to the Secretary on a matter relating to—

(a) public health and wellbeing specified in the notice;

(b) the performance of specified functions or duties, or the exercise of specified powers, by a Council under an Act administered by the Minister.

(2) A Council must provide the report in the form and within the period specified by the Secretary in the notice.

26 Municipal public health and wellbeing plans

(1) Unless section 27 applies, a Council must, in consultation with the Secretary, prepare a municipal public health and wellbeing plan within the period of 12 months after each general election of the Council.

(2) A municipal public health and wellbeing plan must—

(a) include an examination of data about health status and health determinants in the municipal district;

(b) identify goals and strategies based on available evidence for creating a local community in which people can achieve maximum health and wellbeing;

S. 26(2)(ba) inserted by No. 19/2017 s. 60(1).

(ba) specify measures to prevent family violence and respond to the needs of victims of family violence in the local community;

(c) provide for the involvement of people in the local community in the development, implementation and evaluation of the public health and wellbeing plan;

(d) specify how the Council will work in partnership with the Department and other agencies undertaking public health initiatives, projects and programs to accomplish the goals and strategies identified in the public health and wellbeing plan;

S. 26(2)(e) amended by No. 9/2020 s. 390(Sch. 1 item 82.3), substituted by No. 12/2021 s. 61.

(e) be consistent with the Council Plan prepared under section 90 of the **Local Government Act 2020**.

(3) In preparing a municipal public health and wellbeing plan, a Council must have regard to the State Public Health and Wellbeing Plan prepared under section 49.

(4) A Council must review its municipal public health and wellbeing plan annually and, if appropriate, amend the municipal public health and wellbeing plan.

S. 26(4A) inserted by No. 19/2017 s. 60(2).

(4A) An annual review must include a review of the measures referred to in subsection (2)(ba).

(5) Despite subsection (2)(c), a Council is not required to provide for the involvement of people in the local community when reviewing or amending a municipal public health and wellbeing plan under subsection (4).

(6) A Council must give a copy of the current municipal public health and wellbeing plan to the Secretary.

(6A) A Council must report to the Secretary on the measures referred to in subsection (2)(ba) at the intervals specified by the Secretary by notice in writing.

S. 26(6A) inserted by No. 19/2017 s. 60(3).

(7) A copy of the current municipal public health and wellbeing plan must be available for inspection by members of the public at the places at which the current Council Plan must be available under section 90(1) of the **Local Government Act 2020**.

S. 26(7) amended by No. 9/2020 s. 390(Sch. 1 item 82.4).

27 Inclusion of public health and wellbeing matters in Council Plan or Strategic Plan

(1) A Council is not required to comply with section 26 if—

(a) the Council complies with this section; and

(b) the Secretary grants the Council an exemption from complying with section 26.

(2) If a Council intends to comply with this section, the Council must—

(a) address the matters specified in section 26(2) in the Council Plan to be prepared under section 90 of the **Local Government Act 2020** or in a Strategic Plan prepared and approved by the Council;

S. 27(2)(a) amended by No. 9/2020 s. 390(Sch. 1 item 82.3).

S. 27(2)(b) amended by No. 9/2020 s. 390(Sch. 1 item 82.5).

(b) if the matters specified in section 26(2) are included in the Council Plan, review the Council Plan in accordance with section 90 of the **Local Government Act 2020**;

(c) if the matters specified in section 26(2) are included in a Strategic Plan, review the Strategic Plan annually.

(3) A Council may apply to the Secretary for an exemption from complying with section 26 by submitting a draft of the Council Plan or Strategic Plan which addresses the matters specified in section 26(2).

(4) If the Secretary is satisfied that the draft Council Plan or Strategic Plan adequately addresses the matters specified in section 26(2), the Secretary must grant the Council an exemption from complying with section 26.

(5) If the Secretary is not satisfied that the draft Council Plan or Strategic Plan adequately addresses the matters specified in section 26(2), the Secretary must—

(a) refuse to grant an exemption from complying with section 26(2); and

(b) advise the Council in writing—

(i) of the reasons for refusing to do so; and

(ii) as to the changes that should be made to the draft Council Plan or Strategic Plan.

(6) If a Council has been granted an exemption from complying with section 26, the Council must give a copy of the current Council Plan or Strategic Plan to the Secretary if a change is made to the Council Plan or Strategic Plan which relates to the matters specified in section 26(2).

28 Special powers of Secretary in a state of emergency or a pandemic

S. 28 (Heading) amended by No. 53/2021 s. 9(1).

S. 28 amended by No. 53/2021 s. 9(2).

At any time when there is a state of emergency or when a pandemic declaration is in force, the Secretary may do all or any of the following—

(a) order a Council to perform any functions or duties, or exercise any powers, that the Secretary directs;

(b) perform all or any of the functions or duties, or exercise all or any of the powers, of a Council;

(c) order any officer of a Council to perform a particular function or duty or to exercise a particular power;

(d) order any authorised officer of a Council to perform any functions or duties, or exercise any powers, in another municipal district that the Secretary directs.

Division 4—Officers

29 Appointment of environmental health officers

(1) A Council must appoint one or more environmental health officers.

(2) A Council may only appoint as an environmental health officer a person who has the qualifications, or qualifications and experience—

(a) that are declared by the Secretary as necessary for appointment as an environmental health officer; or

(b) that the Secretary or a person approved by the Secretary for the purposes of this section is satisfied are substantially equivalent to the qualifications or experience, or qualifications and experience, declared for the purpose of paragraph (a).

(3) The Secretary may declare the qualifications, or qualifications and experience, which are necessary for appointment as an environmental health officer by a notice published in the Government Gazette.

(4) Despite anything in this or any other Act, 2 or more Councils may appoint the same person to be their environmental health officer.

(5) A person appointed as an environmental health officer is by virtue of that appointment an authorised officer for the purposes of this Act.

(6) Sections 31(4) and 31(5) of this Act and sections 224(2) and 224(3) of the **Local Government Act 1989** apply in respect of a person appointed as an environmental health officer as if the person was an authorised officer.

30 Secretary may appoint authorised officers

S. 30(1) amended by No. 53/2021 s. 10.

(1) The Secretary by instrument may appoint a person employed under Part 3 of the **Public Administration Act 2004**, or an employee of a health service to be an authorised officer for the purposes of this Act.

(2) The Secretary must not appoint a person to be an authorised officer under this section unless the Secretary is satisfied that the person is suitably qualified or trained to be an authorised officer for the purposes of this Act.

(3) An appointment of a person to be an authorised officer may—

(a) specify the functions, duties or powers under this Act or the regulations to which it relates; and

(b) be made subject to any conditions that the Secretary considers to be appropriate.

(4) The Secretary must issue an identity card to each authorised officer appointed by the Secretary.

(5) An identity card issued to an authorised officer under this section must—

(a) contain a photograph of the authorised officer; and

(b) contain the signature of the authorised officer; and

(c) be signed by the Secretary.

(6) The Secretary may give a direction to an authorised officer appointed by the Secretary in relation to the performance of the authorised officer's functions or duties or the exercise of the authorised officer's powers under this Act or the regulations.

(7) A direction given under subsection (6) may—

(a) be of a general nature; or

(b) specify that the direction relates to a specific matter or specified class of matter.

31 Councils may appoint authorised officers

(1) Subject to this section, a Council may, under section 224(1) of the **Local Government Act 1989**, appoint a person to be an authorised officer for the purposes of this Act.

(2) A Council must not appoint a person to be an authorised officer for the purposes of this Act unless the Council is satisfied that the person is suitably qualified or trained to be an authorised officer for the purposes of this Act.

(3) An appointment of a person to be an authorised officer may—

(a) specify the functions, duties or powers under this Act or the regulations to which it relates; and

(b) be made subject to any conditions that the Council considers to be appropriate.

(4) A Council may give a direction to an authorised officer appointed by the Council in relation to the performance of the authorised officer's functions or duties or the exercise of the authorised officer's powers under this Act or the regulations.

(5) A direction given under subsection (4) may—

(a) be of a general nature; or

(b) specify that the direction relates to a specific matter or specified class of matter.

32 Analysts

(1) The Secretary by instrument may appoint a natural person to be an analyst.

(2) The Secretary may only appoint a person to be an analyst if the Secretary considers that the person has the necessary expertise or experience to carry out analyses for the purposes of this Act and the regulations.

(3) A person appointed to be an analyst need not be an authorised officer.

(4) The function of an analyst is to carry out an analysis—

(a) to determine whether this Act and the regulations are being complied with; or

(b) to assist a person performing a function or exercising a power under this Act or the regulations.

(5) If an analyst carries out an analysis, the analyst must prepare and sign a certificate of analysis which includes—

(a) the results of the analysis; and

(b) information about the apparatus and methodology used to conduct the analysis.

32A Governor in Council may appoint Detention Appeals Officers

S. 32A inserted by No. 7/2021 s. 2B, substituted by No. 53/2021 s. 10A.

(1) Subject to subsection (2), the Governor in Council, on the recommendation of the Minister, may by instrument appoint a person as a Detention Appeals Officer at any time when a pandemic declaration or a declaration of a state of emergency is in force.

(2) A person appointed as a Detention Appeals Officer must be an Australian lawyer of at least 10 years' experience.

32B Remuneration and allowances

S. 32B inserted by No. 53/2021 s. 10A.

A person appointed as a Detention Appeals Officer is entitled to the remuneration and allowances determined from time to time by the Governor in Council.

32C Terms and conditions of appointment

S. 32C inserted by No. 53/2021 s. 10A.

(1) A Detention Appeals Officer —

(a) holds office for the period specified in the instrument of appointment, which must not end after the time when the pandemic declaration or declaration of a state of emergency referred to in section 32A(1) ceases to be in force; and

(b) is eligible to be reappointed; and

(c) holds office on the terms and conditions determined by the Governor in Council.

(2) A Detention Appeals Officer is not, in respect of the office of Detention Appeals Officer, subject to the **Public Administration Act 2004**.

S. 32D inserted by No. 53/2021 s. 10A.

32D Independence of Detention Appeals Officers

A Detention Appeals Officer —

(a) must act independently, impartially and in the public interest in the performance of their functions and duties and the exercise of their powers; and

(b) is not subject to the direction or control of the Secretary or the Minister in relation to the performance of their functions or duties or the exercise of their powers under this Act or the regulations.

S. 32E inserted by No. 53/2021 s. 10A.

32E Detention Review Officers taken to be Detention Appeals Officers

(1) A person who, immediately before the commencement day, held office as a Detention Review Officer under the old Act is taken to have been appointed as a Detention Appeals Officer under section 32A(1) on and from the commencement day.

(2) The Governor in Council is taken to have determined the same terms and conditions as applied under the old Act, in respect of a person taken to be appointed as a Detention Appeals Officer because of the operation of subsection (1), to the extent that those terms and conditions are consistent with sections 32A, 32B, 32C and 32D, with the following modifications—

(a) the Governor in Council may terminate the appointment of the person and the Secretary may not terminate the appointment of the person;

(b) the terms and conditions on which the person holds office, including in relation to remuneration and allowances, may be later amended by the Governor in Council and not by the Secretary;

(c) a reference in the original instrument of appointment to a Detention Review Officer is taken to include a reference to a Detention Appeals Officer;

(d) a reference in the original instrument of appointment to a state of emergency ceasing to exist or be in force is taken to include a reference to a pandemic declaration ceasing to be in force;

(e) a reference in the original instrument of appointment to the functions, duties and powers of a Detention Review Officer is taken to include a reference to the functions, duties and powers of a Detention Appeals Officer under section 200C and Part 8A of this Act;

(f) a reference in the original instrument of appointment to the detention under section 200 is taken to include a reference to detention under section 165B(1)(b) or section 165BA(1)(b).

(3) In this section—

commencement day means the day on which this section came into operation;

Detention Review Officer has the meaning given by the old Act;

old Act means this Act, and regulations and instruments made under this Act, as in force immediately before the commencement day;

original instrument of appointment means the instrument of appointment of a person as a Detention Review Officer under the old Act.

S. 32F inserted by No. 53/2021 s. 10A.

32F Secretary may appoint Detention Appeals Registrar

(1) The Secretary by instrument may appoint a person to be the Detention Appeals Registrar for the purposes of this Act.

(2) An instrument of appointment of a person as the Detention Appeals Registrar may—

(a) specify the functions, duties or powers under this Act or the regulations to which the appointment relates; and

(b) be made subject to any conditions that the Secretary considers to be appropriate.

(3) A person appointed as the Detention Appeals Registrar is employed under Part 3 of the **Public Administration Act 2004**.

(4) The Secretary must ensure that the Detention Appeals Registrar has access to such information as may reasonably be required for the performance of the functions and duties and the exercise of the powers of the Detention Appeals Registrar under this Act or the regulations.

(5) The Secretary may employ persons under Part 3 of the **Public Administration Act 2004** to assist the Detention Appeals Registrar in the performance of the functions and duties and the exercise of the powers of the Detention Appeals Registrar under this Act or the regulations.

Part 4—Consultative Councils

Division 1—General provisions

33 Consultative Councils

(1) For the purposes of this Act and any other Act conferring powers or imposing functions on the Minister or the Secretary, the Minister by Order may—

(a) establish a Consultative Council as the Minister considers appropriate in respect of the matters and functions that the Minister determines and specifies in the Order;

(b) appoint a Board, Commission or other body established by or under an Act or a Committee of the Board, Commission or other body to be a Consultative Council.

(2) A Consultative Council established by Order under subsection (1)(a) is to consist of the number of members specified in the Order.

(3) The Minister by Order may appoint the members of a Consultative Council established under subsection (1)(a).

(4) Of the members appointed by Order under subsection (3)—

(a) one must be appointed as the Chairperson;

(b) one may be appointed as the Deputy Chairperson;

(c) the majority must be persons with special knowledge in the matters specified for that Consultative Council in the Order establishing the Consultative Council.

(5) A member appointed under subsection (3)—

(a) holds office for the period, not exceeding 3 years, specified in the Order but is eligible for re-appointment;

(b) may resign from the office of member by writing signed and delivered to the Minister;

(c) may be removed from office by the Minister;

(d) is not in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 5 of that Act).

(6) An Order under this section must be published in the Government Gazette.

34 Assistance to Consultative Council

(1) Subject to the approval of the Minister, a Consultative Council may co-opt any person with special knowledge or skills to assist the Consultative Council in a particular matter.

(2) A person who has been co-opted to assist a Consultative Council is to be considered to be a member of that Consultative Council until the period of co-option ends.

35 Proceedings of a Consultative Council

(1) The Council Chairperson must preside at meetings of the Consultative Council at which the Council Chairperson is present.

(2) If the Council Chairperson is not present at a meeting, the Deputy Chairperson is to be the chairperson of the meeting.

(3) If the Council Chairperson is not present at a meeting and the Deputy Chairperson is not present at the meeting or there is no Deputy Chairperson, the members present must elect one of their number to be chairperson of the meeting.

(4) The Deputy Chairperson may perform the functions of the Council Chairperson under section 38 or 39 if authorised to do so in writing by the Council Chairperson.

(5) Subject to any regulations made for the purposes of this section, a Consultative Council may regulate its own proceedings.

36 Sub-committees

(1) Subject to the approval of the Minister, a Consultative Council may appoint a sub-committee for the purposes of carrying out any of its functions.

(2) A sub-committee of a Consultative Council is to consist of—

(a) the members of the Consultative Council determined by the Consultative Council; and

(b) other persons as the Consultative Council determines.

(3) A sub-committee appointed under this section must report to the Consultative Council.

37 Operation of Consultative Councils

(1) The Council Chairperson may provide information obtained in the course of the Consultative Council performing its functions to any other Consultative Council if the Council Chairperson considers that the information is relevant to the functions of the other Consultative Council.

(2) The Minister or the Secretary may give a direction in writing to—

(a) a Consultative Council to consider and report on a matter relevant to the functions of the Consultative Council specified in the direction;

(b) 2 or more Consultative Councils to jointly consider and report on a matter relevant to their functions specified in the direction.

(3) Two or more Consultative Councils may resolve to consider jointly and report on a matter relevant to their functions specified in the resolution.

Division 2—Provisions applying to prescribed Consultative Councils

38 Functions of certain prescribed Consultative Councils

(1) This section applies to a prescribed Consultative Council established by Order under section 33(1)(a).

(2) The functions of a prescribed Consultative Council to which this section applies are to—

(a) monitor, analyse and report on matters specified for that prescribed Consultative Council in the Order which established that prescribed Consultative Council;

(b) consider, investigate and report on any matter specified by the Minister or the Secretary in a direction to the prescribed Consultative Council under section 37(2);

(c) liaise with any other Consultative Council on any matter relevant to the functions of the prescribed Consultative Council;

(d) improve public health and wellbeing by publishing and disseminating relevant information and practical strategies identified by the prescribed Consultative Council in the course of performing its functions;

(e) publish an annual report on the activities of the prescribed Consultative Council;

(f) perform any function specified in the Order which established that prescribed Consultative Council;

(g) perform any other prescribed function;

(h) collect information for the purpose of performing the functions specified in this subsection.

39 Request to provide information to prescribed Consultative Council

(1) The Chairperson of a prescribed Consultative Council by written notice may request—

(a) a health service provider or a health service provider which is a member of a class of health service provider; or

(b) a pathology service or a pathology service which is a member of a class of pathology service—

to provide to the prescribed Consultative Council general or specific information as specified in the notice within the period or from time to time as specified in the notice which the Chairperson of the prescribed Consultative Council considers is necessary to enable the prescribed Consultative Council to perform its functions.

(2) A health service provider or pathology service to which subsection (1) applies is authorised to provide the information requested under subsection (1) to the Consultative Council.

Note

See section 227.

40 Provision of prescribed information to prescribed Consultative Council

(1) This section applies to—

(a) a prescribed health service provider or a health service provider which is a member of a prescribed class of health service provider; and

(b) a prescribed pathology service or a pathology service which is a member of a prescribed class of pathology service.

(2) A health service provider or pathology service to which this section applies must provide the prescribed information to the relevant prescribed Consultative Council—

(a) in the prescribed manner and form; and

(b) within the prescribed period or at the prescribed intervals.

Note

See section 227.

(3) A health service provider or pathology service to which this section applies must comply with subsection (2).

Penalty: 10 penalty units.

41 Disclosure of information held by a prescribed Consultative Council

(1) If a prescribed Consultative Council considers that it is in the public interest to do so, the prescribed Consultative Council may provide information obtained in the course of performing its functions under this or any other Act to—

S. 41(1)(a) substituted by No. 13/2010 s. 51(Sch. item 44.3).

(a) a National Board established under Part 5 of the Health Practitioner Regulation National Law;

(b) the Health Complaints Commissioner under the **Health Complaints Act 2016**, but only for the purposes of an investigation being carried out by the Health Complaints Commissioner under section 46 of that Act;

S. 41(1)(b) substituted by No. 22/2016 s. 243.

(c) the State Coroner;

S. 41(1)(c) amended by No. 77/2008 s. 129(Sch. 2 item 21.1).

(d) a Ministerial Committee;

(e) the Minister;

(f) the Secretary;

(fa) the Chief Health Officer;

S. 41(1)(fa) inserted by No. 52/2017 s. 90.

(fb) the chief psychiatrist appointed under section 265 of the **Mental Health and Wellbeing Act 2022**;

S. 41(1)(fb) inserted by No. 52/2017 s. 90, amended by No. 39/2022 s. 858.

(g) a protective intervener under section 181 of the **Children, Youth and Families Act 2005** if the prescribed Consultative Council believes that a child is in need of protection;

(h) a health service;

(i) any person in another State, a Territory, the Commonwealth or New Zealand that the prescribed Consultative Council determines has functions corresponding to a person referred to in paragraphs (a) to (h);

(j) any person in another State, a Territory, the Commonwealth or New Zealand that the prescribed Consultative Council determines has functions corresponding to a Consultative Council;

(k) any other person or class of persons prescribed for the purposes of this section.

(2) In subsection (1), ***Ministerial Committee*** means a committee established by the Minister administering Part 6 of the **Child Wellbeing and Safety Act 2005** the functions of which include providing advice to the Minister regarding the death of children and youth who have been the subject of reports under section 183 of the **Children, Youth and Families Act 2005**.

42 Confidentiality obligations applying in respect of a prescribed Consultative Council

(1) This section applies to the following persons—

(a) a prescribed Consultative Council;

(b) a person who is or has been—

(i) a member of a prescribed Consultative Council; or

(ii) a member of a sub-committee of a prescribed Consultative Council; or

(iii) employed or engaged by a prescribed Consultative Council; or

(iv) made available to a prescribed Consultative Council.

S. 42(2) amended by No. 52/2017 s. 91.

(2) A person to whom this section applies must not—

(a) directly or indirectly make a record of, or divulge or communicate to any person any information gained by or conveyed to the person by reason of the person's office, employment or engagement; or

(b) make use of the information for any purpose—

other than in the performance of the functions of the prescribed Consultative Council or to provide information in accordance with section 37, 41, 46A or 48A.

Penalty: 10 penalty units.

(3) Subsection (2) has effect despite anything to the contrary in section 40 of the **Audit Act 1994**.

S. 42(3) amended by No. 12/2019 s. 24.

(4) A person to whom this section applies must not be required—

(a) to produce before any court or tribunal or any board, agency or other person any document that has come into the person's possession or under the person's control in the performance of the functions of the prescribed Consultative Council; or

(b) to divulge or communicate to any court or tribunal or any board, agency or other person any matter or thing that has come under the person's notice in the performance of the functions of the prescribed Consultative Council.

(5) The **Freedom of Information Act 1982** does not apply to a document or any information referred to in subsection (4).

(6) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a document or any information referred to in subsection (4).

(7) Nothing in this section prevents a prescribed Consultative Council from including information in any document that does not contain any particulars which would be likely to lead to the identification of a person from whom or in relation to whom the information was obtained.

43 Confidentiality of documents

(1) A person must not, and cannot, be required to produce before any court or tribunal or any board, agency or other person any document in the person's possession or under the person's control that is the original or a copy of a document that was—

(a) created for the sole purpose of providing information to a prescribed Consultative Council; and

(b) provided to the prescribed Consultative Council by or on behalf of that person.

(2) Except in the case of information or reports published by a prescribed Consultative Council, the following is not admissible in any action or proceedings before any court or tribunal or any board, agency or other person—

(a) evidence of any other information or reports obtained by or in the possession of a prescribed Consultative Council;

(b) evidence of or about a document to which subsection (1) applies.

(3) The **Freedom of Information Act 1982** does not apply to a document or any information referred to in subsection (1) or (2).

(4) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a document or any information referred to in subsection (1) or (2).

Division 3—Provisions applying to the Consultative Council on Obstetric and Paediatric Mortality and Morbidity

44 Consultative Council on Obstetric and Paediatric Mortality and Morbidity

(1) The Consultative Council on Obstetric and Paediatric Mortality and Morbidity established by section 162C of the **Health Act 1958** as in force immediately before the commencement of section 242 is continued under this Act.

(2) The Consultative Council on Obstetric and Paediatric Mortality and Morbidity is referred to in this Act as CCOPMM.

45 Constitution of CCOPMM

(1) CCOPMM is to consist of the members appointed by the Minister by Order.

S. 45(1) amended by No. 52/2017 s. 92.

(2) Of the members appointed by Order under subsection (1)—

(a) one must be appointed as the Chairperson;

(b) one may be appointed as the Deputy Chairperson;

(c) the majority must be persons with special knowledge which the Minister considers is relevant to the functions of CCOPMM.

(3) A member appointed under this section—

(a) holds office for the period not exceeding 3 years, as is specified in the Order but is eligible for re-appointment;

(b) may resign from the office of member by writing signed and delivered to the Minister;

(c) may be removed from office by the Minister;

(d) is not in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 5 of that Act).

(4) An Order under this section must be published in the Government Gazette.

46 Functions of CCOPMM

(1) The functions of CCOPMM are to—

(a) conduct study, research and analysis into the incidence and causes in Victoria of maternal deaths, stillbirths and the deaths of children;

(b) conduct study, research and analysis into the incidence and causes of obstetric and paediatric morbidity;

(c) conduct a perinatal data collection unit for the purpose of—

(i) collecting, studying, researching and interpreting information on and in relation to births in Victoria;

(ii) identifying and monitoring trends in respect of perinatal health including birth defects and disabilities;

(iii) providing information to the Secretary on the requirements for and the planning of neonatal care units;

(iv) providing information for research into the epidemiology of perinatal health including birth defects and disabilities;

(v) establishing and maintaining a register of birth defects and disabilities;

Note

Birth defects and disabilities means any birth defect or disability of prenatal origin identified in a foetus or a child.

(d) provide to health service providers—

(i) information on obstetrics and paediatrics;

(ii) strategies to improve obstetric and paediatric care;

(e) consider, investigate and report on any other matters in respect of obstetric and paediatric mortality and morbidity referred to CCOPMM by the Minister or the Secretary;

(f) liaise with any other Consultative Council (whether or not prescribed) on any matter relevant to the functions of CCOPMM;

(g) publish an annual report on the research and activities of CCOPMM;

(h) perform any other prescribed function;

(i) collect information for the purpose of performing its functions under this subsection.

(2) The Secretary must make available to CCOPMM any resources from the Department that are necessary to enable CCOPMM to carry out its functions.

(3) In this section, ***maternal death*** means the death of a woman who was pregnant at the time of her death or who was pregnant within the period of 12 months immediately before her death.

46A CCOPMM guidelines, compliance and reporting

S. 46A inserted by No. 52/2017 s. 93.

(1) The CCOPMM may prepare and issue guidelines relevant to its functions.

(2) If the CCOPMM issues guidelines, the CCOPMM must publish notice of their issue—

(a) in the Government Gazette; and

(b) on the CCOPMM's Internet site.

(3) A notice under subsection (2) must state—

(a) where a copy of the CCOPMM guidelines may be obtained; and

(b) the date on which the CCOPMM guidelines take effect.

(4) The CCOPMM may—

(a) monitor compliance with its guidelines by health services; and

(b) report to the Secretary any instances of non-compliance identified; and

(c) collect information from health services in relation to the preparation of its guidelines and the monitoring of compliance with those guidelines.

(5) A report under subsection (4) must include the following—

(a) the type of non-compliance, including a failure to provide information to the CCOPMM in relation to the preparation of guidelines and the monitoring of compliance with those guidelines;

(b) the health service which failed to comply with the guidelines;

(c) how the non-compliance may have been prevented;

(d) the status of any investigation by CCOPMM of the non-compliance;

(e) any remedial action taken by the relevant health service.

47 Request to provide information in relation to the death of children

(1) The Chairperson of CCOPMM by written notice may request a person who provided care or services to a child before the child's death to provide to the CCOPMM general or specific information as specified in the notice within the period or from time to time as specified in the notice which the Chairperson of CCOPMM considers is necessary to enable CCOPMM to perform the function specified in section 46(1)(a).

(2) A person to whom subsection (1) applies is authorised to provide the information requested under subsection (1) to the CCOPMM.

Note

See section 227.

(3) This section does not limit the application of section 39.

48 Report of birth

A report of a birth in the form approved by CCOPMM must be submitted to CCOPMM within the prescribed period by—

(a) if the birth occurs in a health service, the proprietor of the health service; or

(b) if the birth does not occur in a health service—

(i) the midwife who is in attendance upon the mother at the time of the birth; or

(ii) if subparagraph (i) does not apply, the registered medical practitioner who is in attendance upon the mother at the time of the birth; or

(c) if paragraphs (a) and (b) do not apply—

(i) if the mother or the child is admitted to a health service because of the birth of the child, the proprietor of the health service; or

(ii) in any other case, the registered medical practitioner who undertakes the care and treatment of the mother or the child because of the birth of the child.

Penalty: 10 penalty units.

S. 48A inserted by No. 52/2017 s. 94.

48A Preventable harm to be reported to Secretary

(1) If the CCOPMM determines that a maternal death, stillbirth or death of a child was likely to have been preventable, the Chairperson of the CCOPMM must provide a report to the Secretary of that death or stillbirth.

(2) If the CCOPMM determines that an instance of severe obstetric or paediatric morbidity was likely to have been preventable, the Chairperson of the CCOPMM must provide a report to the Secretary of that morbidity.

(3) A report under subsection (1) or (2) must include the following—

(a) the type of incident causing the mortality or morbidity;

(b) the health service connected with the mortality or morbidity, if any;

(c) how the mortality or morbidity was likely to have been preventable;

(d) the status of any investigation by CCOPMM of the incident;

(e) any remedial action taken by the relevant health service.

48B Confidentiality of reports under section 48A

S. 48B inserted by No. 52/2017 s. 94.

(1) This section applies to a person who is or has been the recipient of a report referred to in section 48A.

(2) A person must not disclose to any other person a report referred to in section 48A unless the Secretary considers that the disclosure is in the public interest.

(3) Subsection (2) has effect despite anything to the contrary in section 12 of the **Audit Act 1994**.

(4) The **Freedom of Information Act 1982** does not apply to a report referred to in section 48A.

(5) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a report referred to in section 48A.

(6) Nothing in this section prevents a person from including information in any document that does not contain any particulars which would be likely to lead to the identification of a person from whom the information was obtained or to whom the information relates.

(7) A person must not, and cannot, be required to produce before any court or tribunal or any board, agency or other person a report referred to in section 48A unless the Secretary considers that the production is in the public interest.

Pt 4 Div. 4 (Heading and ss 48C–48H) inserted by No. 4/2022 s. 13.

Division 4—Provisions applying to the Victorian Perioperative Consultative Council

S. 48C inserted by No. 4/2022 s. 13.

48C Victorian Perioperative Consultative Council

(1) This Division applies to the Victorian Perioperative Consultative Council.

(2) This Division is in addition to Division 2 and is not limited by this Division.

S. 48D inserted by No. 4/2022 s. 13.

48D Functions of the Victorian Perioperative Consultative Council

(1) The functions of the Victorian Perioperative Consultative Council are to—

(a) conduct study, research and analysis into the incidence and causes in Victoria of perioperative mortality or morbidity; and

(b) conduct study, research and interpret information on and in relation to perioperative care in Victoria, to improve outcomes for patients before, during and after surgery, including providing information to the Secretary and on the requirements for and the planning of perioperative care; and

(c) provide to health service providers—

(i) information on perioperative care; and

(ii) strategies to improve perioperative care; and

(d) consider, investigate and report on any other matters in respect of perioperative mortality and morbidity referred to the Council by the Minister or the Secretary; and

(e) liaise with any other Consultative Council on any matter relevant to the functions of the Victorian Perioperative Consultative Council; and

(f) publish an annual report on the research and activities of the Victorian Perioperative Consultative Council; and

(g) perform any other prescribed function; and

(h) collect information for the purpose of performing its functions under this subsection.

(2) The Secretary must make available to the Victorian Perioperative Consultative Council any resources from the Department that are necessary to enable the Victorian Perioperative Consultative Council to carry out its functions.

S. 48D(2) amended by No. 17/2023 s. 68.

(3) In this section—

perioperative mortality and morbidity means adverse events (including death) that may occur immediately prior to, during or immediately after surgery.

48E Victorian Perioperative Consultative Council guidelines, compliance and reporting

S. 48E inserted by No. 4/2022 s. 13.

(1) The Victorian Perioperative Consultative Council may prepare and issue guidelines relevant to its functions.

(2) If the Victorian Perioperative Consultative Council issues guidelines, the Victorian Perioperative Consultative Council must publish notice of their issue—

(a) in the Government Gazette; and

(b) on the Victorian Perioperative Consultative Council's Internet site.

(3) A notice under subsection (2) must state—

(a) where a copy of the Victorian Perioperative Consultative Council guidelines may be obtained; and

(b) the date on which the Victorian Perioperative Consultative Council guidelines take effect.

(4) The Victorian Perioperative Consultative Council may—

(a) monitor compliance with its guidelines by health services; and

(b) report to the Secretary any instances of non-compliance identified; and

(c) collect information from health services in relation to the preparation of its guidelines and the monitoring of compliance with those guidelines.

(5) A report under subsection (4) must include the following—

(a) the type of non-compliance, including a failure to provide information to the Victorian Perioperative Consultative Council in relation to the preparation of guidelines and the monitoring of compliance with those guidelines;

(b) the health service which failed to comply with the guidelines;

(c) how the non-compliance may have been prevented;

(d) the status of any investigation by the Victorian Perioperative Consultative Council of the non-compliance;

(e) any remedial action taken by the relevant health service.

48F Request to provide information in relation to perioperative mortality

S. 48F inserted by No. 4/2022 s. 13.

(1) The Chairperson of the Victorian Perioperative Consultative Council by written notice may request a person who provided care or services to a person before the person's death to provide to the Victorian Perioperative Consultative Council general or specific information as specified in the notice within the period or from time to time as specified in the notice which the Chairperson of the Victorian Perioperative Consultative Council considers is necessary to enable the Victorian Perioperative Consultative Council to perform the function specified in section 48D(1)(a).

(2) A person to whom subsection (1) applies is authorised to provide the information requested under subsection (1) to the Victorian Perioperative Consultative Council.

Note

See section 227.

(3) To avoid doubt, this section does not limit the application of section 39.

48G Preventable harm to be reported to Secretary

S. 48G inserted by No. 4/2022 s. 13.

(1) This section applies if the Victorian Perioperative Consultative Council determines—

(a) that a perioperative mortality or an instance of severe perioperative morbidity or a cluster at a relevant health service was likely to have been preventable; and

(b) that there is a continuing risk to the health, safety or wellbeing of persons as a result of the provision of services at the relevant health service.

(2) If this section applies, the Chairperson of the Victorian Perioperative Consultative Council must provide a report to the Secretary of that death, severe perioperative morbidity or cluster.

(3) A report under subsection (2) must include the following—

(a) the type of incident causing the mortality or morbidity;

(b) the health service connected with the mortality or morbidity, if any;

(c) how the mortality or morbidity was likely to have been preventable;

(d) the status of any investigation by the Victorian Perioperative Consultative Council of the incident;

(e) any remedial action taken by the relevant health service.

(4) In addition to any report provided under subsection (2), the Chairperson of the Victorian Perioperative Consultative Council must provide a quarterly report to the Secretary—

(a) about themes relating to preventable deaths or instances of severe perioperative morbidity gleaned from information the Victorian Perioperative Consultative Council has received from health services; and

(b) to assist in the identification of systemic issues or trends that may be addressed in order to improve the quality and safety of the provision of health services.

48H Confidentiality of reports under section 48G

S. 48H inserted by No. 4/2022 s. 13.

(1) This section applies to a person who is or has been the recipient of a report referred to in section 48G.

(2) A person must not disclose to any other person a report referred to in section 48G unless the Secretary considers that the disclosure is in the public interest.

(3) Subsection (2) has effect despite anything to the contrary in section 40 of the **Audit Act 1994**.

(4) The **Freedom of Information Act 1982** does not apply to a report referred to in section 48G.

(5) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a report referred to in section 48G.

(6) Nothing in this section prevents a person from including information in any document that does not contain any particulars which would be likely to lead to the identification of a person from whom the information was obtained or to whom the information relates.

(7) A person must not, and cannot, be required to produce before any court or tribunal or any board, agency or other person a report referred to in section 48G unless the Secretary considers that the production is in the public interest.

Part 5—General powers

Division 1—State Public Health and Wellbeing Plan

49 Minister to ensure preparation of State Public Health and Wellbeing Plan

(1) The Minister must ensure that a State Public Health and Wellbeing Plan is prepared—

(a) no later than 1 September 2011; and

(b) thereafter no later than 1 September in every fourth year.

(2) A State Public Health and Wellbeing Plan must—

(a) identify the public health and wellbeing needs of the people of the State;

(b) include an examination of data relating to health status and health determinants within the State;

(c) establish objectives and policy priorities for—

(i) the promotion and protection of public health and wellbeing in the State;

(ii) the development and delivery of public health interventions in the State;

(d) identify how to achieve the objectives and policy priorities referred to in paragraph (c) based on available evidence;

(e) specify how the State is to work with other bodies undertaking public health initiatives, projects and programs to achieve the objectives and policy priorities referred to in paragraph (c).

Division 2—Public inquiries

50 Public inquiry

(1) The Secretary may conduct a public inquiry in respect of any matter which the Secretary considers is a serious public health matter.

(2) The Minister may direct in writing the Secretary to conduct a public inquiry in respect of any matter which the Minister considers is a serious public health matter and is specified in the direction.

(3) The Secretary may appoint in writing a person or panel of persons to conduct a public inquiry and report to the Secretary.

(4) A person appointed under subsection (3) or who is a member of a panel of persons appointed under subsection (3) must be a person who in the opinion of the Secretary has the special knowledge or skills required to conduct the public inquiry.

(5) The Secretary must publish a notice in the Government Gazette specifying—

(a) the terms of reference of the public inquiry;

(b) information relating to the conduct of the public inquiry;

(c) timelines relating to the public inquiry.

(6) If there is a change to any of the matters referred to in subsection (5) in relation to a public inquiry and as specified in a notice published by the Secretary in the Government Gazette under that subsection, the Secretary must, within one month after the day the change is made, publish a subsequent notice in the Government Gazette specifying the change.

51 Conduct of public inquiry

(1) In conducting a public inquiry—

(a) subject to any regulations, the procedure is in the discretion of the Convenor;

(b) the Convenor may proceed with as little formality and technicality and with as much expedition as the requirements of this Act and a proper investigation of the matter permit;

(c) the Convenor may determine whether or not to hold any hearings and whether or not any hearings are to be open to the public;

(d) the Convenor is not bound by the rules of evidence and may be informed of any matter in any manner the Convenor considers appropriate;

(e) the Convenor—

S. 51(1)(e)(i) amended by No. 17/2014 s. 160(Sch. 2 item 79).

(i) must allow a person affected by a public inquiry to be represented by an Australian lawyer;

(ii) may allow or refuse to allow any person to be represented by another person;

(f) the Convenor is bound by the rules of natural justice.

S. 51(2) amended by Nos 69/2009 s. 54(Sch. Pt 2 item 40), 67/2014 s. 147(Sch. 2 item 30).

(2) Sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, apply to a public inquiry and the report of the public inquiry as if the Convenor were a board appointed by the Governor in Council.

(3) A person who is required to appear as a witness at a public inquiry is entitled to reasonable witness expenses as determined by the Convenor.

(4) A person must not give information which he or she knows is false or misleading to the Convenor.

Penalty: 60 penalty units.

(5) A person must not intentionally hinder or obstruct the conduct of a public inquiry.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(6) In this section, ***Convenor*** means the Secretary or the person or panel of persons appointed by the Secretary to conduct the public inquiry.

52 Report of public inquiry

(1) If the Convenor under section 51 is not the Secretary, the Convenor must provide the report of the public inquiry to the Secretary.

(2) The Secretary must publish the report of a public inquiry within the period of 3 months after the public inquiry is concluded.

Division 3—Health Impact Assessments

53 Health Impact Assessment

(1) The Minister may, by a direction in writing, require the Secretary or the Chief Health Officer to conduct a Health Impact Assessment of the public health and wellbeing impact of a matter specified in the direction.

(2) A direction under subsection (1) may specify the period within which the Health Impact Assessment is to be completed.

Division 4—Collection and disclosure of information

54 Application of Division

This Division—

(a) applies in addition to any specific provisions relating to the provision, collection, use or disclosure of information in this Act or the regulations; and

S. 54(b) amended by No. 53/2021 s. 11.

(b) prevails to the extent of any inconsistency with a provision of a kind referred to in paragraph (a) other than Divisions 7 and 8 of Part 8A (which deals with contact tracing information).

55 Disclosure of information to specified persons

A person is authorised to disclose information to the Secretary, the Chief Health Officer or an authorised officer of the Department if the person reasonably believes that the disclosure is necessary to assist the Secretary, the Chief Health Officer or the authorised officer to exercise a power, or perform a duty or function, under this Act or the regulations.

Note

See section 227.

56 Secretary may disclose information in certain circumstances to a relevant body

(1) If this section applies, the Secretary may disclose any information held by the Secretary under, or for the purposes of, this Act or the regulations to a relevant body.

(2) This section applies if the disclosure of the information to the relevant body—

(a) is required or allowed under an agreement between the Secretary and the relevant body, notice of which agreement is published in the Government Gazette; and

(b) is for the purpose of promoting or protecting public health.

(3) In this section, ***relevant body*** means—

(a) the Commonwealth;

(b) another State;

(c) a Territory;

(d) a Government Department of the Commonwealth, another State or a Territory;

(e) an entity established for a public purpose under an Act of the Commonwealth, another State or a Territory;

(f) a body (including an international body) which is prescribed for the purposes of this section;

(g) the holder of a statutory office under an Act of the Commonwealth, another State or a Territory.

57 Disclosure of information to other administrators

(1) The Secretary or the Chief Health Officer may disclose any information held by the Secretary or the Chief Health Officer under, or for the purposes of, this Act or the regulations to a Council if the Secretary or the Chief Health Officer considers that the disclosure would assist the Council to perform its duties or functions or exercise its powers under this Act or the regulations.

(2) A Council may disclose any information that it holds under, or for the purposes of, this Act or the regulations to the Secretary, the Chief Health Officer or another Council if the Council considers that the disclosure would assist the Secretary, the Chief Health Officer or the Council to perform their duties or functions or exercise their powers under this Act or the regulations.

(3) The Secretary or the Chief Health Officer may disclose any information held by the Secretary or the Chief Health Officer under, or for the purposes of, Part 6 or 7 or the regulations made for the purposes of those Parts to a Government Department, statutory body or other person responsible for administering another Act or regulations made under that Act if the Secretary or the Chief Health Officer considers that the disclosure would assist that Government Department, statutory body or other person to perform their duties or functions or exercise their powers under that Act or the regulations made under that Act.

(4) A Council may disclose any information that it holds under, or for the purposes of, Part 6 or the regulations made for the purposes of that Part to a Government Department, statutory body or other person responsible for administering another Act or regulations made under that Act if the Council considers that the disclosure would assist that Government Department, statutory body or other person to perform their duties or functions or exercise their powers under that Act or the regulations made under that Act.

Part 6—Regulatory provisions administered by Councils

Division 1—Nuisances

58 Application of Division

(1) This Division applies to nuisances which are, or are liable to be, dangerous to health or offensive.

(2) Without limiting the generality of subsection (1), this Division applies in particular to nuisances arising from or constituted by any—

(a) premises; or

(b) water; or

(c) animal, including a bird or insect, capable of carrying a disease transmissible to human beings; or

(d) refuse; or

(e) noise or emission, other than a noise or emission referred to in subsection (2A); or

S. 58(2)(e) amended by No. 2/2021 s. 4(1).

(f) state, condition or activity; or

(g) other matter or thing—

which is, or is liable to be, dangerous to health or offensive.

(2A) This Division does not apply to nuisances arising from or constituted by any noise or emission from a wind turbine at a wind energy facility.

S. 58(2A) inserted by No. 2/2021 s. 4(2).

(3) For the purpose of determining whether a nuisance arising from or constituted by any matter or thing referred to in subsection (2) is, or is liable to be, dangerous to health or offensive—

(a) regard must not be had to the number of persons affected or that may be affected; and

(b) regard may be had to the degree of offensiveness.

S. 58(4) substituted by No. 2/2021 s. 4(3).

(4) In this section—

offensive means noxious or injurious to personal comfort;

wind energy facility means land used to generate electricity by wind force, including land used for any turbine, building or other structure, anemometer or other thing used in or in connection with the generation of electricity by wind force, other than turbines principally used to supply electricity for domestic or rural use of land.

59 Effect of Division

(1) This Division does not render lawful any act, matter or thing which but for this Act would be a nuisance.

(2) This Division is in addition to, and does not prejudice, abridge or otherwise affect any right, remedy or proceeding under any other provision of this Act, or under any other Act, or at common law.

60 Duty of Council

A Council has a duty to remedy as far as is reasonably possible all nuisances existing in its municipal district.

61 Offence of causing a nuisance

(1) A person must not—

(a) cause a nuisance; or

(b) knowingly allow or suffer a nuisance to exist on, or emanate from, any land owned or occupied by that person.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) A person is not guilty of an offence under subsection (1)(b) if the person had a lawful excuse for knowingly allowing or suffering a nuisance to exist on, or emanate from, any land owned or occupied by that person.

62 Notification of nuisance

(1) If a person believes that a nuisance exists, that person may notify the Council in whose municipal district the alleged nuisance exists.

(2) The Council must investigate any notice of a nuisance.

(3) If, upon investigation, a nuisance is found to exist, the Council must—

(a) take any action specified in subsection (4) that the Council considers appropriate; or

(b) if the Council is of the opinion that the matter is better settled privately, advise the person notifying the Council of the nuisance of any available methods for settling the matter privately.

(4) For the purposes of subsection (3)(a), the Council may—

(a) if section 66 applies, exercise the powers conferred by that section;

(b) issue an improvement notice or a prohibition notice;

(c) bring proceedings under section 219(2) for an offence against this Act.

Note

See section 197 in relation to the power of a Council to bring proceedings after it has issued an improvement notice or a prohibition notice in respect of a nuisance.

63 Failure of Council to investigate complaint

(1) If the Council does not, within a reasonable time of being notified of an alleged nuisance, investigate the subject matter of the notification, the person who notified the Council may make a complaint to the Magistrates' Court of the existence of the alleged nuisance.

(2) If the Magistrates' Court receives a complaint under subsection (1), the Magistrates' Court may—

(a) summon the person alleged to be contravening section 61 to appear before the Magistrates' Court; and

(b) proceed as if the complaint had been made by a Council under section 197(2).

(3) If the Magistrates' Court is satisfied that the person making a complaint under this section had reasonable grounds for doing so, the Magistrates' Court may order the Council to pay any costs and expenses incurred by that person.

(4) The Magistrates' Court must not order a Council to pay any costs or expenses under subsection (3) unless the Magistrates' Court first gives the Council or its representative an opportunity to be heard.

(5) If the Magistrates' Court is satisfied that a complaint under this section is vexatious or frivolous, the Magistrates' Court may order the person making the complaint to pay the costs and expenses incurred by the person who has answered the complaint.

64 Who can institute proceedings?

Proceedings for an offence against section 61 can only be instituted by the Council of a municipal district in which the nuisance in respect of which the proceedings are to be brought exists wholly or partly.

65 Power of Council to investigate nuisance outside its municipal district

S. 65 (Heading) amended by No. 22/2019 s. 7(3).

A Council may investigate a nuisance which exists outside its municipal district if that nuisance affects the Council's municipal district.

66 Nuisance on unoccupied land or occupied land—occupier and owner unknown or cannot be found

(1) This section applies if a nuisance exists on, or emanates from—

(a) unoccupied land, the owner of which is unknown or cannot be found; or

(b) occupied land, the occupier and owner of which are unknown or cannot be found.

(2) If this section applies, the Council, in whose municipal district the land is wholly or partly located, may—

(a) enter and take steps to abate the nuisance; and

(b) do all things necessary for that abatement.

(3) If a Council is abating a nuisance under subsection (2), another Council is not competent under this Division to abate that nuisance.

(4) Any reasonable costs incurred under subsection (2) are a debt payable to the Council by the owner of the land and—

(a) are until recovered a charge on the relevant land; and

(b) may at any time be recovered by the Council in a court of competent jurisdiction—

(i) from the owner of the relevant land for the time being; or

(ii) after demand from the occupier of the relevant land for the time being, from the rent, to the extent of the amount of rent due, at the time of demand, from the occupier to the owner.

(5) For the purposes of subsection (4), ***reasonable costs*** means—

(a) the costs and expenses of taking the actions necessary to abate the nuisance; and

(b) all other costs and expenses lawfully incurred by the Council in respect of any land or any premises on the land whether or not any judgment or order has been obtained; and

(c) interest at the percentage rate per annum fixed in accordance with section 2 of the **Penalty Interest Rates Act 1983**.

Division 2—Registration of prescribed accommodation

67 Registration of prescribed accommodation

S. 67 amended by Nos 11/2015 s. 4, 15/2022 s. 5.

The proprietor of prescribed accommodation, other than lower risk prescribed accommodation, must, in accordance with Division 4, register, on a periodic basis, that accommodation with the Council in whose municipal district the prescribed accommodation is located.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

67A Registration of lower risk prescribed accommodation

S. 67A inserted by No. 15/2022 s. 6.

The proprietor of lower risk prescribed accommodation, in accordance with Division 4, must register, on an ongoing basis, that accommodation with the Council in whose municipal district the lower risk prescribed accommodation is located.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Division 3—Registration of certain businesses

68 Application of Division

This Division applies in respect of a person conducting a—

(a) business of beauty therapy;

(ab) business of applying cosmetics that does not involve skin penetration or tattooing;

S. 68(ab) inserted by No. 11/2015 s. 5.

(b) business involving colonic irrigation;

(c) business of hairdressing;

(d) business involving skin penetration;

(e) business involving tattooing;

(f) business that poses a risk to public health and is a business of a class of business prescribed for the purposes of this section.

S. 69 (Heading) amended by No. 11/2015 s. 6(1).

69 Registration of premises—higher risk services

S. 69(1) amended by No. 11/2015 s. 6(2).

(1) Unless subsection (2) or (3) applies, a person conducting a business referred to in section 68 must, in accordance with Division 4, register, on a periodic basis, any premises upon which that person conducts that business with the Council in whose municipal district the premises are located.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) Subsection (1) does not apply if the person is conducting a business specified in section 68 in the course of a business which is prescribed as an exempt business or which is a business of a class of business prescribed to be exempt for the purposes of this section.

S. 69(3) inserted by No. 11/2015 s. 6(3).

(3) Subsection (1) does not apply in relation to premises—

(a) at which the person—

(i) conducts a business referred to in section 68(ab) or (c); and

(ii) does not conduct any other business referred to in section 68; and

(b) in respect of which the person holds a registration issued, transferred or renewed on an ongoing basis.

69A Registration of premises—lower risk services

S. 69A inserted by No. 11/2015 s. 7.

(1) Subject to subsection (2), a person conducting a business referred to in section 68(ab) or (c) may, in accordance with Division 4, register, on an ongoing basis, any premises upon which that person conducts that business with the Council in whose municipal district the premises are located.

(2) Subsection (1) does not apply if the person also conducts any other business referred to in section 68 at the premises.

Division 4—General provisions relating to registration

70 Application of Division

This Division applies in respect of the registration of—

(a) prescribed accommodation required to be registered under Division 2;

(b) premises required to be registered under Division 3.

71 Application for registration

S. 71 amended by No. 11/2015 s. 8(1).

An application for the issue, transfer or renewal of a registration must be made to the Council—

(a) in the form approved by the Council;

(b) containing any information in respect of the prescribed accommodation or the premises required by the Council;

S. 71(ba) inserted by No. 11/2015 s. 8(2).

(ba) if the application is for the issue, transfer or renewal of the registration of premises required to be registered under Division 3—

(i) indicating each class of business referred to in section 68 that is conducted by the applicant at the premises; and

(ii) stating whether the registration is to be issued, transferred or renewed on a periodic or ongoing basis;

(c) containing the prescribed particulars;

S. 71(ca) inserted by No. 56/2012 s. 19.

(ca) containing the following information if the application relates to registration of a rooming house—

(i) if the applicant is a body corporate, its ABN or ACN;

(ii) if the applicant is an individual, the applicant's ABN or his or her date of birth;

S. 71(d) amended by No. 11/2015 s. 8(3).

(d) together with the relevant fee for the issue, transfer or renewal of the registration.

72 Registration fees

(1) The fees payable in respect of the issue, transfer or renewal of a registration are—

(a) if this Division applies in a municipal district, the fees as determined by a resolution of the Council of that municipal district; or

(b) if the application for the issue, transfer or renewal of a registration is being dealt with by the Secretary under an Order in Council made under section 12, the prescribed fees;

(c) if the application for the issue, transfer or renewal of a registration is being dealt with by a Council under a delegation from the Secretary under an Order in Council made under section 12, the fees as determined by a resolution of the Council;

(d) if the application for the issue, transfer or renewal of a registration is being dealt with a person (other than a Council) under a delegation from the Secretary under an Order in Council made under section 12, the prescribed fees.

(2) The fees determined by a Council under subsection (1)(a) or (1)(c)—

(a) may vary according, among other things, to the following—

(i) the size or nature of the prescribed accommodation or the premises;

(ii) when an application for the issue, transfer or renewal of a registration is received; and

(b) if a maximum amount is fixed in respect of a specified fee or class of fees by Order in Council, must not exceed the relevant amount.

73 Powers of the Council

(1) Before considering an application under section 71, the Council may—

(a) give the applicant a notice requiring the applicant to provide the information specified in the notice;

(b) inspect the prescribed accommodation or the premises;

S. 73(1)(c) amended by No. 56/2012 s. 20.

(c) require that alterations or improvements be made to the prescribed accommodation or the premises so the prescribed accommodation or the premises comply with this Act or the regulations or any applicable regulations made under Division 8 of Part 3 of the **Residential Tenancies Act 1997**.

(2) The Council may issue, transfer or renew a registration subject to the condition that a requirement under subsection (1)(c) is complied with within the period specified by the Council.

S. 73A inserted by No. 56/2012 s. 21.

73A Information to be provided for Rooming House Register

(1) For the purposes of Division 9 of Part 3 of the **Residential Tenancies Act 1997**, a Council—

(a) must enter in the Rooming House Register any information required under Division 9 of Part 3 of that Act in relation to a rooming house—

(i) that is registered under this Division; or

(ii) for which registration is cancelled or refused to be renewed; and

(b) may enter in the Rooming House Register any information specified in section 142F(3) of that Act for each rooming house located in the Council's municipal district for which registration has been refused to be issued under this Division.

(2) In this section, ***Rooming House Register*** means the Rooming House Register within the meaning of section 3(1) of the **Residential Tenancies Act 1997**.

74 Provisions applying in respect of registration

S. 74 amended by No. 11/2015 s. 9(3) (ILA s. 39B(1)).

(1) A registration must be issued, transferred or renewed by the Council—

(a) in accordance with this Act and the regulations;

(b) in the form of a certificate of registration approved by the Council;

(c) only in respect of the prescribed accommodation or the premises specified in the registration;

(d) subject to subsection (2), for such period as is determined by the Council being a period not greater than 3 years and which period must be specified in the registration;

S. 74(1)(d) amended by No. 11/2015 s. 9(1).

(e) subject to subsection (2), unless sooner cancelled or suspended, to remain in force until the day specified in the registration for the expiration of that registration.

S. 74(1)(e) amended by No. 11/2015 s. 9(2).

(2) Subsection (1)(d) and (e) do not apply in relation to a registration that is issued, transferred or renewed on an ongoing basis.

S. 74(2) inserted by No. 11/2015 s. 9(3).

(3) A registration may be issued, transferred or renewed on an ongoing basis in respect of premises required to be registered under Division 3 if, in accordance with section 71(ba), the application—

S. 74(3) inserted by No. 11/2015 s. 9(3).

(a) does not indicate that a business referred to in section 68(a), (b), (d), (e) or (f) is to be conducted at the premises; and

(b) states that the registration is to be issued, transferred or renewed on an ongoing basis.

S. 74(3A) inserted by No. 15/2022 s. 7.

(3A) In addition to subsection (3), a registration may be issued, transferred or renewed on an ongoing basis in respect of lower risk prescribed accommodation.

S. 74(4) inserted by No. 11/2015 s. 9(3).

(4) A registration that is issued, transferred or renewed on an ongoing basis remains in force until it is cancelled or suspended.

75 Registration subject to conditions

(1) The following are the conditions to which a registration is subject—

(a) any condition imposed on the registration by the Council under section 73(2);

(b) any condition imposed on the registration holder by this Act or the regulations;

(c) any prescribed conditions which apply to a registration or a registration of that class.

(2) A registration holder must comply with the conditions to which the registration is subject.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

76 Powers of a Council in respect of registration

(1) A Council may—

(a) refuse to issue;

(b) issue subject to a condition imposed on the registration by the Council under section 73(2);

(c) vary;

(d) cancel;

(e) suspend;

(f) refuse to transfer;

(g) transfer subject to a condition imposed on the registration by the Council under section 73(2);

(h) refuse to renew;

(i) renew subject to a condition imposed on the registration by the Council under section 73(2)—

a registration on any of the grounds specified in subsection (2).

(2) The grounds are—

(a) the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any requirement of this Act or the regulations that is applicable;

(ab) if the application relates to registration of a rooming house, the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any applicable regulations made under Division 8 of Part 3 of the **Residential Tenancies Act 1997**;

S. 76(2)(ab) inserted by No. 56/2012 s. 22.

(ac) in the case of prescribed accommodation that is registered as lower risk prescribed accommodation, if that accommodation is no longer lower risk prescribed accommodation;

S. 76(2)(ac) inserted by No. 15/2022 s. 8.

(b) the registration holder has failed to comply with any condition to which the registration is subject;

(c) the applicant has ceased to provide prescribed accommodation or conduct the business in respect of which registration is required;

(d) there is a risk to the health of persons if the registration is not cancelled or suspended or is issued, transferred or renewed;

(e) any other ground which is prescribed for the purposes of this section.

(3) If a Council makes a decision under this section, it must notify the applicant or registration holder in writing of the decision and ground or grounds on which the decision is based.

S. 77 amended by No. 9/2020 s. 390(Sch. 1 item 82.6).

77 Council's delegation of power to refuse applications

Despite section 11 of the **Local Government Act 2020**, the exercise by a delegate of a Council's power to refuse an application under this Division is valid only if the Council later ratifies that refusal.

78 Issue of replacement certificate

The Council may issue a replacement certificate of registration or renewal of registration to a holder who satisfies the Council that the original certificate of registration or renewal of registration has been lost, stolen or destroyed.

S. 78A inserted by No. 38/2020 s. 54.

78A Registration of premises may be recorded in online portal

(1) A Council may accept applications for the issue, transfer or renewal of registrations in the online portal if the prescribed accommodation required to be registered under Division 2 or premises required to be registered under Division 3 is located in the municipal district of the Council.

(2) If a Council uses the online portal for the issue, transfer or renewal of registrations, the Council must pay the charge declared by the Secretary under section 78B for use of the portal.

78B Online portal charge

S. 78B inserted by No. 38/2020 s. 54.

(1) The Secretary may set and declare, by notice published in the Government Gazette, the charge to be paid by a Council in respect of the online portal, in accordance with the methodology specified in the notice for use of the portal by the Council.

(2) Without limiting the methodology by which a charge may be set, the methodology may provide for all or any of the following—

(a) that the charge is payable by a Council using the portal in the period or periods specified in the notice;

(b) that different payment arrangements may be specified in the notice in respect of each Council including that the charge be paid in instalments;

(c) that different charges may be specified for each Council based on the use of the portal by the Council having regard to—

(i) the number of applications for the issue, transfer or renewal of registrations received in the online portal by Council during the period specified in the notice; and

(ii) the cost of administering and maintaining the portal; and

(iii) any other information relevant to the use of the portal by Council.

Part 7—Regulatory provisions administered by the Secretary

Division 1—Cooling tower systems

79 When is a cooling tower system in operation?

(1) Once a cooling tower system starts operation (whether initially, or after being recommissioned), then, for the purposes of this Division, the cooling tower system remains in operation until—

(a) it is decommissioned or removed; and

(b) the Secretary has been notified in accordance with section 88 that it has been decommissioned or removed.

(2) For the purposes of this Division, a cooling tower system is in operation even if the only purpose for which it is in operation is to enable the conducting of tests associated with the installation or commissioning or re-commissioning of the cooling tower system.

80 Cooling tower system must be registered

The owner of any land on which there is a cooling tower system must ensure that the cooling tower system is registered with the Secretary at all times that the cooling tower system is in operation.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

81 Applications for registration or renewal of registration

(1) An application to register, or to renew the registration of, a cooling tower system may be made to the Secretary by—

(a) the owner of the land on which the cooling tower system is located;

(b) the owner of the cooling tower system;

(c) an agent, employee or other person acting on behalf of the person referred to in paragraph (a) or (b).

(2) The application must—

(a) be submitted in the approved form; and

(b) include—

(i) any information required by the Secretary that relates to the registration; and

(ii) the relevant prescribed fee.

82 Powers of the Secretary

Before considering an application under section 81, the Secretary may give the applicant a notice requiring the applicant to provide the information specified in the notice.

83 Processing of applications

The Secretary must give the owner of the land on which the cooling tower system is located a certificate of registration, or renewal of registration, for the cooling tower system that states the date—

(a) on which the registration or renewal occurred; and

(b) when the registration will expire.

84 Multiple cooling tower systems

(1) The owner of land on which there are 2 or more cooling tower systems or an agent, employee or other person acting on behalf of that owner may submit one application for registration or renewal of registration in respect of the cooling tower systems which gives details of each cooling tower system.

(2) An agent, employee or other person acting on behalf of the owner of 2 or more cooling tower systems on any land may submit one application for registration or renewal of registration in respect of the cooling tower systems which gives details of each cooling tower system.

(3) An agent or other person acting on behalf of all of the owners of the cooling tower systems on any land may submit one application for registration or renewal of registration in respect of the cooling tower systems which gives details of each cooling tower system.

85 Period of registration

(1) The initial registration of a cooling tower system expires on the date specified in the certificate of registration, being a date not more than 3 years after the date on which the registration was first made.

(2) The renewal of registration of a cooling tower system expires on the date specified in the certificate of renewal of registration, being a date not more than 3 years after the date on which the registration was last renewed.

(3) Despite subsection (2), if an application for the renewal of a registration is received by the Secretary within 60 days after the registration expired, the renewal of registration expires on the date specified in the certificate of renewal of

registration, being a date not more than 3 years after the date on which the registration expired.

(4) In the circumstances specified in subsection (3)—

(a) the granting of the certificate of renewal of registration does not affect the unregistered status of the cooling tower system between the expiry of the previous registration and the granting of the certificate; and

(b) the full prescribed fee for the renewal of registration must still be paid calculated from the day after the day on which the registration expired.

86 Registration to continue pending renewal

(1) This section applies if the Secretary receives an application under section 81 for the renewal of the registration of a cooling tower system before the registration is due to expire.

(2) Despite anything to the contrary in this Division, the registration is deemed to continue until a certificate of the renewal of the registration is issued.

(3) If a certificate of the renewal of registration is issued, the registration is deemed to have been renewed on the day after the day on which it would have expired had it not been renewed.

87 Secretary to be notified of certain changes

(1) This section applies if there is a change in—

(a) the ownership of any land on which there is a cooling tower system; or

(b) the address or other contact details of the owner.

(2) Within 30 days after the date of the change in the ownership or in the address or other contact details, the owner of the land must notify the Secretary in writing of the change.

Penalty: In the case of a natural person, 10 penalty units;

In the case of a body corporate, 50 penalty units.

88 Secretary to be notified of other changes

(1) A person who holds a certificate of registration in respect of a cooling tower system must notify the Secretary within 30 days after—

(a) the addition or removal of a cooling tower to, or from, the cooling tower system;

(b) the removal, or decommissioning, of the cooling tower system;

(c) the relocation of the cooling tower system on the lot of land on which it stands.

Penalty: In the case of a natural person, 10 penalty units;

In the case of a body corporate, 50 penalty units.

(2) A notification under subsection (1) must—

(a) be made in the form and manner approved by the Secretary; and

(b) contain the prescribed details.

89 Cooling tower system register

(1) The Secretary must keep a register containing details of the location of each registered cooling tower system.

(2) The Secretary must ensure that the register is available for inspection by any person wishing to inspect the register during the Department's normal office hours.

90 Issue of replacement certificate

The Secretary may issue a replacement certificate of registration or renewal of registration to a holder who satisfies the Secretary that the original certificate of registration or renewal of registration has been lost, stolen or destroyed.

91 Owner must ensure risk management plan prepared

(1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that a risk management plan exists in respect of the cooling tower system at all times that the cooling tower system is in operation.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) The risk management plan must—

(a) address the risks prescribed in respect of cooling tower systems and set out the steps to be taken to manage the risks;

(b) set out the steps to be taken to ensure compliance with any risk management requirements relating to the cooling tower system;

(c) include any other matters prescribed for the purposes of this section;

(d) be in the approved form.

92 Owner must ensure risk management plan reviewed

(1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that the risk management plan is reviewed, and, if necessary, updated, at least once in each 12 month period.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) The owner of the land must also take all reasonable steps to ensure that the risk management plan is reviewed, and if necessary updated, if—

(a) legionella is detected in the cooling tower system on 2 or more occasions in any period of 12 months; or

(b) the owner of the land is given written advice by the Secretary that a case of legionnaires' disease is associated with the cooling tower system; or

(c) the owner of the land receives a report from the Secretary or from any person engaged by the owner of the land or the owner of the cooling tower system that control measures used in respect of the cooling tower system are inadequate or require improvement; or

(d) there is a significant change in—

(i) any of the environmental conditions under which the cooling tower system operates; or

(ii) the operation of the cooling tower system; or

(e) the owner of the land receives an audit certificate that states that the risk management plan does not address the prescribed risks.

(3) The owner of the land must comply with subsection (2) as soon as is practicable after the occurrence of the relevant triggering event.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

93 Owner must ensure risk management plan audit conducted

(1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that an audit is conducted annually in relation to the risk management plan prepared in respect of a cooling tower system.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) An owner of land is not excused from complying with this section merely because the carrying out of the audit can only be done at the owner's expense.

(3) The risk management plan audit must be conducted by an approved auditor for the purpose of determining whether the risk management plan—

(a) complied with section 91(2) throughout the period in respect of which the audit is undertaken; and

(b) has been implemented during that period; and

(c) has been reviewed within the 12 months immediately before the audit.

(4) In conducting the audit, the approved auditor must inspect all the documents relating to the cooling tower system that are prescribed for the purposes of this section.

(5) The approved auditor is not required to—

(a) determine whether the risk management plan has, in fact, adequately controlled the risks associated with the use of a cooling tower system; or

(b) inspect the cooling tower system.

(6) After conducting the audit, the approved auditor must give the person who commissioned the audit a certificate stating the auditor's opinion on whether the risk management plan—

(a) complied with section 91(2) throughout the period in respect of which the audit is undertaken; and

(b) has been implemented during that period; and

(c) has been reviewed within the 12 months immediately before the audit.

(7) The certificate must—

(a) be in the approved form; and

(b) contain any information required by the Secretary.

(8) The approved auditor must give the Secretary a copy of the information in the audit certificate within 7 days after completing the certificate.

Penalty: 10 penalty units.

94 Certification of approved auditors

(1) The Secretary may certify in writing that a natural person is—

(a) competent to conduct a risk management plan audit; and

(b) an approved auditor for the purposes of this Act.

(2) In certifying a person as an approved auditor, the Secretary may—

(a) impose any conditions on the certification that the Secretary considers to be appropriate; and

(b) specify for how long the certificate remains current.

(3) If any fee is prescribed in relation to a certification, the Secretary must not certify a person until the person has paid the fee.

(4) An approved auditor must comply with any condition imposed on the certification by the Secretary under subsection (2)(a).

Penalty: 60 penalty units.

(5) The Secretary may, after giving a person an opportunity to be heard, revoke that person's certification as an approved auditor if the Secretary is satisfied that—

(a) the certification was granted on the basis of fraud, misrepresentation or the concealment of facts; or

(b) the person is not a suitable person to be an approved auditor; or

(c) the person has failed to comply with any requirement imposed by this Act or the regulations on approved auditors; or

(d) the person has unsatisfactorily carried out 2 or more risk management plan audits; or

(e) any other ground which is prescribed for the purposes of this section applies.

95 Only approved auditors may conduct audits

A person must not conduct a risk management plan audit unless he or she is an approved auditor.

Penalty: 60 penalty units.

96 Offence to impersonate approved auditor

A person who is not an approved auditor must not—

(a) use or take the title "approved auditor" in relation to the conduct of a risk management plan audit; or

(b) directly or indirectly represent that he or she is approved or authorised to conduct a risk management plan audit.

Penalty: 60 penalty units.

97 Conflict of interest to be avoided

(1) A person must not conduct a risk management plan audit of the risk management plan of a cooling tower system if the person is an interested person or is an employee or officer of an interested person.

Penalty: 60 penalty units.

(2) A person must not conduct a risk management plan audit of a risk management plan as an employee of another person if any other employee of that other person has written, or assisted in preparing, that risk management plan.

Penalty: 60 penalty units.

(3) In this section, ***interested person***, in relation to a cooling tower system, means—

(a) the owner of the land on which the cooling tower system stands;

(b) the owner of the cooling tower system;

(c) a person who was involved in the construction or installation of the cooling tower system;

(d) a person who was involved in the maintenance or testing of the cooling tower system during the period covered by an audit;

(e) a person who has written, or has assisted in the writing of, a risk management plan for the cooling tower system;

(f) a person who has reviewed, or has assisted in the reviewing of, the risk management plan for the cooling tower system.

98 Secretary may declare optional variations

(1) The Secretary may by notice in writing declare optional variations to risk management requirements in respect of a particular cooling tower system or a class of cooling tower systems if the Secretary is satisfied that the variation would not result in a higher health risk.

(2) If a notice under subsection (1) applies to a class of cooling tower systems, the Secretary must publish a copy of the notice in the Government Gazette.

(3) If the owner of a cooling tower system in respect of which a declaration under subsection (1) applies—

(a) elects in writing to the Secretary to implement the variations to the risk management requirements which would otherwise apply in respect of the cooling tower system; and

(b) complies with the risk management requirements as varied—

the owner is to be taken to have complied with the risk management requirements under this Act or the regulations that would otherwise have applied.

Division 2—Pest control

99 Use of certain pesticides prohibited

Subject to section 100, a natural person must not, in the course of the business of a pest control operator, use any pesticide or class of pesticides unless the person holds a pest control licence as an authorised user of that pesticide or class of pesticides.

Penalty: 120 penalty units.

100 Exemption

Section 99 does not apply if the use of the pesticide is for the purposes of—

(a) horticulture; or

(b) agriculture; or

(c) water treatment; or

(d) weed control; or

(e) controlling a pest animal within the meaning of the **Catchment and Land Protection Act 1994** to protect an area or place which is not—

(i) a building used for commercial purposes; or

(ii) domestic premises or privately owned land adjacent to domestic premises.

101 Issue or renewal of pest control licences

(1) A person may apply to the Secretary in the approved form for the issue or renewal of a pest control licence to use a pesticide or class of pesticide in the course of a business of a pest control operator.

(2) The Secretary must not grant an application for the issue or renewal of a pest control licence unless the person applying for the issue or renewal—

(a) is a natural person of at least 18 years of age; and

(b) satisfies the Secretary that the person has the prescribed qualifications; and

(c) has paid the relevant prescribed licence fee.

(3) Despite subsection (2), the Secretary may grant an application for the issue or renewal of a pest control licence to a natural person who—

(a) is at least 16 years of age; and

(b) satisfies the Secretary that the person is—

(i) enrolled in a prescribed course of training; or

(ii) undertaking training in the prescribed units of competency; and

(c) has paid the relevant prescribed licence fee.

(4) Unless satisfied that there are special circumstances for doing so, the Secretary must not grant an application under subsection (3) to a person more than 3 times.

(5) Subject to sections 102(3) and 102(4), an application for the renewal of a pest control licence may be made—

(a) before the expiry of the pest control licence; or

(b) within the period of 60 days after the pest control licence has expired.

102 Duration of pest control licence

(1) A pest control licence expires—

(a) in the case of a pest control licence issued under section 101(3), on the date specified in the pest control licence being a date not more than 12 months after the date on which the pest control licence is issued; and

(b) in any other case, on the date specified in the pest control licence being a date not more than 3 years after the date on which the pest control licence is issued.

(2) The renewal of a pest control licence expires—

(a) in the case of a pest control licence issued under section 101(3), on the date specified in the pest control licence being a date not more than 12 months after the date on which the pest control licence was last renewed; and

(b) in any other case, on the date specified in the pest control licence being a date not more than 3 years after the date on which the pest control licence was last renewed.

(3) Despite subsection (2)(a), if an application for the renewal of a pest control licence issued under section 101(3) is received by the Secretary within the period of 60 days after the pest control licence expired, the renewal of the pest control licence expires on the date specified in the pest control licence being a date not more than 12 months after the date on which the pest control licence expired.

(4) Despite subsection (2)(b), if an application for the renewal of a pest control licence issued under section 101(2) is received by the Secretary within the period of 60 days after the pest control licence expired, the renewal of the pest control licence expires on the date specified in the pest control licence being a date not more than 3 years after the date on which the pest control licence expired.

(5) In the circumstances specified in subsections (3) and (4)—

(a) the granting of the renewal of the pest control licence does not affect the unlicensed status of the person between the expiry of the pest control licence and the granting of the renewal; and

(b) the full prescribed fee for the renewal of the pest control licence must still be paid calculated from the day after which the pest control licence expired.

103 Conditions of pest control licence

(1) Without limiting subsection (2), a pest control licence is subject to the following conditions—

(a) the licence holder must comply with any obligation or limitation imposed on the licence holder by this Act or the regulations;

(b) the licence holder is only authorised to use the pesticide or classes of pesticides specified in the pest control licence;

(c) the licence holder must comply with any relevant obligations imposed by the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** and the **Occupational Health and Safety Act 2004**;

(d) if the pest control licence is granted under section 101(3), the licence holder may only use the pesticides or classes of pesticides entered on the pest control licence under the supervision of a person who holds a pest control licence as an authorised user of those pesticides or classes of pesticides under section 101(2).

(2) A pest control licence may also be issued or renewed subject to the following conditions—

(a) if the pest control licence so specifies, a condition that the specified pesticide or classes of pesticides may only be used for the specified uses;

(b) a condition permitting the use of a prescribed chemical product or a chemical product of a class that is prescribed within the meaning of section 30 of the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** for a purpose referred to in section 100;

(c) any other condition imposed by the Secretary.

(3) The Secretary can only issue or renew a licence subject to a condition referred to in subsection (2)(b) if the Secretary—

(a) is satisfied that the licence holder is competent to use the prescribed chemical product or chemical product of a class that is prescribed; and

(b) has consulted the Secretary to the Department of Primary Industries.

104 Application to vary pest control licence

A licence holder may apply to the Secretary in the approved form to vary or delete any condition, or other matter, relating to a pest control licence.

105 Powers of Secretary

(1) The Secretary, after giving the relevant person an opportunity to be heard, may—

(a) refuse to issue;

(b) issue subject to any conditions;

(c) vary;

(d) cancel;

(e) suspend;

(f) refuse to renew;

(g) renew subject to conditions—

a pest control licence on any of the grounds specified in subsection (2).

(2) The grounds are—

(a) the applicant or licence holder is not a suitable person to hold a pest control licence;

(b) the applicant or licence holder does not meet or comply with any requirement of this Act or the regulations that is applicable;

(c) the licence holder has failed to comply with any conditions to which the pest control licence is subject;

(d) there is a risk to the health of persons if the issue or renewal of a pest control licence is not refused, or the pest control licence is not cancelled or suspended, or the issue or renewal of the pest control licence is not subject to conditions;

(e) any other ground which is prescribed for the purposes of this section.

(3) The Secretary may on the application of a licence holder under section 104, vary or delete any condition, or other matter, relating to a pest control licence if the Secretary is satisfied that the variation or deletion would not make the pest control licence inconsistent with any requirement under this Act or the regulations.

(4) The Secretary must advise the applicant or holder of the pest control licence in writing of—

(a) any decision under this section; and

(b) the ground for that decision.

(5) If the Secretary decides to vary or delete a condition to which a pest control licence is subject, being a condition of the kind referred to in section 103(1)(b) or 103(2)(a), the Secretary—

(a) may require the holder of the licence to give his or her pest control licence to the Secretary; and

(b) must issue a revised pest control licence to the holder.

(6) A holder of the licence must comply with a requirement of the Secretary under subsection (5)(a).

Penalty: 10 penalty units.

106 Form of pest control licence

(1) If the Secretary grants an application for the issue or renewal of a pest control licence, the Secretary must provide the applicant with a licence—

(a) specifying—

(i) the name of the licence holder;

(ii) the date on which the licence was issued or renewed;

(iii) the date on which the licence will expire;

(iv) the pesticide or class of pesticide which the licence holder is authorised to use;

(v) if applicable, the uses that the licence holder is authorised to use the pesticide or class of pesticide for;

(b) containing a photograph of the licence holder.

(2) When providing an applicant with a licence under subsection (1), the Secretary must also advise the applicant in writing of the conditions to which the licence is subject.

107 Issue of replacement pest control licence

The Secretary may issue a replacement pest control licence to a holder who satisfies the Secretary that the holder's original or renewed pest control licence has been lost, stolen or destroyed.

108 Records

A pest control operator must keep records containing the prescribed details for the prescribed period.

Penalty: In the case of a natural person, 10 penalty units;

In the case of a body corporate, 50 penalty units.

109 Offences by holder of pest control licence or pest control operator

(1) The holder of a pest control licence must comply with the conditions of the pest control licence.

Penalty: 120 penalty units.

(2) A pest control operator must take all reasonable steps to ensure that persons employed in the course of the business of pest control operator by the pest control operator comply with the provisions of this Division and the regulations made for the purposes of this Division.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

110 Offence by person who is not the holder of a pest control licence

A natural person who is not the holder of a pest control licence must not, whether explicitly, implicitly, orally or in writing—

(a) claim to be the holder of a pest control licence; or

(b) hold themselves out as being qualified to use any pesticide in circumstances which require a person using the pesticide to be the holder of a pest control licence; or

(c) represent that they have used any pesticide in circumstances which would require a person using the pesticide to be the holder of a pest control licence.

Penalty: 60 penalty units.

Part 8—Management and control of infectious diseases, micro-organisms and medical conditions

Division 1—Principles applying to the management and control of infectious diseases

111 Principles

The following principles apply to the management and control of infectious diseases—

(a) the spread of an infectious disease should be prevented or minimised with the minimum restriction on the rights of any person;

(b) a person at risk of contracting an infectious disease should take all reasonable precautions to avoid contracting the infectious disease;

(c) a person who has, or suspects that they may have, an infectious disease should—

(i) ascertain whether he or she has an infectious disease and what precautions he or she should take to prevent any other person from contracting the infectious disease; and

(ii) take all reasonable steps to eliminate or reduce the risk of any other person contracting the infectious disease;

(d) a person who is at risk of contracting, has or suspects he or she may have, an infectious disease is entitled—

(i) to receive information about the infectious disease and any appropriate available treatment;

(ii) to have access to any appropriate available treatment.

Division 2—Examination and testing orders and public health orders

112 Least restrictive measure to be chosen

If in giving effect to this Division alternative measures are available which are equally effective in minimising the risk that a person poses to public health, the measure which is the least restrictive of the rights of the person should be chosen.

113 Chief Health Officer may make examination and testing order relating to infectious disease

(1) The Chief Health Officer may make an examination and testing order if the Chief Health Officer believes that—

(a) a person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is likely to contract the disease; and

(b) if infected with that infectious disease, the person is likely to transmit that disease; and

(c) if infected with that infectious disease, a serious risk to public health is constituted by—

(i) the infectious disease; or

(ii) the combination of the infectious disease and the likely behaviour of that person; and

(d) the making of an order under this section is necessary to ascertain either (or both) of the following—

S. 113(1)(d) substituted by No. 15/2022 s. 21(1).

(i) whether the person has the infectious disease;

(ii) the likelihood that a person with the infectious disease may transmit that disease; and

(e) a reasonable attempt has been made to provide that person with information relating to the effect of the infectious disease on the person's health and the risk posed to public health or it is not practicable to provide this information before making the order.

(2) An examination and testing order must—

(a) be in writing;

(b) identify the person to whom the order applies;

(c) specify the purpose of the order;

(d) specify the infectious disease which the Chief Health Officer believes the person has or has been exposed to;

(e) explain why the Chief Health Officer believes that the person is infected with the infectious disease or has been exposed to the infectious disease in circumstances where a person is likely to contract the infectious disease;

(f) explain that if the person does not comply with the order, the person commits an offence and is liable to a penalty not exceeding 60 penalty units.

(3) An examination and testing order may require the person to whom the order applies to comply with any of the following as specified in the order and subject to any conditions that the Chief Health Officer considers are appropriate—

(a) undergo one or more specified examinations by a specified registered medical practitioner within a specified period of time;

(b) undergo one or more specified tests by a specified registered medical practitioner within a specified period of time to ascertain whether the person has the infectious disease, or if the person is known to have an infectious disease, the likelihood of transmission of that disease;

S. 113(3)(b) amended by No. 15/2022 s. 21(2).

(c) if the person fails to undergo a specified examination or test, the person is to be detained, or detained in isolation, at a specified place for the specified period not exceeding 72 hours for the purpose of undergoing the specified examination or test.

114 Provisions applying to examination and testing orders

(1) An examination and testing order has effect from the time that it is served on the person to whom it applies.

(2) The Chief Health Officer must as soon as is reasonably practicable provide a copy of an examination and testing order to any registered medical practitioner specified in the examination and testing order.

(3) If a person is detained under an examination and testing order, the period of the detention commences when the person is in the physical custody of the person who is taking that person to the specified place of detention.

(4) If the Chief Health Officer ceases to believe that any of the matters specified in section 113(1) apply, the Chief Health Officer must—

(a) revoke the examination and testing order by a written notice of revocation;

(b) serve a copy of the notice of revocation on the person to whom the examination and testing order applied;

(c) provide a copy of the notice of revocation to any registered medical practitioner specified in the examination and testing order.

(5) The Chief Health Officer can only make a further examination and testing order under section 113(1) providing for a person to be detained if the Chief Health Officer is satisfied that since the person was last detained there has been a change in the person's health which constitutes a different serious risk to public health.

115 Registered medical practitioner must provide results

A registered medical practitioner who conducts an examination or test on a person in accordance with an examination and testing order must as soon as is reasonably practicable provide written results of the examination or test to—

(a) the Chief Health Officer; and

(b) the person on whom the examination or test was conducted.

Note

See section 227.

116 Person must comply with an examination and testing order

A person to whom an examination and testing order applies must comply with the examination and testing order.

Penalty: 60 penalty units.

117 Chief Health Officer may make public health order

(1) The Chief Health Officer may, after having regard to the factors specified in subsection (2), make a public health order if the Chief Health Officer believes that—

(a) a person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is likely to contract the disease; and

(b) if a person is infected with that infectious disease, a serious risk to public health is constituted by—

(i) the infectious disease; or

(ii) the combination of the infectious disease and the likely behaviour of that person; and

(c) if infected with that infectious disease, the person needs to take particular action or refrain from taking particular action to prevent, as far as is reasonably possible, that infectious disease constituting a serious risk to public health; and

(d) a reasonable attempt has been made to provide that person with information relating to the effect of the infectious disease on the person's health and the risk posed to public health or it is not practicable to provide this information before making the order; and

(e) it is necessary to make the public health order to eliminate or reduce the risk of the person causing a serious risk to public health.

(2) The factors are—

(a) the nature of the infectious disease, including the ease with which it is transmitted;

(b) the availability and effectiveness of treatment for the infectious disease;

(c) the possible side-effects and discomfort that may be caused to the person who is or may be infected with the infectious disease if he or she is required to undergo specified pharmacological treatment or prophylaxis for the infectious disease;

(d) whether urgent action will significantly affect the public health outcome;

(e) the capacity of the person who is or may be infected with the infectious disease to understand the risk to public health constituted by the person having the infectious disease;

(f) any prescribed factors;

(g) any other factors that the Chief Health Officer considers are relevant in the particular circumstances.

(3) A public health order must—

(a) be in writing;

(b) identify the person to whom the order applies;

(c) specify the purpose of the order;

(d) specify the infectious disease which the Chief Health Officer believes the person has or has been exposed to;

(e) explain why the Chief Health Officer believes that the person is infected with the infectious disease or has been exposed to the infectious disease in circumstances where a person is likely to contract the infectious disease;

(f) subject to subsection (4), specify the period for which the public health order continues to have effect;

(g) explain the person's rights and entitlements under this Act and the process for making an application for review to VCAT;

(h) contain a statement that the person should seek legal advice;

(i) explain that if the person does not comply with the order, the person commits an offence and is liable to a penalty not exceeding 120 penalty units.

(4) The period for which a public health order continues to have effect must—

(a) not exceed 6 months from the day on which the order is made;

(b) be proportionate with the risk that the person poses to public health.

(5) A public health order may require the person to whom the public health order applies to comply with any of the following as specified in the order and subject to any specified conditions that the Chief Health Officer considers are appropriate—

(a) participate in counselling, education or other activities provided by a specified person or specified class of person;

(b) undergo an assessment by a specified psychiatrist or specified neurologist;

(c) refrain from carrying out certain activities either absolutely or unless specified conditions are complied with;

(d) refrain from specified forms of behaviour either absolutely or unless specified conditions are complied with;

(e) refrain from visiting a specified place or specified class of place;

(f) reside at a specified place of residence at all times or during specified times;

(g) notify the Chief Health Officer or a person nominated by the Chief Health Officer in writing or in another specified form if the person changes his or her name or place of residence within 3 days of doing so;

(h) submit to the supervision of a person nominated by the Chief Health Officer, including—

(i) attending meetings arranged by that person;

(ii) receiving visits from that person;

(iii) providing that person with information relating to any action, occurrence or plan relevant to the health risk posed by the person to whom the order applies;

(i) receive specified prophylaxis, including a specified vaccination, within the specified period;

(j) undergo specified pharmacological treatment for the infectious disease from a registered medical practitioner;

(k) submit to being detained or isolated or detained and isolated as specified.

118 Provisions applying to public health orders

(1) A public health order has effect from the time that it is served on the person to whom it applies.

(2) The Chief Health Officer must as soon as is reasonably practicable provide a copy of a public health order to any registered medical practitioner

or other registered health practitioner required to perform any activity under the public health order.

(3) If the Chief Health Officer ceases to believe that any of the matters specified in section 117(1) apply, the Chief Health Officer must—

(a) revoke the public health order by a written notice of revocation;

(b) serve a copy of the notice of revocation on the person to whom the public health order applied;

(c) provide as soon as is reasonably practicable a copy of the notice of revocation to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.

(4) If after having regard to the factors specified in section 117(2) the Chief Health Officer believes that it is necessary to vary a public health order, the Chief Health Officer must—

(a) vary the public health order by a written notice of variation;

(b) serve a copy of the notice of variation on the person to whom the public health order applies;

(c) provide as soon as is reasonably practicable a copy of the notice of variation to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.

(5) If the Chief Health Officer believes that the matters specified in section 117(1) continue to apply, the Chief Health Officer must—

(a) extend the public health order by a written notice of extension for a further period not exceeding 6 months;

(b) serve a copy of the notice of extension on the person to whom the public health order applies;

(c) provide as soon as is reasonably practicable a copy of the notice of extension to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.

(6) A public health order may be extended as many times as the Chief Health Officer considers to be necessary.

(7) A notice of revocation, notice of variation or notice of extension has effect from the time that it is served on the person to whom it applies.

119 Registered medical practitioner must provide information requested by the Chief Health Officer

A registered medical practitioner who receives a request in writing from the Chief Health Officer for information in relation to a person for the purpose of deciding whether to make, revoke, vary or extend a public health order must as soon as is reasonably practicable provide the requested information in writing to the Chief Health Officer.

Note

See section 227.

120 Person must comply with a public health order

A person to whom a public health order applies must comply with the public health order.

Penalty: 120 penalty units.

121 Application for review by Chief Health Officer

(1) A person subject to a public health order may at any time while the order is in force apply to the Chief Health Officer for a review of the order.

(2) An application for a review of a public health order must be in writing or in any other form approved by the Chief Health Officer.

(3) Within the period of 7 days after receiving the application for review, the Chief Health Officer must review the public health order and may—

(a) revoke the order; or

(b) vary the order; or

(c) confirm the order.

122 Application for review by VCAT

A person subject to a public health order may at any time while the order is in force apply to VCAT for a review of the decision to make the order.

Note

A person who is entitled to apply to VCAT for review of a decision may, within 28 days after the day on which the decision is made, request the decision-maker to give the person a written statement of reasons for the decision.

123 Enforcement of orders

(1) Subject to this section, an authorised officer who is a registered medical practitioner may enforce an examination and testing order or a public health order.

(2) A requirement in an examination and testing order or a public health order that a person undergo any examination, test, pharmacological treatment or prophylaxis cannot be enforced by the use of force.

S. 123(3) amended by No. 37/2014 s. 10(Sch. item 136.2).

(3) For the purposes of this section, an authorised officer may request the assistance of a police officer.

S. 123(4) amended by No. 37/2014 s. 10(Sch. item 136.2).

(4) A police officer may use reasonable force to detain the person subject to an examination and testing order or a public health order and take that person to—

(a) a place where an examination and test is to be carried out; or

(b) the place where the person is required to be under the order.

(5) For the purposes of this section if it appears to the authorised officer that it is necessary to do so to enforce an examination and testing order or a public health order, the authorised officer may apply to the Magistrates' Court for a warrant to arrest the person who is subject to the order.

S. 123(6) amended by No. 6/2018 s. 68(Sch. 2 item 103.1).

(6) If the Magistrates' Court is satisfied by evidence on oath or by affirmation or by affidavit of the matter specified in subsection (5), the Magistrates' Court may order that a warrant to arrest be issued against the person subject to the examination and testing order or public health order.

(7) A warrant issued for the purpose of subsection (6) may specify any conditions to which the warrant is subject.

(8) A person who is arrested or detained under this section must be informed at the time of the arrest or detention of the reason why the person is being arrested or detained.

Note

Section 183 provides that it is an offence to hinder or obstruct an authorised officer.

124 No action lies against registered health practitioner

No action lies against a registered health practitioner who in good faith and with reasonable care—

(a) conducts a test, examination or assessment in accordance with this Division; or

(b) provides counselling, pharmacological treatment or prophylaxis authorised by this Division.

125 Chief Health Officer to facilitate reasonable request for communication

The Chief Health Officer must facilitate any reasonable request for communication made by a person detained under an examination and testing order or a public health order.

Division 3—Notifiable conditions and micro-organisms

126 Governor in Council may declare infectious diseases and micro-organism to be notifiable

(1) The Governor in Council may by Order in Council declare—

(a) an infectious disease to be a notifiable condition;

(b) a micro-organism to be a notifiable micro-organism.

(2) An Order in Council under this section—

(a) must specify—

(i) the details to be included with a notification of a notifiable condition or notifiable micro-organism;

(ii) the period within which a notification of a notifiable condition or notifiable micro-organism is to be made;

(iii) the manner in which a notification of a notifiable condition or notifiable micro-organism is to be made;

(b) has effect—

(i) throughout Victoria or in the areas of Victoria specified in the Order in Council;

(ii) from the date that it is published in the Government Gazette or any later date specified in the Order in Council for the period not exceeding 12 months specified in the Order in Council;

(c) may vary in relation to notifications to be made by registered medical practitioners and notifications to be made by pathology services.

S. 126(3)–(6) repealed by No. 15/2022 s. 22.

* * * * *

127 Notification by registered medical practitioners of notifiable conditions

(1) This section applies if a registered medical practitioner has reasonable grounds to believe that a patient—

(a) has, or may have, a notifiable condition; or

(b) has, or may have, died with a notifiable condition.

(2) The registered medical practitioner must notify the Secretary of the notification details in accordance with—

(a) if the notifiable condition was prescribed to be a notifiable condition by the regulations, the regulations within the prescribed period; or

(b) if the notifiable condition was declared to be a notifiable condition by an Order in Council, the Order in Council within the specified period.

Penalty: 60 penalty units.

128 Notification by a pathology service of a notifiable condition

(1) This section applies if—

(a) a pathology service situated in Victoria performs a test in Victoria on a sample, or a pathology service situated outside Victoria, performs a test on a sample at the request of a pathology service situated in Victoria; and

(b) the sample was taken for any purpose from a person—

(i) in Victoria; or

(ii) who the pathology service situated in Victoria has reason to believe, on the basis of the supplied address of the person, has a permanent or temporary postal address in Victoria; and

(c) the test relates to a notifiable condition.

S. 128(1)(c) substituted by No. 15/2022 s. 9.

(2) The person in charge of the pathology service situated in Victoria must notify the Secretary of the notification details in accordance with—

(a) if the notifiable condition was prescribed to be a notifiable condition by the regulations, the regulations; or

(b) if the notifiable condition was declared to be a notifiable condition by an Order in Council, the Order in Council.

Penalty: 60 penalty units.

129 Health service and pathology service must have processes to ensure notification

(1) A health service must implement processes to ensure that any registered medical practitioner employed or engaged by, or performing work at, the health service complies with section 127.

(2) A pathology service must implement processes to ensure that the person in charge of the pathology service complies with section 128.

130 Notification of a notifiable micro-organism in food

(1) Subject to subsection (3), subsection (2) applies to a person in charge of a laboratory service situated within Victoria where a notifiable micro-organism is—

(a) isolated or detected by that laboratory service from or within food or from or within samples taken from food, regardless of where the sample was taken; or

(b) isolated or detected on behalf of that person by another laboratory service situated outside Victoria from or within food or from or within samples taken from food, regardless of where the sample was taken.

(2) The person in charge of the laboratory service must notify the Secretary of the notification details in accordance with—

(a) if the notifiable micro-organism was prescribed to be a notifiable micro-organism by the regulations, the regulations; or

(b) if the notifiable micro-organism was declared to be a notifiable micro-organism in an Order in Council, the Order in Council.

Penalty: 60 penalty units.

(3) Subsection (2) does not apply if the notifiable micro-organism is isolated or detected in the course of a test carried out only for—

(a) educational purposes; or

(b) the purpose of academic research.

(4) Subsection (5) applies if the proprietor of a food premises or food vending machine in Victoria is informed at any time by the person in charge of a laboratory service whether situated inside or outside Victoria that—

(a) a sample of food handled by that proprietor has been tested by that laboratory; and

(b) the test conducted by the laboratory has isolated or detected a notifiable micro-organism in the food sample.

(5) The proprietor of the food premises or food vending machine must notify the Secretary of the notification details in accordance with—

(a) if the notifiable micro-organism was prescribed to be a notifiable micro-organism by the regulations, the regulations; or

(b) if the notifiable micro-organism was declared to be a notifiable micro-organism in an Order in Council, the Order in Council.

Penalty: 60 penalty units.

(6) In this section, ***food*** includes—

(a) any substance or thing of a kind used for, or represented as being for the use of, human consumption, whether it is raw, prepared or partly prepared;

(b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a);

(c) any substance used in preparing a substance or thing referred to in paragraph (a), other than a substance used in preparing a living thing, if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid;

(d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum;

(e) any substance or thing declared to be a food under a declaration in force under section 3B of the Australia New Zealand Food Authority Act 1991 of the Commonwealth.

(7) A substance, thing, chewing gum or ingredient or additive in chewing gum described in subsection (6) is ***food*** regardless of whether or not it is in a condition fit for human consumption.

(8) However, ***food*** does not include therapeutic goods or live animals.

(9) In this section—

food premises, ***food vending machine*** and ***handled*** have the same meanings respectively as in section 4(1) of the **Food Act 1984**;

laboratory service means a service which performs tests or analyses on food or samples of food for the purpose of isolating or detecting micro-organisms in the food or a sample of food.

Division 3A—Notification of anaphylaxis presentation

Pt 8 Div. 3A (Heading and ss 130A–130C) inserted by No. 4/2018 s. 18.

130A Definitions

S. 130A inserted by No. 4/2018 s. 18.

In this Division—

anaphylaxis reporting body means—

(a) a public hospital; or

(b) a denominational hospital; or

(c) a private hospital; or

(d) a multi purpose service; or

(e) a privately-operated hospital within the meaning of the **Health Services Act 1988**;

person in charge means—

(a) in the case of an anaphylaxis reporting body that is a public hospital, denominational hospital, multi purpose service or privately-operated hospital, the chief executive officer of the body; and

(b) in the case of an anaphylaxis reporting body that is a private hospital, the proprietor of the private hospital.

S. 130B inserted by No. 4/2018 s. 18.

130B Notification by anaphylaxis reporting body

(1) This section applies if a registered medical practitioner employed at, or otherwise engaged by, the anaphylaxis reporting body has reasonable grounds to believe that a person presenting for treatment at the anaphylaxis reporting body has anaphylaxis.

(2) An anaphylaxis reporting body must notify the Secretary in the prescribed manner of the prescribed notification details within the prescribed period.

(3) The person in charge of an anaphylaxis reporting body must implement processes to ensure that the anaphylaxis reporting body complies with subsection (2).

S. 130C inserted by No. 4/2018 s. 18.

130C Secretary may provide anaphylaxis reporting information

If the Secretary considers that it is in the public interest to do so, the Secretary may provide information obtained under this Division to a person or class of person prescribed for the purposes of this section.

Division 4—Closure of court or tribunal

Pt 8 Div. 4 (Heading) substituted by No. 22/2019 s. 5.

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S. 131 repealed by No. 22/2019 s. 6(1).

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S. 132 repealed by No. 22/2019 s. 6(2).

133 Closure of court or tribunal

(1) This section applies if—

(a) evidence is proposed to be given in a matter before a court or tribunal of any matter relating to a prescribed disease; and

S. 133(1)(a) amended by No. 15/2022 s. 10.

(b) the court or tribunal considers that, because of the social or economic consequences to a person if the information is disclosed, the court or tribunal should make an order under this section.

(2) If this section applies, the court or tribunal may—

(a) order that the whole or any part of the proceedings be heard in closed session; or

(b) order that only persons specified by it may be present during the whole or any part of the proceedings; or

(c) make an order prohibiting the publication of a report of the whole or any part of the proceedings or of any information derived from the proceedings.

(3) The powers specified in subsection (2) are in addition to any other powers the court or tribunal may have.

(4) If an order has been made under this section, the court or tribunal must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the court or tribunal is being held.

(5) A person must not contravene an order made and posted under this section.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

Division 5—Orders for tests if incident has occurred

134 Orders for tests if incident has occurred

(1) Subject to subsection (11), the Chief Health Officer may make an order under this section if the Chief Health Officer believes that—

(a) an incident has occurred, while a caregiver or custodian is acting in their capacity as a caregiver or custodian, in which, if any of those involved in the incident were infected with a specified infectious disease, the disease could have been transmitted to any of the other persons involved; and

(b) any of those persons to whom the disease could have been transmitted—

(i) has been counselled by a person of a prescribed class about the risk of transmission of the disease in the particular circumstances and about the

medical and social consequences of being infected with the disease; and

(ii) has consented to be tested for that disease; and

(c) any of those persons who, if he or she were infected with the disease, could have transmitted it—

(i) has been offered counselling, irrespective of whether the offer was accepted, and has refused to be tested for the disease; or

(ii) is unconscious or otherwise does not have the capacity to consent to be tested for the disease; and

(d) the making of the order is necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment for any of those involved.

(2) An order made under this section—

(a) must be in writing;

(b) must give details of the incident which led to its making;

(c) must name the person to whom it applies;

(d) must name the disease for which the person must be tested, which must be a disease for which another person has agreed to be tested under subsection (1)(b);

(e) must require that the person named in the order give a sample of blood or urine or submit to a sample of blood or urine being taken;

(f) must specify the place where the person named in the order is required to give a sample of blood or urine or submit to a sample of blood or urine being taken;

(g) has effect from the time that it is served on the person named in the order or, if the order is made in respect of a person who is dead, from the time that the order is made.

S. 134(3) amended by No. 37/2014 s. 10(Sch. item 136.3(a)).

(3) If the Chief Health Officer believes that it is necessary to do so to enforce an order made under this section, the Chief Health Officer may apply to the Magistrates' Court for an order to authorise a police officer to use reasonable force to—

(a) take the person named in the order to the place specified in the order; or

(b) restrain the person named in the order so as to enable a registered medical practitioner to take a sample of blood or urine; or

(c) take the person named in the order to the place specified in the order and restrain the person named in the order so as to enable a registered medical practitioner to take a sample of blood or urine.

S. 134(4) amended by No. 6/2018 s. 68(Sch. 2 item 103.1).

(4) If the Magistrates' Court is satisfied by evidence on oath or by affirmation or by affidavit that the circumstances are so exceptional that the making of the order is justified, the Magistrates' Court may make the order applied for by the Chief Health Officer subject to any conditions that the Magistrates' Court considers are appropriate.

(5) The Chief Health Officer may also make an order under this section in respect of a person who is dead if the Chief Health Officer believes subsections (1)(a), (1)(b) and (1)(d) apply.

(6) For the purposes of this section, a person is to be treated as not having the capacity to consent to be tested even if—

(a) the lack of capacity is due to a temporary cause; or

(b) there is another person who has the capacity to consent to testing on that person's behalf.

(7) An order must not be made under this section if more than 1 month has passed since the happening of the incident which would enable the order to be made.

(8) The Chief Health Officer may make an order under this section subject to any conditions the Chief Health Officer considers appropriate.

(9) The Chief Health Officer may vary or revoke an order made under this section.

(10) In this section, ***caregiver or custodian*** means—

(a) a person who is employed or engaged by, or performs work at, a health service;

(b) a registered medical practitioner;

(c) a person registered under the Health Practitioner Regulation National Law—

(i) to practise in the dental profession as a dentist (other than as a student); and

(ii) in the dentists division of that profession;

S. 134(10)(c) substituted by No. 13/2010 s. 51(Sch. item 44.4).

(ca) a nurse or a midwife;

S. 134(10)(ca) inserted by No. 13/2010 s. 51(Sch. item 44.4).

S. 134(10)(d) substituted by No. 13/2010 s. 51(Sch. item 44.4), amended by No. 15/2022 s. 23(a).

(d) a student who is registered under the Health Practitioner Regulation National Law by the Medical Board of Australia, the Dental Board of Australia, the Nursing and Midwifery Board of Australia or the Paramedicine Board of Australia;

S. 134(10)(e) substituted by No. 15/2022 s. 23(b).

(e) a person registered under the Health Practitioner Regulation National Law to practise in the paramedicine profession as a paramedic (other than as a student);

(f) a person who is employed or engaged by, or performs work at, a pathology service;

(g) a person who—

(i) removes human tissue from a person, whether alive or dead; or

(ii) handles human tissue—

in accordance with the **Human Tissue Act 1982**;

(h) a person who carries out an activity of a kind referred to in section 42(1) of the **Human Tissue Act 1982**;

(i) a legal custodian of a person who is in legal or protective custody and any person who is employed or engaged by the legal custodian in the course of keeping that person in legal or protective custody;

S. 134(10)(j) substituted by No. 37/2014 s. 10(Sch. item 136.3(b)).

(j) a police officer;

(k) a person who is prescribed to be a caregiver or custodian for the purposes of this section.

(11) If in giving effect to this Division alternative measures are available which are equally effective in ensuring the rapid diagnosis and clinical management for any person affected, the measure which is the least restrictive of the rights of the person should be chosen.

135 Authorisation for tests

(1) This section applies if—

(a) the Chief Health Officer could make an order in respect of a person under section 134; and

(b) a sample of blood or urine from that person has been stored at any place for any purpose; and

(c) the Chief Health Officer is satisfied that, if the sample of blood or urine was authorised to be tested and was tested under this section, it could still be used for the purpose for which it was originally stored.

(2) If this section applies, the Chief Health Officer may authorise the testing of the sample of blood or urine for any disease for which the Chief Health Officer could order the person to be tested under section 134.

(3) Sections 134(2), 134(7), 134(8) and 134(9) apply to an authorisation as if it were an order made under section 134.

136 Chief Health Officer may disclose certain information

(1) If the Chief Health Officer believes that the circumstances exist for the making of an order under section 134 in respect of a person, the Chief Health Officer may—

(a) examine any relevant health information held by the Department relating to that person; or

(b) require a health service provider to provide to the Chief Health Officer any relevant health information held by the health service provider relating to that person.

(2) A health service provider must comply with a requirement under subsection (1)(b).

Note

See section 227.

(3) The Chief Health Officer can only use relevant health information obtained under subsection (1) for the purposes of this Division.

(4) Without limiting subsection (3), the Chief Health Officer may, subject to the following conditions, disclose relevant health information obtained under subsection (1) to a person to whom section 134(1)(b) applies—

(a) the information must only be disclosed to the extent necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment for that person; and

(b) the information disclosed must not include information that would identify the person to whom the relevant health information relates; and

(c) the person to whom the information is disclosed must not disclose, communicate, or make a record of, anything that would identify the person to whom the relevant health information relates; and

(d) the information is not admissible in any action or proceedings before any court or tribunal or any board, agency or other person.

(5) A person who contravenes subsection (4)(c) is guilty of an offence.

Penalty: 60 penalty units.

137 Orders and authorisations for tests by senior medical officer

(1) Subject to subsection (2), this section only applies to a senior medical officer who is—

(a) employed or engaged by, or performs work for, a denominational hospital, multi purpose service or public hospital and is authorised by that hospital or service or the chief executive officer of that hospital or service to make orders or authorise testing for the purposes of this section; or

(b) employed or engaged by, or performs work for, a private hospital that is—

(i) registered under Part 4 of the **Health Services Act 1988**; and

(ii) approved by the Secretary for the purposes of this section—

and is authorised by the proprietor or chief executive officer of that private hospital to make orders or authorise testing for the purposes of this section.

(2) For the purposes of this section—

(a) the Director of Forensic Medicine within the meaning of the **Victorian Institute of Forensic Medicine Act 2024** is a senior medical officer; and

S. 137(2)(a) amended by No. 77/2008 s. 129(Sch. 2 item 21.2), substituted by No. 34/2024 s. 56(a).

(b) the Director of Forensic Medicine of the Victorian Institute of Forensic Medicine may authorise a senior medical officer employed under section 30 or 31 of the **Victorian**

S. 137(2)(b) amended by No. 34/2024 s. 56(b).

Institute of Forensic Medicine Act 2024 to make orders or authorise testing for the purposes of this section.

(3) A senior medical officer has all the powers that the Chief Health Officer has to—

(a) make an order under section 134 in the circumstances specified in section 134(1)(c)(ii) or 134(5); or

(b) authorise testing under section 135 in the circumstances specified in section 134(1)(c)(ii) or 134(5)—

in relation to the health service where the senior medical officer is employed or engaged or performs work.

(4) This Division applies to—

(a) an order made by a senior medical officer and a test made under such an order as if the order were an order made by the Chief Health Officer under section 134; and

(b) an authorisation made by a senior medical officer and a test made under such an authorisation as if the authorisation were an authorisation made by the Chief Health Officer under section 135.

(5) Despite subsection (4), sections 134(3) and 134(4) do not apply to an order made by a senior medical officer.

138 Post test or authorisation counselling

(1) A person who—

(a) made an order in the circumstances specified in section 134(1)(c)(ii) or 134(5); or

(b) authorised the testing of a sample of blood or urine under section 135 in the circumstances specified in section 134(1)(c)(ii) or 134(5)—

must ensure that the relevant person is counselled by a registered medical practitioner in accordance with this section.

(2) The person tested or whose sample of blood or urine was tested must be counselled as soon as is practicable if the person has regained capacity to consent to testing after the testing.

(3) If the person tested under the order or whose sample of blood or urine was tested under an authorisation is dead or does not have or regain capacity to consent to testing, the person who made the order or gave the authorisation must ensure that the following are counselled by a registered medical practitioner—

(a) in the case of a child, a parent; and

(b) in any other case, the medical treatment decision maker (within the meaning of the **Medical Treatment Planning and Decision Act 2016**) for the person tested.

S. 138(3)(b) amended by No. 13/2019 s. 221(Sch. 1 item 42).

(4) The person counselled must be provided with—

(a) details of the test conducted;

(b) the reasons why the test was conducted;

(c) the results of the test;

(d) if the test indicated the presence of an infectious disease—

(i) the effects of the infectious disease on an infected person; and

(ii) the risk to public health of the infectious disease.

139 Tests and test results

(1) A pathologist or registered medical practitioner who conducts a test under an order or authorisation—

(a) of the Chief Health Officer under this Division must without delay report the test results to the Chief Health Officer;

(b) of an authorised senior medical officer under this Division must without delay report the test results to the authorised senior medical officer.

(2) On receiving the test results, the Chief Health Officer or authorised senior medical officer must without delay give notice of the test results to—

(a) the appropriate person mentioned in section 134(1)(b); and

(b) the person tested.

(3) A pathologist or registered medical practitioner who conducts a test on a person mentioned in section 134(1)(b) in relation to an order or authorisation—

(a) of the Chief Health Officer under this Division must without delay report the test results to the Chief Health Officer;

(b) of an authorised senior medical officer under this Division must without delay report the test results to the authorised senior medical officer.

(4) If the test results are positive, the Chief Health Officer or authorised senior medical officer must without delay give notice of the test results to—

(a) any other person involved in the incident to whom the infectious disease could have been transmitted; and

(b) the person tested.

(5) Test results referred to in this section are not admissible in any action or proceedings before any court or tribunal or any board, agency or other person.

140 No identification to be given

(1) A person mentioned in section 134(1)(a) who receives notice under this Division of the results of a test on another person must not disclose, communicate, or make a record of, anything in those results that would identify that other person.

Penalty: 60 penalty units.

(2) When advising a person mentioned in section 134(1)(a) of the results of a test under this Division, the Chief Health Officer or authorised senior medical officer must not include information that would identify the person tested.

141 Directions about orders or authorisations

(1) The Chief Health Officer may give directions to a hospital, multi purpose service, proprietor, Chief Executive Officer of the Victorian Institute of Forensic Medicine or an authorised senior medical officer referred to in section 137(1) or 137(2) about the following—

S. 141(1) amended by No. 34/2024 s. 57(a).

(a) the requirements for persons suitable to be authorised as a senior medical officer for the purposes of making orders or authorisations under this Division;

(b) the process for authorising a person to be a senior medical officer for the purposes of making orders or authorisations under this Division;

S. 141(1)(c) amended by No. 34/2024 s. 57(a).

(c) the information to be provided by the hospital, multi purpose service, proprietor or the Chief Executive Officer of the Victorian Institute of Forensic Medicine to the authorised senior medical officer;

(d) the matters that an authorised senior medical officer must take into account in deciding whether to make an order or authorisation under this Division;

(e) the procedures to be followed by an authorised senior medical officer before or after making an order or authorisation under this Division;

S. 141(1)(f) amended by No. 34/2024 s. 57(a).

(f) the requirements to be complied with by an authorised senior medical officer about the keeping of records and reporting to the hospital, multi purpose service, proprietor, Chief Executive Officer of the Victorian Institute of Forensic Medicine or Chief Health Officer;

(g) the provision of counselling or information required by section 138.

S. 141(2) amended by No. 34/2024 s. 57(b).

(2) The hospital, multi purpose service, proprietor, Chief Executive Officer of the Victorian Institute of Forensic Medicine or authorised senior medical officer must comply with any direction given by the Chief Health Officer under this section.

142 No action lies against registered medical practitioner

No action lies against a registered medical practitioner who in good faith and with reasonable care—

(a) takes a sample of blood or urine from a person in accordance with this Division; or

(b) conducts a test in accordance with this Division; or

(c) provides information about test results or counselling authorised by this Division.

Division 6—Reporting requirements

143 Annual report to include information about orders

(1) The Chief Health Officer must include information about—

(a) the number of orders made by the Chief Health Officer under each of section 113, 117 and 134;

(b) the reasons for the making of those orders—

during the financial year in the relevant annual report of operations under Part 7 of the **Financial Management Act 1994**.

(2) The information included in the annual report under subsection (1) must not include any information that identifies, or is likely to lead to the identification of, any person.

Division 7—Immunisation

143A Application of sections 143B, 143C, 143D and 143E

S. 143A (Heading) amended by No. 4/2018 s. 19(1).

(1) Sections 143B, 143C and 143D apply in relation to any child that is to attend an early childhood service.

S. 143A inserted by No. 55/2015 s. 5, amended by No. 4/2018 s. 19(2) (ILA s. 39B(1)).

(2) Section 143E applies in relation to any child that attends an early childhood service.

S. 143A(2) inserted by No. 4/2018 s. 19(2).

S. 143B inserted by No. 55/2015 s. 5, substituted by No. 4/2018 s. 20.

143B Obligation of person in charge of early childhood service

The person in charge of an early childhood service must ensure that the enrolment of a child at the early childhood service is not confirmed unless the parent of the child has provided to the early childhood service an immunisation status certificate which indicates, in relation to a date not more than 2 months immediately before the date on which the child first attends the early childhood service, that the child is age appropriately immunised.

S. 143C inserted by No. 55/2015 s. 5.

143C Exemption—early childhood services

(1) Subject to subsection (2), the person in charge of an early childhood service is not required to comply with section 143B in relation to a child if—

(a) the child and the child's parent are evacuated from their place of residence due to an emergency within the meaning of section 3(1) of the **Emergency Management Act 2013**; or

(b) the child is in emergency care within the meaning of section 3(1) of the **Children, Youth and Families Act 2005**; or

(c) the child is in the care of an adult who is not the child's parent due to exceptional circumstances such as illness or incapacity; or

(d) a parent of the child states that the child—

S. 143C (1)(d)(i) substituted by No. 17/2023 s. 62.

(i) is of Aboriginal or Torres Strait Islander descent; and

(ii) identifies as an Aboriginal or Torres Strait Islander person; and

S. 143C (1)(d)(ii) substituted by No. 17/2023 s. 62.

(iii) is accepted as an Aboriginal or Torres Strait Islander person by an Aboriginal or Torres Strait Island community; or

S. 143C (1)(d)(iii) substituted by No. 17/2023 s. 62.

(e) the child is in the care of a parent who is the holder of—

(i) a health care card issued under section 1061ZS of the Social Security Act 1991 of the Commonwealth; or

(ii) a pensioner concession card issued under section 1061ZF of the Social Security Act 1991 of the Commonwealth; or

(iii) a Gold Card, being a card issued to a person who is eligible for treatment under Part V of the Veterans' Entitlement Act 1986 of the Commonwealth; or

(iv) a White Card, being a card issued to a person who is eligible for limited treatment under Part V of the Veterans' Entitlement Act 1986 of the Commonwealth; or

(f) the child's birth was a multiple birth, (being the birth of triplets or more); or

(g) a circumstance specified in the guidelines made under section 143D applies in relation to the child.

(2) Within 16 weeks after the date on which the child first attends the early childhood service, the person in charge of the early childhood service must take reasonable steps to ensure that an immunisation status certificate in relation to the child is provided by a parent of the child.

S. 143D inserted by No. 55/2015 s. 5.

143D Secretary's guidelines in relation to exemption

(1) For the purposes of section 143C(1)(g), the Secretary may make guidelines specifying the circumstances that may apply in relation to a child.

(2) The guidelines made under subsection (1)—

(a) must be published in the Government Gazette; and

(b) come into operation on the date they are published; and

(c) may be revoked by the Secretary.

S. 143E inserted by No. 4/2018 s. 21.

143E Periodic production of immunisation status certificate

(1) The parent of a child who attends an early childhood service must provide to the person in charge of the early childhood service an immunisation status certificate indicating that the child is age appropriately immunised—

(a) within 2 months after the child attains a prescribed age; or

(b) at intervals not exceeding the prescribed period.

(2) The person in charge of an early childhood centre must take reasonable steps to ensure that a parent of a child who attends the early childhood service provides an immunisation status certificate in accordance with subsection (1).

(3) A parent of a child attending an early childhood service is not required to comply with subsection (1) if—

(a) section 143C(1) applies in relation to the child; and

(b) the relevant immunisation status certificate is to be provided during the 16 week period referred to in section 143C(2).

144 Application of sections 145 and 146

Sections 145 and 146 apply in relation to any child that is to attend a primary school.

145 Immunisation status certificates to be produced before attendance at primary school

The parent of a child must give an immunisation status certificate in respect of each vaccine-preventable disease to the person in charge of each primary school that the child is to attend.

146 Obligations of person in charge of primary school

(1) A person in charge of a primary school must take reasonable steps to obtain an immunisation status certificate in respect of each child attending the primary school.

(2) A person in charge of a primary school must take reasonable steps to ensure that the student immunisation record in respect of each child attending the primary school is kept up to date.

147 Immunisation status certificate

S. 147 amended by No. 55/2015 s. 6, substituted by No. 4/2018 s. 22.

An immunisation status certificate is—

(a) an extract of an entry in the Australian Immunisation Register kept under section 8 of the Australian Immunisation Register Act 2015 of the Commonwealth; or

(b) a document, or a combination of documents, of a class declared by the Secretary to be an immunisation status certificate for the purposes of this paragraph under section 148.

S. 148 amended by No. 55/2015 s. 7, substituted by No. 4/2018 s. 22.

148 Secretary may declare documents to be immunisation status certificates

S. 148(1) amended by No. 22/2019 s. 7(4).

(1) For the purposes of section 147(b), the Secretary may declare a class of document, or a class of a combination of documents, to be an immunisation status certificate by notice published in the Government Gazette.

(2) The Secretary may vary or revoke the declaration at any time by notice published in the Government Gazette.

(3) A declaration, or variation or revocation of a declaration, has effect from the day notice of the declaration, or its variation or revocation, is published in the Government Gazette or any later day specified in the notice.

S. 149 amended by No. 55/2015 s. 8 (ILA s. 39B(1)).

149 Effect of immunisation status certificate

(1) A person in charge of a primary school may rely on statements in an immunisation status certificate.

S. 149(2) inserted by No. 55/2015 s. 8.

(2) A person in charge of an early childhood service may rely on statements in an immunisation status certificate.

S. 149A inserted by No. 4/2018 s. 23.

149A Review of provisions relating to immunisation of children attending or to attend early childhood services

(1) The Minister must arrange for a review to be conducted into the operation of sections 143B, 143C, 143D and 143E.

(2) The Minister must cause a copy of the review to be laid before each House of the Parliament before 30 November 2020.

(3) The review must give particular consideration to any unintended or adverse effects of sections 143B, 143C, 143D and 143E and may include recommendations on any matter addressed in the review.

Division 8—Blood and tissue donations

150 Application

(1) This Division applies in respect of any proceedings in an action referred to in section 151 or 152 commenced on or after the day on which this section comes into operation.

Note

See section 244 for transitional provisions that relate to proceedings.

(2) Sections 154 and 155 apply in respect of any donation of blood or tissue in relation to which the donor signs a statement on or after the day on which this section comes into operation.

151 Blood donations

(1) This section applies to an action brought in tort, in contract, under statute or otherwise by or on behalf of—

(a) a person who claims—

(i) to have been infected with a prescribed disease because he or she was given, or in any way dealt with, blood supplied by the Society or a health service or a blood product derived from blood so supplied; or

S. 151(1)(a)(i) amended by No. 15/2022 s. 11(a).

S. 151(1)(a)(ii) amended by No. 15/2022 s. 11(b).

(ii) to have been infected with a prescribed disease by another person who was given, or in any way dealt with, any such blood or blood product; or

S. 151(1)(b) amended by No. 15/2022 s. 11(c).

(b) a dependant or the estate of a person who died as a result of having been infected with a prescribed disease as specified in paragraph (a).

(2) If a person is found liable in an action brought by a person, or on behalf of the estate, referred to in subsection (1) for damage, this section also applies to an action brought by the person found liable to recover contribution from any other person liable in respect of that same damage.

(3) Subject to subsection (4), in an action to which this section applies brought against a person specified in column 1 of an item in Table 1 in the Schedule, it is a defence to prove the facts or matters specified in column 2 of that Table unless any of the facts or circumstances mentioned in column 3 of that Table apply.

(4) If a person specified in column 1 of an item in Table 1 in the Schedule cannot prove a fact or matter specified in column 2 of that Table, the person can still rely on the relevant defence in column 2 of the Table if the person can prove that, in respect of that fact or matter, the failure to comply did not cause the relevant loss.

152 Tissue donations

(1) This section applies to an action brought in tort, in contract, under statute or otherwise by or on behalf of—

(a) a person who claims—

(i) to have been infected with a prescribed disease because he or she received tissue (other than semen) taken from a person or the body of a dead person; or

S. 152(1)(a)(i) amended by No. 15/2022 s. 12(a).

(ii) to have been infected with a prescribed disease by another person who received such tissue; or

S. 152(1)(a)(ii) amended by No. 15/2022 s. 12(b).

(b) a person who claims—

(i) to have been infected with a prescribed disease as a result of the carrying out in relation to the person of artificial insemination or a treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**; or

S. 152(1)(b)(i) amended by Nos 76/2008 s. 157, 15/2022 s. 12(c).

(ii) to have been infected with a prescribed disease by another person in relation to whom such a procedure was carried out; or

S. 152(1)b)(ii) amended by No. 15/2022 s. 12(d).

(c) a dependant or the estate of a person who died as a result of having been infected with a prescribed disease as specified in paragraph (a) or (b).

S. 152(1)(c) amended by No. 15/2022 s. 12(e).

(2) If a person is found liable in an action brought by a person, or on behalf of the estate, referred to in subsection (1) for damage, this section also applies to an action brought by the person found liable to recover contribution from any other person liable in respect of that same damage.

(3) Subject to subsection (4), in an action to which this section applies brought against a person specified in column 1 of Table 2 in the Schedule, it is a defence to prove the facts or matters specified in column 2 of that Table unless any of the facts or circumstances mentioned in column 3 of that Table apply.

(4) If a person specified in column 1 in Table 2 in the Schedule cannot prove a fact or matter specified in column 2 of that Table, the person can still rely on the relevant defence in column 2 of the Table if the person can prove that, in respect of that fact or matter, failure to comply did not cause the relevant loss.

153 Evidentiary

In an action to which section 151 or 152 applies, a certificate purporting to have been issued at the laboratory at which a sample of blood was tested stating—

(a) that the sample was tested in a manner approved by the Secretary and published in the Government Gazette; and

(b) that the results of the test were as stated in the certificate—

is proof of the matters so stated and of the facts on which they are based.

154 Liability of donors

S. 154(1) amended by No. 15/2022 s. 13.

(1) No civil or criminal proceedings, other than proceedings under section 155(1), lie against a donor of blood or tissue by reason only of a person having been infected with a prescribed disease by the administration to, or the use by, the person of blood given by, or of a blood product derived wholly or partly from blood given by, the donor or by the transplanting of tissue or the use of semen or ova given by the donor.

(2) Subsection (1) does not apply in relation to a donor who has been found guilty of an offence against section 155(1).

155 False statements

(1) A donor must not, in a statement referred to in the Schedule, knowingly make a statement that is false in a material particular.

Penalty: 120 penalty units or imprisonment for 1 year.

(2) A person must not, in response to an inquiry of the kind referred to in paragraph (b)(iii) in column 2 of Table 2 in the Schedule, knowingly make a statement that is false in a material particular.

Penalty: 120 penalty units.

Division 9—Autopsies

156 Autopsies

(1) The Chief Health Officer may require a registered medical practitioner who has qualifications or experience that the Chief Health Officer considers appropriate to carry out an autopsy on a body if—

(a) the Chief Health Officer believes that—

(i) an infectious disease caused, may have caused, or contributed to, the person's death; and

(ii) an autopsy is necessary to determine whether there is a serious risk to public health; and

(b) the coroner does not have jurisdiction over the body.

S. 156(1)(b) amended by No. 77/2008 s. 129(Sch. 2 item 21.3)

(2) Before an autopsy is carried out, the Chief Health Officer must comply with section 157.

(3) For the purposes of carrying out an autopsy under this section, the Chief Health Officer may order the person who has possession of the body to give possession of that body to the registered medical practitioner.

(4) A person who has possession of a body must comply with an order of the Chief Health Officer under this section.

Penalty: 10 penalty units.

157 Notice of and objection to autopsy

(1) The Chief Health Officer must immediately give notice in writing of the decision to perform an autopsy to the senior next of kin of the deceased.

(2) Unless the Chief Health Officer believes that an autopsy must be performed immediately, the autopsy must not be performed until 48 hours after the senior next of kin has been given notice of the decision.

(3) Within 48 hours after the senior next of kin has been given notice of the decision, the senior next of kin may apply to the Supreme Court for an order that no autopsy be performed.

(4) The Supreme Court may make an order that no autopsy be performed if the Supreme Court is satisfied that an autopsy should not be performed in the circumstances.

S. 157(5) amended by No. 77/2008 s. 129(Sch. 2 item 21.4)

(5) In this section, ***senior next of kin*** in relation to a deceased person, has the same meaning as in the **Coroners Act 2008**.

* * * * *

Pt 8 Div. 10 (Heading and ss 158–165) amended by No. 63/2010 s. 81(Sch. item 9.2), repealed by No. 7/2022 s. 73.

Pt 8A (Headings and ss 165A–165CX) inserted by No. 53/2021 s. 12.

Part 8A—Protection of life and public health during pandemics

Division 1—Objective and interpretation

S. 165A inserted by No. 53/2021 s. 12.

165A Objective of Part

(1) The objective of this Part is to protect public health and wellbeing in Victoria by establishing a regulatory framework for—

(a) preventing and managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential; and

(b) supporting proactive and responsive decision-making for the purposes of preventing and managing the outbreak or spread of pandemics and diseases of pandemic potential; and

(c) ensuring that decisions made and actions taken under this Part are informed by public health advice and other relevant information including, but not limited to, advice given by the Chief Health Officer; and

(d) promoting transparency and accountability in relation to decisions made and actions taken under this Part; and

(e) safeguarding contact tracing information that is collected when a pandemic declaration is in force.

(2) The Parliament—

(a) recognises the importance of protecting human rights in managing the serious risk to life, public health and wellbeing presented

by the outbreak or spread of pandemics and diseases of pandemic potential; and

(b) intends that nothing in this Part displaces the operation of the Charter of Human Rights and Responsibilities; and

(c) intends that the Charter of Human Rights and Responsibilities therefore applies to the following—

(i) the interpretation of this Part and subordinate instruments made under this Part;

(ii) acts done, and decisions made, under this Part by public authorities.

Division 2—Pandemic declarations

165AB Premier may make a pandemic declaration

S. 165AB inserted by No. 53/2021 s. 12.

(1) The Premier may make a declaration under this subsection (a ***pandemic declaration***) if the Premier is satisfied on reasonable grounds that there is a serious risk to public health arising from—

(a) a pandemic disease; or

(b) a disease of pandemic potential.

(2) The Premier must consult with, and consider the advice of, the Minister and the Chief Health Officer before making a pandemic declaration.

(3) The Premier may make a pandemic declaration whether or not, at the time the declaration is made—

(a) the pandemic disease is present in Victoria; or

(b) the disease is a disease of pandemic potential that is present in Victoria—

as the case requires.

(4) The validity of a pandemic declaration is not affected by either of the following—

(a) the pandemic declaration being made on the basis that the Premier was satisfied on reasonable grounds, at the time of making the declaration, that there was a serious risk to public health arising from a disease of pandemic potential, but the disease was a pandemic disease at that time;

(b) the pandemic declaration being made on the basis that the Premier was satisfied on reasonable grounds, at the time of making the declaration, that there was a serious risk to public health arising from a pandemic disease, but the disease was a disease of pandemic potential at that time.

S. 165AC inserted by No. 53/2021 s. 12.

165AC Form and content of a pandemic declaration

(1) A pandemic declaration must be in writing and must specify the following—

(a) the area or areas to which the declaration applies, being throughout Victoria or in one or more specified areas of Victoria;

(b) the pandemic disease, or the disease of pandemic potential, to which the declaration relates;

(c) the period for which the declaration continues in force, which must not exceed a period of 4 weeks but may be extended under section 165AE.

(2) If, on the coming into force of a pandemic declaration, a declaration of a state of emergency will cease to be in force under section 165CH(3),

the pandemic declaration must include a statement to that effect.

(3) A failure to comply with subsection (2) does not affect the validity of a pandemic declaration.

165AD When a pandemic declaration comes into force and ceases to be in force

S. 165AD inserted by No. 53/2021 s. 12.

(1) A pandemic declaration comes into force—

(a) on the day specified in the declaration and, if a time is also specified, at that time on that day; or

(b) if no day is specified in the declaration, immediately upon its making.

(2) A pandemic declaration continues in force until—

(a) the end of the period specified in the declaration under section 165AC(1)(c) or, if the declaration is extended under section 165AE(1), the end of the period as extended; or

(b) if the declaration is revoked before it ceases to be in force under paragraph (a), upon its revocation.

165AE Variation, extension and revocation of a pandemic declaration

S. 165AE inserted by No. 53/2021 s. 12.

(1) The Premier may vary or extend a pandemic declaration if the Premier is satisfied on reasonable grounds that there continues to be a serious risk to public health arising from—

(a) a pandemic disease, including a disease that was a disease of pandemic potential when the pandemic declaration first came into force but is a pandemic disease at the time of the variation or extension; or

(b) a disease of pandemic potential, including a disease that was a pandemic disease when the pandemic declaration first came into force but is a disease of pandemic potential at the time of the variation or extension.

(2) Subsection (1) applies whether or not, at the time of the variation or extension, the disease is present in Victoria.

(3) The Premier—

(a) must revoke a pandemic declaration if the Premier is satisfied on reasonable grounds that there is no longer a serious risk to public health arising from a pandemic disease or a disease of pandemic potential; and

(b) may at any other time revoke a pandemic declaration if the Premier considers it appropriate to do so.

(4) The Premier must consult with, and consider the advice of, the Minister and the Chief Health Officer before varying, extending or revoking a pandemic declaration.

(5) There is no limit on the number of times a pandemic declaration may be extended under subsection (1), but the period of each extension must not be longer than 3 months.

(6) Without limiting subsection (1), a variation of a pandemic declaration may modify any pandemic management area specified in the declaration, including by extending the pandemic management area.

(7) A variation, extension or revocation of a pandemic declaration must be by written instrument.

(8) The validity of a variation or extension of a pandemic declaration is not affected by either of the following—

(a) the variation or extension being made on the basis that the Premier was satisfied on reasonable grounds, at the time of the variation or extension, that there was a serious risk to public health arising from a disease of pandemic potential, but the disease was a pandemic disease at that time;

(b) the variation or extension being made on the basis that the Premier was satisfied on reasonable grounds, at the time of the variation or extension, that there was a serious risk to public health arising from a pandemic disease, but the disease was a disease of pandemic potential at that time.

165AF Notification of the making, variation, extension or revocation of a pandemic declaration

S. 165AF inserted by No. 53/2021 s. 12.

(1) As soon as practicable after the making, variation, extension or revocation of a pandemic declaration, the Premier must cause notice of the making, variation, extension or revocation to be—

(a) broadcast from a broadcasting station in Victoria; and

(b) in the case of the making, variation or extension of a declaration, published with a copy of the declaration as made, varied or extended in the Government Gazette; and

(c) in the case of the revocation of a declaration, published in the Government Gazette.

(2) Production of a Government Gazette purporting to contain—

(a) notice of the making, variation extension or revocation of a declaration under this section is evidence of that making, variation, extension or revocation; and

(b) a copy of the declaration is evidence of the terms of the declaration.

S. 165AG inserted by No. 53/2021 s. 12.

165AG Reporting to Parliament in relation to a pandemic declaration

(1) If a pandemic declaration is made, varied, extended or revoked, the Premier must prepare a report in accordance with this section on the making, variation, extension or revocation, which must include the following—

(a) a statement of the reasons for the making, variation, extension or revocation;

(b) a copy of the advice of the Minister and the Chief Health Officer in respect of the making, variation, extension or revocation;

(c) a summary of the matters in subsection (4), if applicable.

(2) Subject to subsection (3), if a House of the Parliament is sitting on the day after the coming into force of the pandemic declaration or the variation, extension or revocation, the Premier must cause the report to be laid before that House on that day.

(3) If—

(a) a House of the Parliament is not sitting on the day after the coming into force of the pandemic declaration or the variation, extension or revocation; or

(b) for another reason it is not reasonably practicable for the report to be laid before that House on that day—

the Premier must, within 3 business days of the coming into force of the pandemic declaration or the variation, extension or revocation, give a copy of the report to the Clerk of that House.

(4) A report under subsection (1) in relation to a variation, extension or revocation of a pandemic declaration must also include a summary of the pandemic orders made, the public health risk powers and the pandemic management powers exercised and the reasons for the exercise of those powers during the period—

(a) beginning when the pandemic declaration that is extended, varied or revoked first came into force; and

(b) ending when the variation, extension or revocation came into force.

(5) If the Clerk of either House is given a copy of the report, the Clerk must—

(a) give a copy of the report to each member of the House as soon as practicable after receiving it; and

(b) cause a copy of the report to be laid before the House on the next sitting day of the House.

(6) A failure to comply with the requirements of this section in relation to a report in respect of the making, variation, extension or revocation of a pandemic declaration does not affect the validity of the declaration or the variation, extension or revocation, as the case requires.

S. 165AH inserted by No. 53/2021 s. 12.

165AH Reports tabled when Parliament is not sitting

(1) A report that is given to a Clerk of either House under section 165AG(3) is taken to have been published by order under the authority of the Parliament.

(2) The publication of a report under section 165AG(3) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975**, and of any other enactment or rule of law relating to the publication of the proceedings of the Parliament, apply to and in relation to the publication of that report as if—

(a) it were a report to which those sections applied; and

(b) it had been published by the Government Printer under the authority of the Parliament.

Division 3—Pandemic orders

S. 165AI inserted by No. 53/2021 s. 12.

165AI Minister may make a pandemic order

(1) The Minister may, at any time on or after the making of a pandemic declaration, make any order (a ***pandemic order***) that the Minister believes is reasonably necessary to protect public health.

(2) Without limiting subsection (1), a pandemic order may include, but is not limited to, an order—

(a) that requires persons to be detained in a pandemic management area for the period specified in the order—

(i) if the conditions specified in the order are satisfied; or

(ii) in the circumstances specified in the order; or

(b) that requires that the detention of persons in a pandemic management area be extended for the period specified in the order—

(i) if the conditions specified in the order are satisfied; or

(ii) in the circumstances specified in the order; or

(c) that restricts movement in a pandemic management area; or

(d) that requires movement in, into or from a pandemic management area; or

(e) that prevents or limits entry to a pandemic management area; or

(f) that prohibits or regulates gatherings whether public or private in a pandemic management area; or

(g) that requires the use of personal protective equipment in a pandemic management area; or

(h) that prohibits or regulates the carrying on of activities, businesses or undertakings in a pandemic management area; or

(i) that requires the provision of information (including information about the identity of any person), the production of documents or the keeping of records; or

(j) that requires the medical examination or testing of persons in a pandemic management area or as a condition of entry to a pandemic management area; or

S. 165AI(2)(j) renumbered as s. 165AI(2)(k) by No. 39/2024 s. 118(2).

(k) that requires the quarantining, destruction or other management of disease vectors in a pandemic management area.

Note

A person can be detained in the exercise of a pandemic management power: see sections 165B(1)(b) and 165BA(1)(b). Special protections apply to detention under this Part, including the right of a detained person to apply for review by a Detention Appeals Officer of the detention: see Division 6.

(3) A period of detention specified in a pandemic order must not exceed the period that the Minister believes is reasonably necessary to eliminate or reduce a serious risk to public health.

(4) Without limiting subsection (2)(b), the reasons for making a pandemic order that requires the extension of a period for which persons are detained may relate to a refusal or failure to comply with a requirement to undergo a medical examination or a medical test.

S. 165AJ inserted by No. 53/2021 s. 12.

165AJ Pandemic order prevails over other subordinate instruments

A pandemic order has effect despite anything to the contrary in any subordinate instrument, other than a subordinate instrument made under the Charter of Human Rights and Responsibilities.

S. 165AK inserted by No. 53/2021 s. 12.

165AK To whom a pandemic order may apply

(1) A pandemic order may be expressed to apply to the following—

(a) all persons;

(b) specified classes of person;

(c) specified persons.

(2) A pandemic order must not be expressed to apply to a single named individual.

(3) Without limiting subsection (1), a pandemic order may apply to, differentiate between or vary in its application to persons or classes of person identified by one or more of the following, if such application, differentiation or variation is relevant to the serious risk to public health posed by the disease specified in the pandemic declaration to which the pandemic order relates—

(a) their presence in a pandemic management area or in a particular location in a pandemic management area;

(b) their participation in or presence at an event;

(c) an activity that they have undertaken or are undertaking;

(d) their characteristics, attributes or circumstances.

Examples

A pandemic order might—

(a) differentiate between persons or classes of person on the basis of their vaccination status in relation to a pandemic disease or a disease of pandemic potential, by restricting persons who are unvaccinated from engaging in specified activities unless they are exempt from vaccination;

(b) differentiate between persons or classes of person on the basis of age, if age is relevant to the risks to health posed by a pandemic disease or a disease of pandemic potential. For example, a pandemic order might limit the ability of persons or classes of person to receive visitors at, or to move within, residential care facilities.

Note

The Minister may only make a pandemic order that the Minister believes is reasonably necessary to protect public health—see section 165AI.

Further, the Charter of Human Rights and Responsibilities applies to subordinate instruments under this Part. Section 165AP(2)(c) and (d) have the effect that when the Minister makes, varies or extends a pandemic order that applies to, differentiates between or varies in its application to persons or classes of person identified by reference to a matter specified in this subsection, the Minister must publish an explanation of whether, in the Minister's opinion, the order does, or does not, limit any human right set out in the Charter of Human Rights and Responsibilities, and an explanation of any limitations identified.

S. 165AL inserted by No. 53/2021 s. 12.

165AL Minister must consult before making a pandemic order

(1) Before making a pandemic order, the Minister must request the advice of the Chief Health Officer in relation to—

(a) the serious risk to public health posed by the disease specified in the pandemic declaration to which the proposed pandemic order relates; and

(b) the public health measures that the Chief Health Officer considers are necessary or appropriate to address this risk.

(2) In making a pandemic order, the Minister—

(a) must have regard to the advice of the Chief Health Officer (which may be given orally or in writing) about the matters referred to in subsections (1)(a) and (b); and

(b) may have regard to any other matter the Minister considers relevant including, but not limited to, social and economic matters.

(3) The Minister may consult any other person the Minister considers appropriate before making a pandemic order.

165AM Additional matters relating to a pandemic order

S. 165AM inserted by No. 53/2021 s. 12.

(1) A pandemic order must be in writing and must specify the following—

(a) the day on which, and time when, it comes into force, which must not be before the time when the pandemic declaration to which it relates comes into force;

(b) the period for which it continues in force;

(c) that refusal or failure to comply with the order without a reasonable excuse is an offence.

(2) A pandemic order may be expressed to apply in, or in relation to, the whole or a specified part of a pandemic management area.

(3) A pandemic order—

(a) may be of general or of specially limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or specified class of persons; and

(d) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the pandemic order, whether unconditionally or on specified conditions, and either wholly or to such extent as is specified; and

(e) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—

(i) wholly or partially or as amended by the pandemic order; or

(ii) as formulated, issued, prescribed or published at the time the pandemic order is made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(f) may confer powers or impose duties in connection with the pandemic order on any specified person or specified class of persons; and

(g) may make provision for and in relation to requiring a specified person or specified class of persons to obtain a permit (however described) including, but not limited to, in respect of an activity, a business, an undertaking, a gathering, or movement within or entry into an area; and

(h) may make provision for and in relation to matters relating to permits (however described) including but not limited to eligibility, applications, conditions, variations and cancellation; and

(i) may make provision for and in relation to matters of a transitional or saving nature including but not limited to in relation to the transition from a state of emergency after a pandemic declaration comes into force; and

(j) may provide for any matter or thing incidental to the making of a pandemic order.

165AN When a pandemic order comes into force and ceases to be in force

S. 165AN inserted by No. 53/2021 s. 12.

(1) A pandemic order comes into force on the day and at the time specified in the order.

(2) A pandemic order ceases to be in force—

(a) at the end of the period specified in the order; or

(b) if, before the end of that period, the order is revoked, or the pandemic declaration to which the order relates ceases to be in force, upon that revocation or cessation.

165AO Variation, extension or revocation of a pandemic order

S. 165AO inserted by No. 53/2021 s. 12.

(1) Subject to subsection (2), the Minister may at any time vary, extend or revoke a pandemic order under this section.

(2) The Minister must request the advice of the Chief Health Officer before varying, extending or revoking a pandemic order, other than in relation to a variation for the purpose of correcting a defect, mistake or omission.

(3) In varying, extending or revoking a pandemic order, the Minister—

(a) must have regard to the advice of the Chief Health Officer given in response to a request under subsection (2) (which may be given orally or in writing); and

(b) may have regard to any other matter the Minister considers relevant including, but not limited to, social and economic matters.

(4) The Minister may consult any other person the Minister considers appropriate before varying, extending or revoking a pandemic order.

S. 165AP inserted by No. 53/2021 s. 12.

165AP Publication of a pandemic order and associated documents

(1) The Minister must ensure that before a pandemic order or a variation, extension or revocation of a pandemic order comes into force, a copy of the order as made, varied or extended, or of the instrument of revocation, as the case requires, is published on the Pandemic Order Register.

(2) Subject to subsection (5), the Minister must ensure that within 7 days after a pandemic order or a variation, extension or revocation of a pandemic order comes into force, the following documents are published on an Internet site maintained by the Department—

(a) a copy of, or a written record of, the advice given by the Chief Health Officer as mentioned in section 165AL(2)(a) or 165AO(3)(a) in relation to the making, variation, extension or revocation of the order;

(b) a statement of reasons for the making, varying, extension or revocation of the order;

(c) in the case of the making, variation, or extension of the order, a statement as to whether, in the opinion of the Minister, the order does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and

(d) if, in the opinion of the Minister, the order as made, varied or extended does limit a human right set out in the Charter of Human Rights and Responsibilities, an explanation of—

(i) the nature of the human right limited; and

(ii) the importance of the purpose of the limitation; and

(iii) the nature and extent of the limitation; and

(iv) the relationship between the limitation and its purpose; and

(v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

(3) If—

(a) more than one pandemic order is made, varied, extended or revoked on the same day; and

(b) the Chief Health Officer's advice, the statement of reasons or the explanation applies to more than one of the orders—

the advice, statement of reasons or explanation, as the case requires, is only required to be published once in relation to the orders to which it relates.

(4) For the purposes of subsection (2)(a)—

(a) to the extent that the Chief Health Officer's advice was given wholly or partly in writing, a copy of the written advice, or a written record of the advice, must be published; and

(b) to the extent that the Chief Health Officer's advice was given wholly or partly orally, the Minister must cause a record of the advice to be prepared and endorsed by the Chief Health Officer, and a copy of the written record of the advice must be published.

(5) If a variation of a pandemic order is only for the purpose of correcting a defect, mistake or omission, subsection (2) does not apply to the variation, but the Minister must ensure that within 7 days after the variation comes into force, a statement certifying that the variation is only for

that purpose is published on an Internet site maintained by the Department.

(6) A failure to comply with the requirements of this section does not affect the validity of the pandemic order or the variation, extension or revocation, as the case requires.

S. 165AQ inserted by No. 53/2021 s. 12.

165AQ Tabling in Parliament of documents relating to a pandemic order

(1) The Minister must ensure that within 4 sitting days after a pandemic order or a variation, extension or revocation of a pandemic order comes into force—

(a) a copy of the pandemic order or the instrument of variation, extension or revocation, as the case requires, is laid before each House of the Parliament; and

(b) a copy of each document that is required to be published under section 165AP(2) in relation to the making, variation, extension or revocation of the order is laid before each House of the Parliament.

(2) A failure to comply with the requirements of this section does not affect the validity of the pandemic order or the variation, extension or revocation, as the case requires.

Note

However, the Pandemic Declaration Accountability and Oversight Committee may report on a failure to comply (see section 165AU(1)(b)), which is a precondition for disallowance under section 165AU.

165AR Publication of a pandemic order in the Government Gazette

S. 165AR inserted by No. 53/2021 s. 12.

After the making, variation, extension or revocation of a pandemic order, the order as made, varied or extended, or the instrument of revocation, must be published in full—

(a) in the next general edition of the Government Gazette; or

(b) in a special edition of the Government Gazette within 10 working days after the making, variation, extension or revocation.

Division 4—Scrutiny, suspension and disallowance of pandemic orders

165AS Consideration of pandemic orders by Parliament

S. 165AS inserted by No. 53/2021 s. 12.

(1) The Pandemic Declaration Accountability and Oversight Committee may report to each House of Parliament if the Pandemic Declaration Accountability and Oversight Committee considers that a pandemic order or an instrument that extends, varies or revokes a pandemic order—

(a) does not appear to be within the powers conferred by this Act; or

(b) without clear and express authority being conferred by this Act—

(i) has a retrospective effect; or

(ii) imposes any tax, fee, fine, imprisonment or other penalty; or

(iii) purports to shift the legal burden of proof to a person accused of an offence; or

(iv) provides for the subdelegation of powers delegated by this Act; or

(c) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.

(2) Subject to subsection (3), a report of the Pandemic Declaration Accountability and Oversight Committee under this section may contain such recommendations as the Pandemic Declaration Accountability and Oversight Committee considers appropriate, including a recommendation that a pandemic order or an instrument that extends, varies or revokes a pandemic order, should be—

(a) disallowed in whole or in part; or

(b) amended as suggested in the report.

(3) The Pandemic Declaration Accountability and Oversight Committee must not recommend that a pandemic order, or an instrument that extends, varies or revokes a pandemic order, should be disallowed in whole or in part unless the Pandemic Declaration Accountability and Oversight Committee has first requested and considered the advice of the Independent Pandemic Management Advisory Committee in relation to the pandemic order concerned.

S. 165AT inserted by No. 53/2021 s. 12.

165AT Suspension of pandemic order or part of a pandemic order, etc.

(1) If the Pandemic Declaration Accountability and Oversight Committee—

(a) proposes under section 165AS to recommend that a pandemic order, or an instrument that extends, varies or revokes a pandemic order, should be—

(i) disallowed in whole or in part; or

(ii) amended; and

(b) is of the opinion that considerations of justice and fairness require that the operation of the pandemic order or any part of the pandemic order, or the instrument or any part of the instrument that extends, varies or revokes a pandemic order, should be suspended pending the consideration by the Parliament of the pandemic order or instrument—

the Pandemic Declaration Accountability and Oversight Committee may propose in the report under section 165AS that the operation of the pandemic order or part of pandemic order, or the instrument or part of the instrument, as the case requires, be suspended.

(2) If the Pandemic Declaration Accountability and Oversight Committee proposes that the operation of a pandemic order or part of a pandemic order, or an instrument or any part of an instrument that extends, varies or revokes a pandemic order, be suspended—

(a) the Pandemic Declaration Accountability and Oversight Committee must forthwith send a copy of the report to the responsible Minister, the Governor in Council and the maker of the pandemic order or the instrument; and

(b) subject to subsection (3), the operation of the pandemic order or part of the pandemic order or the instrument or part of the instrument, as the case requires, is suspended at the end of the period of 7 days after the sending of the report to the Governor in Council until the end of the period during which the pandemic order or part of the pandemic order or the instrument or part of the instrument, as the

case requires, could be disallowed under section 165AU.

(3) The Governor in Council, on the recommendation of the responsible Minister made within the period of 7 days referred to in subsection (2), may by Order published in the Government Gazette declare that the operation of the pandemic order or part of the pandemic order, or the instrument or part of the instrument, as the case requires, is not suspended.

(4) As from the date on which the Order referred to in subsection (3) is published, the provision in a report of the Pandemic Declaration Accountability and Oversight Committee providing for the suspension ceases to have any force or effect.

(5) While the operation of a pandemic order or part of a pandemic order, or an instrument or part of an instrument, as the case requires, is suspended under this section, the pandemic order or instrument is deemed not to have been made or to have been made without that part.

S. 165AU inserted by No. 53/2021 s. 12.

165AU Disallowance of pandemic order or instrument in whole or part

(1) This section applies to a pandemic order, or an instrument that extends, varies or revokes a pandemic order, if—

(a) in a report under section 165AS, the Pandemic Declaration Accountability and Oversight Committee has recommended that the pandemic order or the instrument be disallowed in whole or in part; or

(b) there was a failure to comply with section 165AQ and the Pandemic Declaration Accountability and Oversight Committee has reported that failure to each House of the Parliament.

(2) A pandemic order or instrument to which this section applies is disallowed in whole or in part if—

(a) a notice of a resolution to disallow the pandemic order or instrument is given in each House of the Parliament within whichever of the following periods applies—

(i) if the pandemic order or instrument and associated documents were laid before each House of the Parliament in accordance with section 165AQ, on or before the 18th sitting day of each House after the pandemic order or instrument is laid before that House;

(ii) if the pandemic order or instrument and associated documents were not laid before each House of the Parliament in accordance with section 165AQ, on or before the 24th sitting day of each House after the pandemic order or instrument is published in the Government Gazette in accordance with section 165AR; and

(b) the resolution is passed by a joint sitting of the Legislative Assembly and the Legislative Council held in accordance with subsection (6) and held before the end of the period of 3 months after the giving of the notice of the resolution.

(3) Notice of a resolution to disallow a pandemic order, or an instrument that extends, varies or revokes a pandemic order, may be expressed to apply to the whole or to any part of the pandemic order or instrument.

(4) A resolution to disallow the whole or any part of a pandemic order, or an instrument that extends, varies or revokes a pandemic order, has effect according to its tenor.

(5) If a House of the Parliament is prorogued or the Legislative Assembly is dissolved—

(a) the prorogation or dissolution does not affect the power of the House to pass a resolution disallowing the whole or any part of a pandemic order, or an instrument that extends, varies or revokes a pandemic order; and

(b) the calculation of sitting days of the House is to be made as if there had been no prorogation or dissolution.

(6) At a joint sitting of the Legislative Assembly and the Legislative Council for the purposes of subsection (2)(b)—

(a) the members have the same privileges and immunities as the members of the Legislative Assembly in relation to proceedings before that House; and

(b) a question is to be decided by an absolute majority of the total number of the members of the Legislative Assembly and the Legislative Council; and

(c) in the event of an equality of votes on a question, the question is to be taken to have been determined in the negative.

165AV Effect of disallowance and Clerk to publish notice of disallowance

S. 165AV inserted by No. 53/2021 s. 12.

(1) If a pandemic order or a part of a pandemic order is disallowed by the Parliament the order or part of the order, as the case requires is revoked and ceases to be in force on and after the time of the disallowance.

(2) If an instrument that varies a pandemic order, or a part of such an instrument, is disallowed by the Parliament, the pandemic order as in force immediately before the revocation is revived, on and after the time of the disallowance, as if the variation made by the instrument or part of the instrument, as the case requires, had not been made.

(3) If an instrument that extends a pandemic order is disallowed, the instrument is revoked and the pandemic order ceases to be in force on and after the time of the disallowance.

(4) If an instrument that revokes a pandemic order is disallowed, the pandemic order as in force immediately before the revocation is revived on and after the time of the disallowance.

(5) If a pandemic order or a part of a pandemic order, or an instrument that extends, varies or revokes a pandemic order or a part of such an instrument, is disallowed, the Clerk of the Parliaments must cause notice of the disallowance to be published in the Government Gazette.

Division 5—Pandemic management powers

165AW Chief Health Officer may authorise exercise of certain powers

S. 165AW inserted by No. 53/2021 s. 12.

(1) This section applies if—

(a) a pandemic declaration is in force; and

(b) the Chief Health Officer believes that it is reasonably necessary to grant an authorisation under this section to eliminate or reduce a serious risk to public health.

(2) The Chief Health Officer may, for the purpose of eliminating or reducing the serious risk to public health, authorise—

(a) authorised officers, or a specified class or classes of authorised officers, appointed by the Secretary to exercise any of the public health risk powers and the pandemic management powers; and

(b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or specified Councils to exercise any of the public health risk powers and the pandemic management powers.

(3) The Chief Health Officer may at any time revoke or vary an authorisation given under this section.

S. 165AX inserted by No. 53/2021 s. 12.

165AX How may an authorisation be given?

(1) An authorisation under section 165AW(2) may be given orally or in writing.

(2) An authorisation given orally must be confirmed in writing as soon as reasonably practicable.

(3) An authorisation must—

(a) state that the authorisation is given under this Division; and

(b) describe in general terms the serious risk to public health to which it relates; and

(c) specify when the authorisation is given; and

(d) specify any restrictions or limitations that apply to the exercise of any of the public

health risk powers or the pandemic management powers; and

(e) specify the period of time for which the authorisation continues in force.

165AY Chief Health Officer may extend authorisation

S. 165AY inserted by No. 53/2021 s. 12.

The Chief Health Officer may extend the period of time for which an authorisation continues in force, which must not be longer than the period for which the pandemic declaration continues in force.

165AZ Authorised officers may exercise public health risk powers and pandemic management powers

S. 165AZ inserted by No. 53/2021 s. 12.

Subject to section 165AX(3), an authorised officer who is authorised under section 165AW(2) may exercise any of the public health risk powers or the pandemic management powers at any time when a pandemic declaration is in force.

Note

A pandemic order prevails over a direction given by an authorised officer to the extent of any inconsistency, see section 165CQ.

165B Pandemic management order powers

S. 165B inserted by No. 53/2021 s. 12.

(1) The ***pandemic management order powers*** are as follows—

(a) to take any action or give any direction, other than to detain a person, that the authorised officer believes is reasonably necessary to implement or give effect to a pandemic order;

(b) to detain a person in a pandemic management area in accordance with a pandemic order that requires the detention of the person (including a pandemic order that requires that the detention of a person be extended).

Note

A pandemic order can require that a person be detained or that the detention of a person be extended: see section 165AI(2)(a) and (b). Special protections apply to detention under this Part, including the right of a detained person to apply for review by a Detention Appeals Officer of the detention: see Division 6.

(2) Without limiting subsection (1)(a), an authorised officer may give a direction in the exercise of a pandemic management order power under that subsection that requires a person to take, or refrain from taking, any action that authorised officer believes is reasonably necessary to ensure compliance, or limit non-compliance, by the person with a pandemic order.

Note

A pandemic order that applies generally to all persons or to a person included in a specified class can be made by the Minister, see section 165AK(1).

(3) An authorised officer may detain more than one person in a single exercise of a pandemic management order power under subsection (1)(b), if the detention of the persons is in accordance with a pandemic order.

S. 165BA inserted by No. 53/2021 s. 12.

165BA Pandemic management general powers

(1) The ***pandemic management general powers*** are as follows—

(a) to take any action or give any direction, other than to detain a person, that the authorised officer believes is reasonably necessary to protect public health;

(b) to detain a person in a pandemic management area for the period the authorised officer believes is reasonably necessary to eliminate or reduce a serious risk to public health.

(2) Without limiting the pandemic management general powers, an authorised officer may give a written or oral direction in the exercise of a pandemic management general power—

(a) that restricts movement in a pandemic management area; or

(b) that requires movement in, into or from a pandemic management area; or

(c) that prevents or limits entry to a pandemic management area; or

(d) that requires a person to refrain from organising or participating in a gathering whether public or private in a pandemic management area; or

(e) that requires the use of personal protective equipment in a pandemic management area; or

(f) that requires a person to refrain from carrying on activities, businesses or undertakings, or to carry them on in a specified manner, in a pandemic management area; or

(g) that requires the provision of information (including information about the identity of any person), the production of documents or the keeping of records; or

(h) that requires medical examination or testing in a pandemic management area or before entering a pandemic management area; or

(i) that requires the quarantining, destruction or other management of disease vectors in a pandemic management area.

(3) If a direction is given orally, matters required to be specified in the direction may be stated orally.

(4) An authorised officer, in the exercise of a pandemic management general power under subsection (1)(a), must not give a direction that applies to more than one person unless the direction—

(a) relates to a particular event at a particular location and is given to persons participating in, or present at, that event (including, but not limited to, a direction to restrict movement, require movement or limit entry); or

(b) relates to a particular activity at a particular location and is given to persons undertaking that activity (including, but not limited to, a direction to restrict movement, require movement or limit entry); or

(c) is a direction to restrict movement, require movement or to limit entry, if when the direction is given the persons to whom the direction is given—

(i) are located in the immediate vicinity of the authorised officer; or

(ii) are present at a particular premises.

(5) An authorised officer must not detain more than one person in a single exercise of a pandemic management general power under subsection (1)(b).

S. 165BB inserted by No. 53/2021 s. 12.

165BB Warning before giving a direction

Before exercising a pandemic management power to give a direction, the person exercising the power must, unless it is not practicable to do so, warn the person to whom the direction is given that refusal or failure to comply with the direction without a reasonable excuse is an offence.

165BC Assistance

S. 165BC inserted by No. 53/2021 s. 12.

(1) An authorised officer may be assisted by any person in exercising a power under an authorisation given under this Part.

(2) A request for assistance by a police officer must be made to the Chief Commissioner of Police or a delegate of the Chief Commissioner of Police.

Note

Division 4A of Part 11 contains general provisions relating to compliance and enforcement.

Division 6—Special protections in respect of powers of detention

165BD When detention commences

S. 165BD inserted by No. 53/2021 s. 12.

The detention of a person in the exercise of a pandemic management power under section 165B(1)(b) or 165BA(1)(b) commences at whichever of the following times occurs first—

(a) the time when the person is first at a place where the person is to be detained after the exercise of the pandemic management power, whether or not the person is to remain at that place throughout the period of detention, or is to be transported to another place;

(b) the time when the person is first taken into the physical custody of an authorised officer in the exercise of the pandemic management power or into the physical custody of a person assisting an authorised officer;

(c) the time when an authorised officer takes an action in respect of the person, the taking of which is specified in the pandemic order as being the commencement of the detention of a person.

S. 165BE inserted by No. 53/2021 s. 12.

165BE Requirement to isolate or quarantine not of itself detention

To avoid doubt, for the purposes of this Part, a person who is required to isolate or quarantine under a pandemic order or under a direction given in the exercise of a pandemic management power is not detained for the purposes of this Part merely because of the requirement to isolate or quarantine.

S. 165BF inserted by No. 53/2021 s. 12.

165BF Pandemic management powers that involve detention

(1) Subject to subsection (4), before a person is detained pursuant to the exercise of a pandemic management power, or the detention of a person is extended in the exercise of a pandemic management power, the person must be given—

(a) a notice under subsection (2); or

(b) an explanation of the reason why it is necessary to detain the person, and a warning to the person that a refusal or failure to comply with a pandemic order, or a direction given or a requirement made, in the exercise of a pandemic management power without a reasonable excuse is an offence.

(2) A notice under this subsection must be in writing and must state the following—

(a) the purpose of the detention and its terms;

(b) any exemptions that may be available to the person in respect of the detention;

(c) an explanation of the person's rights and entitlements in relation to making a complaint, seeking an exemption or seeking a review of the detention or the extension of the detention including, but not limited to—

(i) the process for making a complaint or seeking an exemption; and

(ii) the process for making an application for review of the detention under section 165BI;

(d) that a refusal or failure to comply with a pandemic order, or with a direction given to the person, or a requirement made of the person, in the exercise of a pandemic management power without a reasonable excuse is an offence.

(2A) Without limiting subsection (2)(c), an explanation under that subsection must include an explanation of the following rights that the person has, or may have, and the processes in respect of those rights—

(a) the right to complain to the Ombudsman under the **Ombudsman Act 1973**;

(b) the right to make a complaint under section 185 of this Act; or

(c) the right to seek review in a court.

(3) If an explanation is given under subsection (1)(b) or a notice is given under subsection (2)—

(a) it must be in a form that the person to whom it is given is capable of understanding; or

(b) the person to whom it is given must be provided with reasonable assistance to understand the explanation or notice.

(4) If, in the particular circumstances in which a person is detained or the detention of a person is extended, it is not practicable to give a notice or an explanation to the person before the person is detained or the extension takes effect, a notice or explanation must be given as soon as reasonably practicable.

(5) If a person is given an explanation under subsection (1)(b) or (4), a notice under subsection (2) must be given to the person as soon as reasonably practicable after the explanation is given.

S. 165BG inserted by No. 53/2021 s. 12.

165BG Authorised officers must facilitate communication and review detention

(1) An authorised officer must facilitate any reasonable request for communication made by a person who is detained under section 165B(1)(b) or 165BA(1)(b).

(2) Subject to subsection (3), an authorised officer must, at least once every 24 hours during the period that a person is detained, review whether the authorised officer is satisfied that the continued detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health.

(3) If it is not reasonably practicable for a review under subsection (2) to be undertaken within a particular 24 hour period, the review must occur as soon as practicable and without undue delay.

S. 165BH inserted by No. 53/2021 s. 12.

165BH Reports by authorised officers to Chief Health Officer about exercise of pandemic management powers that involve detention

(1) An authorised officer must, as soon as is reasonably practicable, give written notice to the Chief Health Officer of each of the following—

(a) that a person has been detained in the exercise of a pandemic management power under section 165B(1)(b) or 165BA(1)(b);

(b) that following a review under subsection 165BG(2), a person is to continue to be detained under section 165B(1)(b) or 165BA(1)(b).

(2) A notice under subsection (1) must include—

(a) the name of the person being detained; and

(b) a brief statement as to the reason why the person is detained or continues to be detained; and

(c) if a review under subsection 165BG(2) did not occur within a 24 hour period as required by that subsection—

(i) when the review occurred; and

(ii) the reason why the review did not occur within the 24 hour period.

(3) The Chief Health Officer must, as soon as is reasonably practicable—

(a) advise the Minister in writing of the following as applicable—

(i) that a person has been detained under section 165B(1)(b) or 165BA(1)(b);

(ii) that following a review under section 165BG(2) a person is to continue to be detained under section 165B(1)(b) or 165BA(1)(b); and

(b) include in the advice the name of the person being detained and a brief statement as to the reason why the person is, or continues to be, detained.

165BI Review of certain decisions in relation to detention

S. 165BI inserted by No. 53/2021 s. 12.

(1) A person who is detained or whose detention is extended under section 165B(1)(b) or 165BA(1)(b) may make an application to the Detention Appeals Registrar for review by a Detention Appeals Officer of the detention including, but not limited to, in respect of the following—

(a) the reasons for the detention;

(b) the period of the detention;

(c) the place of the detention;

(d) the conditions of the detention;

(e) any other matter relating to the detention.

(2) A person who has made an application under subsection (1) may make further applications under that subsection if—

(a) the most recent application made by the person has been determined; and

(b) since the most recent application was determined, new and materially different circumstances have arisen that affect the person in respect of the detention.

(3) An application under subsection (1)—

(a) must be in writing; and

(b) must specify the grounds on which the application is made; and

(c) if the application is a further application of the kind permitted by subsection (2), must include a description of the new and materially different circumstances that have arisen and affect the person in respect of the detention; and

(d) must include any prescribed information; and

(e) may include any other information that the person making the application considers appropriate.

(4) An application under subsection (1) may also be made by a person on behalf of a person who is detained—

(a) with the explicit consent of the person who is detained; or

(b) without the explicit consent of the person who is detained, if the person making the application provides a written undertaking that the person who is detained has been consulted about the application and has not refused to give consent.

(5) The Detention Appeals Registrar must ensure that an application made under subsection (1) is referred to a Detention Appeals Officer immediately after the application is received.

165BIA Secretary and Detention Appeals Registrar to provide relevant information and assistance to Detention Appeals Officers

S. 165BIA inserted by No. 53/2021 s. 12.

(1) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with all relevant information in their possession including, but not limited to, documents and information mentioned in section 165BJ(3)(ab), as soon as reasonably practicable after an application under section 165BI is received by the Detention Appeals Registrar.

(2) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with any information requested by the Detention Appeals Officer under section 165BJ(3)(c) within 24 hours after receiving the request.

(3) The Secretary and the Detention Appeals Registrar must provide all reasonable assistance requested by a Detention Appeals Officer for the

purposes of the Detention Appeals Officer considering and deciding applications for review.

(4) The provision of information under subsection (1) or (2) is authorised or required by law for the purposes of the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**.

S. 165BJ inserted by No. 53/2021 s. 12.

165BJ Detention Appeals Officer must decide applications

(1) This section applies if an application in respect of a decision is referred to a Detention Appeals Officer under section 165BI(5).

(2) Subject to subsection (5), the Detention Appeals Officer must use their best endeavours to decide the application, and advise the applicant in writing of the decision, the reasons for it and the review rights available to the applicant within 72 hours after the application was received by the Detention Appeals Registrar or within such longer period as is requested by the applicant.

(2A) Without limiting subsection (2), the advice under that subsection must include an explanation of the following rights that the person has, or may have, and the processes in respect of those rights—

(a) the right to complain to the Ombudsman under the **Ombudsman Act 1973**;

(b) the right to make a complaint under section 185 of this Act;

(c) the right to seek review in a court.

(3) In deciding the application, the Detention Appeals Officer—

(a) must consider the information included in the application; and

(ab) may consider any documents and other information relied upon by the authorised officer who detained the person or extended

the detention of the person under section 165B(1)(b) or 165BA(1)(b) and may consider any other information in relation to the person's detention; and

(ac) must take reasonable steps to contact the applicant in relation to the application; and

(b) may consider any other matter the Detention Appeals Officer considers relevant, including but not limited to general information provided to the Detention Appeals Officer in relation to risks to public health; and

(c) may make such further inquiries and seek such further information in relation to any aspect of the application as the Detention Appeals Officer thinks fit including, but not limited to, making inquiries of or seeking information from persons with expertise in public health.

(4) The Detention Appeals Officer may decide—

(a) not to vary the person's detention; or

(b) subject to subsections (5), (6) and (7), to vary or cease the person's detention.

(5) A Detention Appeals Officer must not vary or cease a person's detention under subsection (4)(b) unless the Detention Appeals Officer has consulted and considered the advice of the Chief Health Officer about the proposed variation or cessation.

Note

The Chief Health Officer can delegate powers, duties and functions: see section 22.

(6) If a Detention Appeals Officer consults the Chief Health Officer about the proposed variation or cessation of a person's detention, the Chief Health Officer must make their best endeavours to

provide oral or written advice about the proposed variation or cessation within 24 hours.

(7) If the Chief Health Officer provides oral advice under subsection (6), a written record of the advice must be prepared as soon as practicable—

(a) by the Chief Health Officer; or

(b) by the Detention Appeals Officer, who must provide a copy of the written record to the Chief Health Officer for endorsement by the Chief Health Officer.

S. 165BL inserted by No. 53/2021 s. 12.

165BL Detention not unlawful merely because of a decision on review

If the detention of a person ceases because of a decision made on a review of the detention, the detention of the person is not unlawful merely because of the decision made on the review.

S. 165BM inserted by No. 53/2021 s. 12.

165BM Detention guidelines and standards

(1) The Minister may make and publish guidelines and standards in relation to the welfare of persons detained under section 165B(1)(b) or 165BA(1)(b).

(2) The Minister must consult the Chief Health Officer before making guidelines or standards under subsection (1).

(3) Guidelines and standards made under subsection (1) may deal with any matter relating to the welfare of detained persons.

Note

For example, matters could include the provision of psychological support and contact with other persons.

(4) In performing functions and exercising powers under this Act, a person must have regard to any guidelines and standards issued under subsection (1).

(5) If a standard makes specific provision in relation to a particular matter, a person must perform functions and exercise powers under this Act in compliance with the provision, to the extent that the provision is not inconsistent with a pandemic order.

(6) If the Minister makes a pandemic order that is inconsistent with a guideline or a standard, the Minister must explain the reasons for the inconsistency in the statement of reasons referred to in section 165AP(2)(b) in relation to the pandemic order.

Division 6A—Offences, penalties and related matters

165BN Failure to comply with pandemic order, direction or other requirement

S. 165BN inserted by No. 53/2021 s. 12.

(1) A person commits an offence if the person refuses or fails to comply with a pandemic order, or with a direction given to the person, or a requirement made of the person, in the exercise of a pandemic management power.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply.

Division 7—Information sharing

S. 165BR inserted by No. 53/2021 s. 12.

165BR Secretary and Chief Health Officer may collect, use and disclose information

The Secretary and the Chief Health Officer may collect, hold, manage, use, disclose or transfer information if this is reasonably necessary for—

(a) the performance of functions or the exercise of powers under or in relation to this Part; or

(b) achieving the objective of this Part.

S. 165BS inserted by No. 53/2021 s. 12.

165BS Provision of information etc. is authorised by law

To avoid doubt, the disclosure or transfer of personal information or health information in answering a question, giving information or producing a document or other thing as authorised or required by this Part is taken to be authorised or required by law for the purposes of—

(a) the **Privacy and Data Protection Act 2014**; and

(b) the **Health Records Act 2001**.

S. 165BT inserted by No. 53/2021 s. 12.

165BT Pandemic information determination

(1) The Minister may apply to the Information Commissioner, in writing, for a determination (a ***pandemic information determination***) under section 165BU(1) in relation to either or both of the following in respect of information that is collected, held, managed, used, disclosed or transferred for the purposes of this Part—

(a) an act or a practice of an organisation that contravenes or may contravene a specified Information Privacy Principle or an approved code of practice within the meaning of the **Privacy and Data Protection Act 2014**;

(b) an act or a practice of an organisation that contravenes or may contravene a specified Health Privacy Principle.

(2) An application for a pandemic information determination must specify—

(a) the act or practice to which the determination would apply; and

(b) the persons or organisations to which the determination would apply; and

(c) the Information Privacy Principle, approved code of practice or Health Privacy Principle to which the application relates; and

(d) the reasons for seeking the determination.

(3) A pandemic information determination may relate to personal information or health information or both.

165BU Information Commissioner may make a pandemic information determination

S. 165BU inserted by No. 53/2021 s. 12.

(1) The Information Commissioner may make a pandemic information determination on application under section 165BT if satisfied that the public interest in the organisation doing the act or engaging in the practice substantially outweighs the public interest in complying with the specified Information Privacy Principle, approved code of practice or Health Privacy Principle.

(2) In deciding whether to make a pandemic information determination, the Information Commissioner—

(a) must have regard to whether permitting the organisation to do the act or engage in the practice would be in the public interest; and

(b) must have regard to the objective of this Act, the objective of this Part, the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**; and

(c) may have regard to any other matter the Information Commissioner considers relevant.

(3) The Information Commissioner must consult the Health Complaints Commissioner before making a pandemic information determination that relates to a Health Privacy Principle.

(4) The Health Complaints Commissioner may comment in writing on a pandemic information determination made by the Information Commissioner that relates to a Health Privacy Principle.

(5) A pandemic information determination must include a statement of reasons for making the determination.

S. 165BV inserted by No. 53/2021 s. 12.

165BV Effect of a pandemic information determination

If the Information Commissioner makes a pandemic information determination, the persons or organisations to which the determination applies are not required to comply with the Information Privacy Principles, approved codes of practice and Health Privacy Principles to the extent specified in the determination.

S. 165BW inserted by No. 53/2021 s. 12.

165BW Duration of a pandemic information determination

A pandemic information determination has effect on and after the day of its publication until—

(a) the expiry date (if any) specified in the determination; or

(b) if, before the expiry date, the determination is revoked, or the pandemic declaration to

which the determination relates ceases to be in force, upon that revocation or cessation.

165BX Variation of a pandemic information determination

S. 165BX inserted by No. 53/2021 s. 12.

(1) The Minister may apply to the Information Commissioner to vary a pandemic information determination.

(2) The Information Commissioner may vary the pandemic information determination, upon application by the Minister under subsection (1), if the Information Commissioner considers it appropriate to do so.

(3) In deciding whether to vary a pandemic information determination, the Information Commissioner—

(a) must have regard to whether the variation would be in the public interest; and

(b) must have regard to the objective of this Act, the objective of this Part, the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**; and

(c) may have regard to any other matter the Information Commissioner considers relevant.

165BY Revocation of a pandemic information determination

S. 165BY inserted by No. 53/2021 s. 12.

The Information Commissioner must revoke a pandemic information determination if satisfied that—

(a) the public interest in the organisation doing the act or engaging in the practice no longer substantially outweighs the public interest in complying with the Information Privacy Principle or approved code of practice or Health Privacy Principle specified in the determination; or

(b) the reasons set out in the application for the determination no longer apply.

S. 165BZ inserted by No. 53/2021 s. 12.

165BZ Procedures before variation or revocation of a pandemic information determination

(1) Before revoking a pandemic information determination, the Information Commissioner must give the Minister written notice stating—

(a) that the Information Commissioner intends to vary or revoke the determination; and

(b) the reasons for the intended variation or revocation; and

(c) that the Minister may make a submission as to why the determination should not be varied or revoked.

(2) The Information Commissioner must consider any submission received under subsection (1)(c) within the period stated in the notice before revoking the pandemic information determination.

(3) The Information Commissioner must consult the Health Complaints Commissioner before varying or revoking a pandemic information determination that relates to a Health Privacy Principle.

(4) The Health Complaints Commissioner may comment in writing on an instrument varying or revoking a pandemic information determination that relates to a Health Privacy Principle.

(5) An instrument varying or revoking a pandemic information determination must include a statement of reasons for the variation or revocation.

165C Publication of a pandemic information determination and an instrument of variation or revocation

S. 165C inserted by No. 53/2021 s. 12.

Subject to this section, within 14 days after a pandemic information determination is made, varied or revoked, the Information Commissioner must ensure that the following documents are published on an Internet site maintained by the Information Commissioner—

(a) a copy of the pandemic information determination as made or varied, or the instrument of revocation;

(b) a statement of reasons for the making, variation or revocation of the pandemic information determination;

(c) a copy of any comments made by the Health Complaints Commissioner—

(i) under section 165BU(4) on the pandemic information determination; or

(ii) under section 165BZ(4) on an instrument varying or revoking the pandemic information determination.

Division 8—Safeguards for contact tracing information

165CA Objective

S. 165CA inserted by No. 53/2021 s. 12.

The objectives of this Division are—

(a) to safeguard information about individuals, and certain other information, to the extent that it forms part of a system established for contact tracing purposes in relation to a pandemic disease or a disease of pandemic potential to which a pandemic declaration relates; and

(b) to provide a strong legislative framework in order to maintain the Victorian community's confidence in the safeguards that apply to the use and disclosure of such information.

S. 165CB inserted by No. 53/2021 s. 12.

165CB Meaning of *contact tracing information*

(1) In this Act—

contact tracing information means information that forms part of a system established for contact tracing purposes in relation to a pandemic disease or a disease of pandemic potential to which a pandemic declaration relates, being information that—

(a) is recorded in any form, and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information; or

(b) is collected by a digital visitor registration system for the purposes of contact tracing, whether or not the information is about an individual whose identity is apparent, or can reasonably be ascertained, from the information.

(2) In this Act, a system is established for ***contact tracing purposes***, in relation to a pandemic disease or a disease of pandemic potential to which a pandemic declaration relates or related, if—

(a) under the system, information is or was collected, held, used, disclosed, managed and transferred by entities and individuals for the purposes of identifying, notifying or communicating with one or more other entities and individuals; and

(b) the identification, notification or communication referred to in paragraph (a) is or was about one or more individuals who—

(i) are, or at any time may be or may have been, infected with the pandemic disease or disease of pandemic potential; or

(ii) had, or at any time may have or have had, direct or indirect contact with one or more individuals who are, or at any time may be or may have been, infected with that disease.

165CC Offence to use or disclose contact tracing information

S. 165CC inserted by No. 53/2021 s. 12.

A person commits an offence if—

(a) the person uses or discloses contact tracing information; and

(b) the use or disclosure is not authorised under section 165CD.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

165CD When a use or disclosure of contact tracing information is authorised

S. 165CD inserted by No. 53/2021 s. 12.

(1) For the purposes of section 165CC, a use or disclosure of contact tracing information is authorised by this section if the use or disclosure—

(a) is for a public health purpose; or

(b) is in the performance of functions or the exercise of powers under this Part; or

(c) is for a permitted purpose.

(2) A use or disclosure of contact tracing information is for a ***permitted purpose*** if the use or disclosure—

(a) is with the consent of any individual whose identity is apparent, or can reasonably be ascertained, from the information; or

(b) is for the purpose of addressing an imminent threat to life, health, safety or welfare of one or more individuals in circumstances where an individual—

(i) is, or is reasonably suspected of being, at imminent risk of self-harm;

(ii) poses, or is reasonably suspected of posing, an imminent threat to the life, health, safety or welfare of others; or

(c) is for the purpose of taking enforcement action (including, but not limited to, issuing infringement notices or investigating or prosecuting an offence) in respect of an offence under the following—

(i) section 165CC; or

(ii) section 210.

Division 9—Independent Pandemic Management Advisory Committee

S. 165CE inserted by No. 53/2021 s. 12.

165CE Establishment of Independent Pandemic Management Advisory Committee

(1) Within 30 days of the first extension of a pandemic declaration, the Minister, by Order published in the Government Gazette, must establish a committee, to be known as an Independent Pandemic Management Advisory Committee, for the purposes of providing advice

in relation to managing the pandemic disease or the disease of pandemic potential to which the pandemic declaration relates.

(2) If the Minister establishes an Independent Pandemic Management Advisory Committee the Minister must, by Order published in the Government Gazette—

(a) appoint as members of the committee persons whom the Minister considers have skills, knowledge or experience relevant to the committee's functions; and

(b) specify the period of appointment and the terms and conditions of the appointment.

(3) Before appointing a person as a member of an Independent Pandemic Management Advisory Committee, the Minister must consult the Chief Health Officer in relation to the appointment.

(4) For the purposes of appointing members to an Independent Pandemic Management Advisory Committee, the Minister must ensure as far as reasonably practicable that members of the committee, taken as a group, have skills, knowledge and experience that encompass all of the following matters—

(a) public health;

(b) infectious diseases;

(c) primary care;

(d) emergency care;

(e) critical care;

(f) law;

(g) human rights;

(h) the interests and needs of traditional owners and Aboriginal Victorians;

(i) the interests and needs of vulnerable communities.

(5) Each person appointed in order to ensure that an Independent Pandemic Management Advisory Committee has skills, knowledge and experience in the interests and needs of traditional owners and Aboriginal Victorians must be an Aboriginal Victorian.

(6) A member of an Independent Pandemic Management Advisory Committee is not subject to the **Public Administration Act 2004** (other than Part 5 of that Act) in respect of their membership.

(7) A member of an Independent Pandemic Management Advisory Committee, other than a member who is an employee of the public service, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister in respect of their appointment.

S. 165CF inserted by No. 53/2021 s. 12.

165CF Functions of an Independent Pandemic Management Advisory Committee

(1) The functions of an Independent Pandemic Management Advisory Committee are—

(a) to review and provide advice to the Minister in relation to the exercise of powers under this Part; and

(b) to prepare and provide reports to the Minister including, but not limited to, reports that make non-binding recommendations.

(2) A review under subsection (1)(a) may be conducted on the initiative of an Independent Pandemic Management Advisory Committee or on request by the Minister.

(3) If the Minister requests that an Independent Pandemic Management Advisory Committee advise the Minister in relation to particular matters, the committee must advise the Minister in relation to those matters, but the committee is not otherwise subject to the direction or control of the Minister.

165CG Tabling in Parliament of reports

S. 165CG inserted by No. 53/2021 s. 12.

Within 4 sitting days after a report under section 165CF(1)(b) is provided to the Minister, the Minister must ensure that a copy of the report is laid before each House of the Parliament.

Division 10—Interaction between a state of emergency and a pandemic and other matters

165CH Application of Division

S. 165CH inserted by No. 53/2021 s. 12.

(1) This Division applies if—

(a) a declaration of a state of emergency under section 198(1) is in force, in respect of one or more emergency areas, in relation to an infectious disease or an infectious agent that gives rise to an infectious disease; and

(b) a pandemic declaration in relation to the same infectious disease comes into force at a particular time in relation to one or more pandemic management areas.

(2) For the purposes of this Division the time when the pandemic declaration referred to in subsection (1)(b) comes into force is the ***pandemic start time***.

(3) On and from the pandemic start time, the declaration of the state of emergency—

(a) ceases to be in force in respect of so much of each emergency area that is, or is within, a pandemic management area;

(b) remains in force in respect of each other emergency area.

S. 165CI inserted by No. 53/2021 s. 12.

165CI Authorised officers

An authorisation of an authorised officer under section 199 that is in force immediately before the pandemic start time continues in force on and after that time as if the authorisation had been given, on the same terms, under section 165AW(2), with the following modifications—

(a) if the authorisation is expressed to expire when the state of emergency declaration ceases to be in force (however described), the authorisation is taken to expire when the pandemic declaration ceases to be in force;

(b) a reference in the authorisation to the emergency powers under section 200 or to directions under section 200 is taken to be a reference to the pandemic management powers and pandemic orders;

(c) a restriction or limitation imposed under section 201(3)(e) is taken to be a restriction or limitation imposed under section 165AX(3)(d).

S. 165CJ inserted by No. 53/2021 s. 12.

165CJ Directions of Chief Health Officer

A direction given by the Chief Health Officer or their delegate under section 200(1) that is in force immediately before the pandemic start time, other than a direction that applies to a single named individual, continues in force, until it is revoked, on and after the pandemic start time—

(a) as if the direction were a pandemic order in the same terms made under section 165AI(1); and

(b) subject to any exemption, benefit, requirement or entitlement (however described) to which the direction was subject immediately before the pandemic start time.

165CK Directions and actions other than in relation to detention

S. 165CK inserted by No. 53/2021 s. 12.

(1) A direction given, and anything done, by an authorised officer under an emergency power or a public health risk power during the state of emergency, other than a direction or thing done in relation to detention under section 200(1)(a), continues in force, on and after the pandemic start time—

(a) as if the direction had been given, or the thing had been done, in the exercise of a pandemic management general power under section 165B(1)(a), or a public health risk power, as the case requires; and

(b) subject to any exemption, benefit, requirement or entitlement (however described) to which the direction or thing done was subject immediately before the pandemic start time.

(2) Subsection (1) does not apply to a direction given, or anything done, by the Chief Health Officer or their delegate.

165CL Directions and actions in relation to detention

S. 165CL inserted by No. 53/2021 s. 12.

(1) Subject to this section if, immediately before the pandemic start time, a person is detained under a direction or thing done under section 200(1)(a)—

(a) the detention of the person continues in force, on and after the pandemic start time, as if the person were detained under section 165B(1)(b) or 165BA(1)(b); and

(b) any direction given to the person under section 200(1)(d) in relation to the detention continues in force as if the direction had been given under 165B(1)(a) or 165BA(1)(a).

(2) An application under section 200B made by or on behalf of the person, which had not been determined as at the pandemic start time, is taken, on and after the pandemic start time, to have been made under section 165BI(1).

(4) A decision made before the pandemic start time on an application under section 200B is taken, on and after the pandemic start time, to have been made under section 165BJ.

(6) For the purposes of this section, any time frames that would have applied under this Act as in force immediately before the pandemic start time continue to apply.

S. 165CM inserted by No. 53/2021 s. 12.

165CM Exemptions in relation to detention

(1) Subject to this section if—

(a) immediately before the pandemic start time, a person who would otherwise have been detained under section 200(1)(a) is not in detention because of the exercise of a discretion to not detain the person; and

(b) as at the pandemic start time, the reasons for not detaining the person remain applicable—

the person is presumed not to be required to be detained under a pandemic order on or after the pandemic start time.

(2) Nothing in subsection (1) limits the operation of a pandemic order or section 165B(1)(b) or 165BA(1)(b) in respect of the person if the reasons referred to in subsection (1) cease to be applicable.

165CN Secretary may appoint authorised officers

S. 165CN inserted by No. 53/2021 s. 12.

During any period when a pandemic declaration is in force, in addition to the persons who may otherwise be appointed under section 30(1), the Secretary by instrument may also appoint under that subsection any of the following to be an authorised officer for the purposes of this Act—

(a) a person the Secretary considers appropriate for appointment based on the person's skills, attributes or experience;

(b) a police officer;

(c) a protective services officer;

(d) a Worksafe inspector;

(e) an employee in the public sector of a State other than Victoria, or a territory;

(f) a designated health service provider.

165CO Limitation on the powers that may be conferred on authorised officers appointed as permitted by section 165CN

S. 165CO inserted by No. 53/2021 s. 12.

(1) Despite section 189, the Chief Health Officer may only authorise an authorised officer appointed as permitted by section 165CN to exercise the following public health risk powers—

(a) if the authorised officer is a police officer or a protective services officer, the public health risk powers referred to in section 190(1)(c), (d), (e) and (f);

(b) if the authorised officer is a Worksafe inspector, the public health risk powers referred to in section 190(1)(c), (d), (e), (f), (g), (h), (i), (j) and (k);

(c) if the authorised officer is a person appointed as permitted by section 165CN(a), the public health risk powers referred to in section 190(1)(d) and (e);

(d) if the authorised officer is a person appointed as permitted by section 165CN(e) or (f), the public health risk powers specified in the authorised officer's instrument of appointment.

(2) Despite section 165AW, the Chief Health Officer must not authorise an authorised officer appointed as permitted by section 165CN to exercise any of the pandemic management powers.

Note

The pandemic management powers include powers relating to detention.

(3) This section does not limit the restrictions to which the appointment of an authorised officer may otherwise be subject under this Act.

Division 11—Other matters

S. 165CP inserted by No. 53/2021 s. 12.

165CP Interaction of powers

Unless the contrary intention appears, the powers conferred by or under this Part are in addition to, and not in derogation of, any other powers conferred by or under this Act.

S. 165CQ inserted by No. 53/2021 s. 12.

165CQ Interaction between pandemic order and other directions

A pandemic order prevails over a direction given by an authorised officer to the extent of any inconsistency.

165CR Certain instruments are not legislative instruments

S. 165CR inserted by No. 53/2021 s. 12.

The following instruments are not legislative instruments within the meaning of the **Subordinate Legislation Act 1994**—

(a) a pandemic declaration;

(b) an instrument of variation, extension or revocation of a pandemic declaration;

(c) a pandemic order;

(d) an instrument of variation, extension or revocation of a pandemic order;

(e) a direction made in the exercise of a pandemic management power;

(f) a standard or guideline made under section 165BM;

(g) a pandemic information determination;

(h) a variation or revocation of a pandemic information determination.

165CS Minister must establish and maintain a Pandemic Order Register

S. 165CS inserted by No. 53/2021 s. 12.

(1) The Minister must establish and maintain a register (the ***Pandemic Order Register***) that includes the following instruments and incorporated matter—

(a) all pandemic orders as made;

(b) all pandemic orders as in force from time to time;

(c) all instruments that vary, extend or revoke a pandemic order;

(d) if one or more pandemic orders make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in a document (not being

another pandemic order, an Act, a Commonwealth Act, a Code, a statutory rule or a legislative instrument made under a Commonwealth Act), all such documents.

(2) The Pandemic Order Register must be made available to the public free of charge on an Internet site maintained by the Department.

(3) An electronic version of a pandemic order or a document included in the Pandemic Order Register, or a printed copy of such an order or a document, is, on the mere production of that electronic version or printed copy, admissible as evidence thereof before all courts and persons acting judicially within Victoria.

(4) In this section—

Code has the same meaning as it has in section 32(1) of the **Interpretation of Legislation Act 1984**;

legislative instrument has the same meaning as it has in the Acts Interpretation Act 1901 of the Commonwealth.

S. 165CT inserted by No. 53/2021 s. 12.

165CT Disapplication of certain requirements in relation to certain incorporated matter

(1) This section applies to a pandemic order (the ***incorporating pandemic order***) that makes provision for or in relation to a matter by applying, adopting or incorporating any matter contained in another document (not being an Act, a Commonwealth Act, a Code, a statutory rule or a statutory rule made under a Commonwealth Act).

(2) If the other document is also a pandemic order, section 32 of the **Interpretation of Legislation Act 1984** does not apply to matter contained in the incorporating pandemic order, or to the incorporating pandemic order.

(3) If the other document is not also a pandemic order, the requirements of section 32(3)(a) and (b) and (4)(a) and (c) of the **Interpretation of Legislation Act 1984** are taken to be satisfied in relation to the incorporating pandemic order if a copy of the document that contains the matter is published on the Pandemic Order Register.

165CU Immunity

S. 165CU inserted by No. 53/2021 s. 12.

(1) This section applies to the following—

(a) the Chief Health Officer;

(b) a delegate of the Chief Health Officer;

(c) an authorised officer;

(d) a Detention Appeals Officer.

(2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith, at a time when a pandemic declaration is in force, in relation to a pandemic disease or a disease of pandemic potential—

(a) in the exercise of a power or the discharge of a duty in relation to the pandemic disease or disease of pandemic potential—

(i) under this Part or under regulations or an instrument under this Part; or

(ii) under Part 10 or under regulations or an instrument under Part 10; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Part or Part 10, or under regulations or an instrument under this Part or Part 10, in relation to the pandemic disease or a disease of pandemic potential.

(3) Any liability resulting from an act or omission that would but for subsection (2) attach to a person attaches instead to the Crown.

S. 165CV inserted by No. 53/2021 s. 12.

165CV Gazette notices

(1) Subject to subsection (2), production of a Government Gazette purporting to contain—

(a) notice of the making, variation extension or revocation of an instrument under this Part is evidence of that making, variation, extension or revocation; and

(b) a copy of the instrument is evidence of the terms of the instrument.

(2) If the instrument is included in the Pandemic Order Register, and there is an inconsistency between the instrument as included in the Register and as included in the Government Gazette, section 165CS(3) prevails over subsection (1) of this section.

S. 165CW inserted by No. 53/2021 s. 12.

165CW Invalidity of declaration not to affect validity of things done

The validity of anything done or purportedly done in reliance on a pandemic declaration or a state of emergency declaration is not affected by the invalidity of the declaration unless the declaration was not made in good faith.

S. 165CX inserted by No. 53/2021 s. 12.

165CX Independent review of Part

(1) The Minister must arrange for an independent review to be conducted of the operation of this Part.

(2) The independent review must commence no later than 18 months after the day on which this Part commences.

(2A) For the purposes of this section, an ***independent review*** means a review by persons who—

(a) in the opinion of the Minister, possess appropriate qualifications or expertise to undertake the review; and

(b) collectively, have qualifications or expertise in public health and law; and

(c) include one or more persons who are not employed by the State of Victoria or a State agency and have not, since the commencement of this Part, provided services to the State of Victoria or a State agency under or in connection with a contract.

(2B) In this section—

State agency means the following—

(a) the Crown in right of Victoria;

(b) a Minister of the Crown in right of Victoria;

(c) a public service body within the meaning of the **Public Administration Act 2004**;

(d) an instrumentality of the State of Victoria, including a body corporate established for a public purpose by or under a law of the State of Victoria;

(e) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together—

(i) the Crown in right of Victoria;

(ii) a person or body covered by paragraph (b) or (d).

(3) The Minister must cause a copy of a report of the independent review to be laid before each House of Parliament as soon as reasonably practicable after the review is completed.

Part 8B—Concessional infringement scheme

Pt 8B (Heading and ss 165CY–165DE) inserted by No. 53/2021 s. 21.

165CY Eligible offences

S. 165CY inserted by No. 53/2021 s. 21.

(1) For the purposes of this Part, an offence against this Act or the regulations is an ***eligible offence*** in respect of a natural person if—

(a) the offence is prescribed by the regulations; and

(b) the commission of the offence by the natural person relates to the performance of a function or the exercise of a power in respect of a pandemic disease or a disease of pandemic potential.

(2) For the purposes of this Part, a person is an ***eligible person*** in relation to an eligible offence if the person is determined to be an eligible person in relation to the offence under section 165DC(1).

165CZ Application for determination

S. 165CZ inserted by No. 53/2021 s. 21.

(1) A natural person who has been issued with an infringement notice in respect of an eligible offence may apply to the Director, Fines Victoria for a determination under section 165DC(1) that they are an eligible person in respect of the eligible offence.

Note

If the Director, Fines Victoria determines under section 165DC(1) that a person is an eligible person, the infringement penalty payable by the person may be reduced under section 165DC(3).

(2) An application under subsection (1) may also be made by a person acting on behalf of the person issued with the infringement notice.

(3) An application must—

(a) be in writing; and

(b) provide evidence that the applicant is a prescribed person or a person included in a prescribed class; and

(c) provide the applicant's address for service; and

(d) refer to the infringement notice to which the application relates; and

(e) include any other prescribed information.

S. 165D inserted by No. 53/2021 s. 21.

165D Application to be made before certain enforcement related events

An application under section 165CZ(1) must be made before any of the following occur in respect of the infringement offence referred to in the application—

(a) a seven-day notice served on the person has expired;

(b) an attachment of earnings direction or an attachment of debts direction has been made;

(c) a land charge has been recorded;

(d) property has been seized under a vehicle seizure and sale notice;

(e) the infringement penalty and any fees that have been added to the infringement penalty under the **Infringements Act 2006**, the **Fines Reform Act 2014** or any regulations made under those Acts have been paid;

(f) the operation of the unexpired period of a seven-day notice served on the person has been waived under section 36 of the **Sheriff Act 2009**;

(g) the infringement penalty or a part of the infringement penalty has been registered with the Children's Court under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**.

165DA Verification of information supplied in application

S. 165DA inserted by No. 53/2021 s. 21.

The Director, Fines Victoria may specify how any information supplied in an application under section 165CZ is to be verified.

165DB Suspension of enforcement action for infringement offence the subject of application

S. 165DB inserted by No. 53/2021 s. 21.

(1) If an application is made under section 165CZ(1) the Director, Fines Victoria—

(a) must suspend any enforcement action, and not take any further enforcement action, under the **Fines Reform Act 2014** against the applicant in respect of each eligible offence referred to in the application; and

(b) may direct an enforcement agency to suspend any enforcement action, and not take any enforcement action, under the **Infringements Act 2006** against the applicant in respect of each eligible offence referred to in the application.

(2) A direction under subsection (1)(b) must—

(a) include notice of the application; and

(b) specify that, until the Director, Fines Victoria notifies the enforcement agency of the outcome of the application, the enforcement agency—

(i) must suspend any enforcement action under the **Infringements Act 2006** against the applicant in respect of each eligible offence referred to in the application; and

(ii) must not take any further enforcement action against the applicant in respect of each such eligible offence.

(3) The suspension of enforcement action under subsection (1)—

(a) begins when the application is received by the Director, Fines Victoria; and

(b) ends on the date notice is given to the enforcement agency of the outcome of the application.

S. 165DC inserted by No. 53/2021 s. 21.

165DC Determination of eligible person and infringement penalty reduction

(1) The Director, Fines Victoria must determine that an applicant is an eligible person in respect of an eligible offence if the Director is satisfied that—

(a) the applicant was served with an infringement notice in relation to the eligible offence; and

(b) the applicant is a prescribed person or a person included in a prescribed class.

(2) The Director, Fines Victoria must determine that an applicant is not an eligible person in respect of an eligible offence if the Director is satisfied that the criteria in subsection (1) are not met.

(3) If the Director, Fines Victoria determines that an applicant is an eligible person in respect of an eligible offence, the Director must reduce the infringement penalty in respect of the eligible offence—

(a) to the prescribed amount in respect of the eligible offence; or

(b) if a method for calculating the rate of reduction for an eligible offence is prescribed, the amount calculated in accordance with the prescribed method.

(4) If the Director, Fines Victoria reduces the infringement penalty in respect of the eligible offence, the infringement penalty is taken to be reduced in accordance with the determination.

(5) Despite subsection (4), if the applicant has already paid an amount in respect of the infringement penalty for the eligible offence that exceeds the infringement penalty as reduced, the person is not entitled to a refund of the excess.

165DD Director must give notice if applicant is an eligible person

S. 165DD inserted by No. 53/2021 s. 21.

(1) This section applies if the Director, Fines Victoria determines—

(a) that an applicant is an eligible person in respect of an eligible offence; and

(b) that the infringement penalty is reduced, and specifies the amount of the reduced infringement penalty, resulting from the determination.

(2) The Director, Fines Victoria must, by writing, notify the following of the determination—

(a) the applicant; and

(b) if a direction has been given under section 165DB(1)(b) to an enforcement agency, the enforcement agency.

(3) The applicant is not liable for any fees related to any fine which is the subject of an application that accrue while the application is being determined.

(4) The period during which an enforcement agency that has been given a direction under subsection 165DB(1)(b) in relation to an eligible offence may commence a proceeding for that offence is extended by 6 months after the date of the notice given under subsection (2)(b).

S. 165DE inserted by No. 53/2021 s. 21.

165DE Director must give notice if applicant is not an eligible person

(1) This section applies if the Director, Fines Victoria determines that an applicant is not an eligible person in respect of an eligible offence.

(2) The Director, Fines Victoria must give written notice of the determination within 21 days of its making to the following—

(a) the applicant;

(b) any enforcement agency to which the Director, Fines Victoria has given a direction under section 165DB(1)(b).

(3) Within 21 days of the Director, Fines Victoria notifying an applicant that the applicant is not an eligible person, the person liable to pay the infringement penalty referred to in the application must—

(a) pay the infringement penalty and any fees that have been added to the infringement penalty under the **Infringements Act 2006**, the **Fines Reform Act 2014** or regulations made under either of those Acts; or

(b) take any other action in relation to the fine which the person may take under this Act, the **Infringements Act 2006** or the **Fines Reform Act 2014**.

(4) For the purposes of subsection (3)(a), a person is not liable for any fees related to any fine which is the subject of an application, being fees that accrue while the application is being determined.

(5) The period during which an enforcement agency that has been given a direction under subsection 165DB(1)(b) in relation to an eligible offence may commence a proceeding for that offence is extended by 6 months after the date of the notice given under subsection (2)(b).

Part 9—Authorised officers

Division 1—General

166 Production of identity card

(1) An authorised officer must produce their identity card for inspection before exercising a power under this Act or the regulations.

(2) However, if it is impracticable for an authorised officer to produce their identity card for inspection when exercising a power under this Act or the regulations, the authorised officer need not do so.

(3) An authorised officer must produce their identity card for inspection if asked to do so by the occupier of any premises during the exercise of a power under this Act or the regulations.

(4) If an authorised officer does not comply with a request under subsection (3), the authorised officer must immediately cease exercising the power under this Act or the regulations.

167 Power to request information

(1) An authorised officer may request a person to provide information to the authorised officer which the authorised officer believes is necessary to investigate whether there is a risk to public health or to manage or control a risk to public health.

(2) A person is authorised to provide the information requested under subsection (1).

Note

See section 227.

(3) A person may refuse to provide the information requested under subsection (1).

(4) An authorised officer must at the time of making a request under subsection (1) advise the person that the person may refuse to provide the information requested.

Division 2—Powers of entry

168 Power to enter—risk to public health

(1) An authorised officer may for the purpose of investigating whether there is a risk to public health or to manage or control a risk to public health—

(a) enter a public place; or

(b) with the consent of the occupier, enter any other premises including any residential premises.

(2) For the purposes of subsection (1)(b), an authorised officer may in seeking to obtain the consent of the occupier—

(a) enter land around the premises to the extent that it is reasonable to do so for the purpose of contacting the occupier; or

(b) enter a part of the premises which the authorised officer considers can be entered by a member of the public for the purpose of contacting the occupier.

(3) An authorised officer who enters a public place or any other premises in accordance with subsection (1) may exercise any of the powers specified in section 175.

(4) For the purposes of this section, ***public place*** means a place, or part of a place, that—

(a) the public is entitled to use; or

(b) is open to members of the public; or

(c) is used by the public—

whether or not on the payment of any money.

169 Power to enter—monitoring compliance or investigating

(1) For the purposes of monitoring compliance with this Act or the regulations and investigating a possible contravention of this Act or the regulations, an authorised officer may enter without a warrant, at any reasonable hour in the daytime or any time that the premises are open to the public, any premises that an authorised officer believes is—

(a) used for the provision of prescribed accommodation; or

(b) used for conducting a business specified in section 68; or

(c) land on which there is a cooling tower system; or

(d) used for the business of a pest control operator; or

S. 169(1)(e) repealed by No. 7/2022 s. 74.

* * * * *

(f) used for the provision of services by a health service provider.

(2) In relation to any possible contravention of the Act or the regulations, an authorised officer may, without a warrant, enter any premises at any time if—

(a) the authorised officer believes on reasonable grounds that there may be an immediate risk to public health; and

(b) the entry is necessary to enable the authorised officer to investigate, eliminate or reduce the risk.

(3) An authorised officer may enter any premises at any time—

(a) for the purposes of monitoring compliance with this Act or the regulations, or investigating a possible contravention of this Act or the regulations, with the consent of the occupier; or

(b) with a warrant issued under this Act.

(4) For the purposes of subsection (3)(a), an authorised officer may in seeking to obtain the consent of the occupier—

(a) enter land around the premises to the extent that it is reasonable to do so for the purpose of contacting the occupier; or

(b) enter a part of the premises which the authorised officer considers can be entered by a member of the public for the purpose of contacting the occupier.

Note

See section 187.

170 Issue of search warrants

(1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to any premises if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, a particular thing (including a document) at the premises that may afford evidence of the commission of an offence against this Act or the regulations.

S. 170(2) amended by No. 6/2018 s. 68(Sch. 2 item 103.2).

(2) A magistrate may issue the search warrant if the magistrate is satisfied by evidence on oath or by affirmation or by affidavit that there are reasonable grounds for suspecting that there is, or may be within 72 hours, a particular thing (including a document) at the premises that may afford evidence of the commission of an offence against this Act or the regulations.

(3) The search warrant may authorise a named authorised officer and any assistants the authorised officer considers necessary—

(a) to enter the premises or part of the premises named or described in the warrant; and

(b) to search for the thing named or described in the warrant.

(4) In addition to any other requirement, the search warrant must state—

(a) the offence suspected;

(b) the premises to be searched;

(c) a description of the thing for which the search is to be made;

(d) any conditions to which the warrant is subject;

(e) whether entry is authorised to be made at any time or during specified hours;

(f) that the warrant authorises entry on only one occasion;

(g) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.

(5) Subject to subsection (6), a search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.

(6) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise an authorised officer to arrest a person.

(7) The rules that apply to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search warrants under this section.

Division 3—Procedure for entry

171 Announcement before exercising power of entry

(1) Subject to subsection (2), before entering any premises in the exercise of a power conferred under this Act or the regulations, an authorised officer must—

(a) announce that they are an authorised officer who is authorised under this Act to enter the premises; and

(b) give any person in the premises a reasonable opportunity to allow entry to the premises.

(2) An authorised officer does not have to comply with subsection (1) if the authorised officer—

(a) considers that it is not practicable to do so; or

(b) believes on reasonable grounds that immediate entry to the premises is required to ensure—

(i) the health or safety of any person; or

(ii) the effective exercise of the powers of the authorised officer.

172 Notice if power of entry exercised without owner or occupier being present

If an authorised officer exercises a power of entry under section 169(3), 190(1)(c) or 229 without the owner or occupier being present, unless the premises are abandoned or vacant or public land,

the authorised officer must, on leaving the premises, leave a notice setting out—

(a) the time of entry;

(b) the purpose of entry;

(c) a description of all things done while on the premises;

(d) the time of departure;

(e) the procedure for contacting—

(i) if the authorised officer was appointed by the Secretary, the Department; or

(ii) if the authorised officer was appointed by a Council, the relevant Council—

for further details of the entry.

173 Announcement before entry on warrant

(1) Before executing a search warrant, the authorised officer named in the warrant, or a person assisting the authorised officer, must—

(a) announce that they are authorised by the warrant issued under this Act to enter the premises; and

(b) give any person at the premises an opportunity to allow that entry.

(2) However, the authorised officer, or person assisting the authorised officer, need not comply with subsection (1) if they believe on reasonable grounds that immediate entry to the premises is needed to ensure—

(a) the health or safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

174 Copy of warrant to be given to occupier

If an occupier or apparent occupier is present at the premises when a search warrant is being executed, the authorised officer must—

(a) identify themselves to that person by producing their identity card for inspection; and

(b) give that person a copy of the execution copy of the warrant.

Division 4—Powers after entry

175 General powers of authorised officers

(1) An authorised officer who enters any premises under the powers conferred by this Act may do any of the following—

(a) inspect, examine, or make enquiries, at the premises;

(b) examine or inspect any thing (including a document or part of a document) at the premises;

(c) bring any equipment or materials to the premises that may be required;

(d) seize any thing (including a document) at the premises if the authorised officer believes on reasonable grounds that—

(i) the seizure is required to determine whether there has been a contravention of this Act or the regulations; or

(ii) the seized thing may be used as evidence in a possible prosecution for a contravention of this Act or the regulations; or

(iii) the seizure is required to minimise a risk to the health of any person;

(e) seal a premises or thing;

(f) take a sample of, or from, any thing, at the premises for examination, analysis, measurement or testing;

(g) analyse, measure or test any thing at the premises with equipment brought to the premises or already at the premises;

(h) take any photographs or make any audio or visual recordings at the premises;

(i) make copies of, or take extracts from, any document kept at the premises;

(j) use or test any equipment at the premises;

(k) do any other thing that is reasonably necessary for the purpose of the authorised officer performing or exercising his or her functions or powers under this Act or the regulations.

(2) In doing any thing referred to in subsection (1), an authorised officer may be assisted by any person.

176 Power to direct persons to produce documents, operate equipment or answer questions

(1) An authorised officer who enters any premises under section 169 may direct a person at the premises to—

(a) produce a document or part of a document located at the premises that is in the person's possession or control;

(b) operate equipment to access information from that equipment;

(c) answer any questions put by the authorised officer.

(2) A person must not refuse or fail to comply with a direction under subsection (1) unless the person has a reasonable excuse.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) Before directing a person to produce a document or part of a document or to answer questions under subsection (1), an authorised officer must—

(a) warn the person that a refusal or failure to comply with the direction, without reasonable excuse, is an offence; and

(b) inform the person that they may refuse or fail to answer any question if answering the question would tend to incriminate them.

(4) A person is not liable to be prosecuted for an offence against subsection (2) if the authorised officer concerned failed to comply with section 166 and subsection (3).

Notes

1 Before directing a person to do a thing under subsection (1), an authorised officer must also produce their identity card for inspection if asked to do so by any person: See section 166.

2 This section does not affect the privilege against self-incrimination. See section 212.

177 Authorised officers to give receipts for seized things and samples taken

(1) If an authorised officer seizes a thing, or takes a sample of, or from, a thing at any premises under this Division, the authorised officer must give a receipt in the approved form for the thing to the person in charge of the thing or the premises from which it was taken.

(2) A receipt in the approved form must—

(a) specify the name of the authorised officer; and

(b) identify the thing seized or sample taken; and

(c) state the reason why the thing was seized or the sample taken; and

(d) include any other matters specified in the approved form.

(3) If for any reason it is not practicable for an authorised officer to comply with subsection (1), the authorised officer may—

(a) leave the receipt at the premises in a conspicuous position and in a reasonably secure way; or

(b) send the receipt to the occupier of the premises from where the thing was seized or the sample was taken.

178 Copies of seized documents

(1) If an authorised officer retains possession of a document seized from a person under this Division, the authorised officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.

(2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals as evidence of equal validity to the original.

179 Retention and return of seized documents or things

(1) If an authorised officer seizes a document or other thing under this Division, the authorised officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

(2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—

(a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) the Magistrates' Court makes an order under section 180 extending the period during which the document or thing may be retained.

(3) This section does not apply to a document or other thing seized under this Division that is forfeited to the Secretary or a Council under section 181.

180 Magistrates' Court may extend 3 month period

(1) An authorised officer may apply to the Magistrates' Court—

(a) within 3 months after seizing a document or other thing under this Division; or

(b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the authorised officer may retain the document or thing but so that the total period of retention does not exceed 12 months.

(2) The Magistrates' Court may order such an extension if it is satisfied that—

(a) it is in the interests of justice; and

(b) the total period of retention does not exceed 12 months; and

(c) retention of the document or other thing is necessary—

(i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or

(ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.

(3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

181 Forfeiture and destruction of seized things

(1) Any thing (including a document) that an authorised officer has seized and retained under this Division is forfeited to the Secretary (if the authorised officer was appointed by the Secretary) or a Council (if the authorised officer was appointed by the Council) if the Secretary or the Council—

(a) cannot find its owner despite making reasonable enquiries; or

(b) cannot return it to the owner despite making reasonable efforts; or

(c) decides it is necessary to retain the thing to prevent a risk to public health; or

(d) decides it is necessary to retain the thing to prevent the commission of an offence against this Act or the regulations.

(2) If a thing is forfeited to the Secretary or a Council under subsection (1)(c), the Secretary or Council must notify (in writing) the owner accordingly, setting out how the owner may seek review of the decision referred to in that subsection, unless the

Secretary or the Council cannot find the owner despite making reasonable enquiries.

182 Secretary or Council may cause forfeited things to be destroyed or otherwise disposed of

The Secretary or a Council may cause any thing that has been seized and retained under this Division by an authorised officer, and forfeited to the Secretary or the Council by operation of section 181, to be destroyed or otherwise disposed of.

Division 5—Offences and complaints

183 Offence to hinder or obstruct authorised officer

A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising a power under this Act or the regulations.

Penalty: 60 penalty units.

184 Offence to impersonate authorised officer

A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Penalty: 60 penalty units.

185 Complaints

(1) Any person may complain about the exercise of a power by an authorised officer under this Act or the regulations to—

(a) the Secretary, if the authorised officer was appointed by the Secretary; or

(b) the relevant Council, if the authorised officer was appointed by the Council.

(2) A complaint to the Secretary or the relevant Council under subsection (1) may be made in writing or in any other form approved by the Secretary or the relevant Council.

(3) The Secretary must—

(a) investigate any complaint made to the Secretary in accordance with subsection (2); and

(b) provide a written report to the complainant on the results of the investigation.

(4) The Council must—

(a) investigate any complaint made to the Council in accordance with subsection (2); and

(b) provide a written report to the complainant on the results of the investigation.

S. 186 repealed by No. 82/2012 s. 296.

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Part 9A—Safe access to premises at which abortions are provided

Pt 9A (Heading and ss 185A–185H) inserted by No. 66/2015 s. 5.

185A Purpose

S. 185A inserted by No. 66/2015 s. 5.

The purpose of this Part is—

(a) to provide for safe access zones around premises at which abortions are provided so as to protect the safety and wellbeing and respect the privacy and dignity of—

(i) people accessing the services provided at those premises; and

(ii) employees and other persons who need to access those premises in the course of their duties and responsibilities; and

(b) to prohibit publication and distribution of certain recordings.

185B Definitions

S. 185B inserted by No. 66/2015 s. 5.

(1) In this Part—

abortion has the same meaning as in the **Abortion Law Reform Act 2008**;

distribute includes—

(a) communicate, exhibit, send, supply or transmit, whether to a particular person or not; and

(b) make available for access, whether by a particular person or not; and

(c) enter into an agreement or arrangement to do anything mentioned in paragraph (a) or (b); and

(d) attempt to distribute;

premises at which abortions are provided does not include a pharmacy;

prohibited behaviour means—

(a) in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or

(b) subject to subsection (2), communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety; or

(c) interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided; or

(d) intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access, or leaving premises at which abortions are provided, without that other person's consent; or

(e) any other prescribed behaviour;

publish has the same meaning as in the **Open Courts Act 2013**;

safe access zone means an area within a radius of 150 metres from premises at which abortions are provided.

(2) Paragraph (b) of the definition of ***prohibited behaviour*** does not apply to an employee or other person who provides services at premises at which abortion services are provided.

185C Principles

S. 185C inserted by No. 66/2015 s. 5.

The following principles apply to this Part—

(a) the public is entitled to access health services, including abortions;

(b) the public, employees and other persons who need to access premises at which abortions are provided in the course of their duties and responsibilities should be able to enter and leave such premises without interference and in a manner which—

(i) protects the person's safety and wellbeing; and

(ii) respects the person's privacy and dignity.

185D Prohibited behaviour

S. 185D inserted by No. 66/2015 s. 5.

A person must not engage in prohibited behaviour within a safe access zone.

Penalty: 120 penalty units or imprisonment for a term not exceeding 12 months.

185E Offence to publish or distribute recording

S. 185E inserted by No. 66/2015 s. 5.

A person must not without consent of the other person or without reasonable excuse publish or distribute a recording of a person accessing, attempting to access, or leaving premises at which abortions are provided, if the recording contains particulars likely to lead to the identification of—

(a) that other person; and

(b) that other person as a person accessing premises at which abortions are provided.

Penalty: 120 penalty units or imprisonment for a term not exceeding 12 months.

S. 185F inserted by No. 66/2015 s. 5.

185F Search warrant

(1) A police officer of or above the rank of sergeant may apply to a magistrate for the issue of a search warrant under this section in relation to a particular place if the police officer believes on reasonable grounds that there is, or may be within the next 72 hours, in that place evidence of the commission of an offence against—

(a) section 185D, constituted by intentionally recording by any means, without lawful excuse, another person accessing, attempting to access, or leaving premises at which abortions are provided, without that other person's consent; or

(b) section 185E.

S. 185F(2) amended by No. 6/2018 s. 68(Sch. 2 item 103.3).

(2) If the magistrate is satisfied by the evidence on oath or by affirmation or by affidavit of the applicant that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, in that place evidence of the commission of an offence referred to in subsection (1), the magistrate may issue a search warrant authorising any police officer named in the warrant—

(a) to enter the place, or the part of the place, named or described in the warrant; and

(b) to search for and seize any thing named or described in the warrant.

(3) In addition to any other requirement, a search warrant issued under this section must state—

(a) the offence suspected; and

(b) the place to be searched; and

(c) a description of the thing for which the search is to be made; and

(d) any conditions to which the warrant is subject; and

(e) whether entry is authorised to be made at any time or during stated hours; and

(f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and must be in the form set out in the regulations under that Act.

(5) The rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

185G Seizure of things not mentioned in the warrant

S. 185G inserted by No. 66/2015 s. 5.

A search warrant authorises a police officer executing the warrant, in addition to the seizure of any thing of a kind described in the warrant, to seize any thing which is not of a kind described in the warrant if the police officer believes on reasonable grounds—

(a) that the thing is of a kind which could have been included in a warrant issued under section 185F, or will afford evidence about the commission of an offence referred to in section 185F(1); and

(b) that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence referred to in section 185F(1).

S. 185H inserted by No. 66/2015 s. 5.

185H Announcement before entry

(1) Before executing a search warrant, a police officer named in the warrant must—

(a) announce that the officer is authorised by the warrant to enter the place; and

(b) give any person at the place an opportunity to allow entry to the place.

(2) The police officer need not comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the place is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

Part 10—Protection and enforcement provisions

Division 1—Powers to investigate, eliminate or reduce public health risks

187 Restriction on entry to residential premises

(1) This section applies in respect of the exercise of a power conferred on any person by a provision of this Act to enter any residential premises without a warrant.

(2) The power to enter can only be exercised to enter that part of the residential premises to which entry is necessary for the purposes for which the power is conferred.

188 Chief Health Officer may direct a person to provide information

(1) The Chief Health Officer may direct a person to provide information specified in the direction to the Chief Health Officer which the Chief Health Officer believes is necessary to investigate whether there is a risk to public health or to manage or control a risk to public health.

Note

See section 227.

(2) A person must not refuse or fail to comply with a direction given to the person under subsection (1).

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction.

(4) Before directing a person to provide information, the Chief Health Officer must—

(a) warn the person that a refusal or failure to comply with the direction, without reasonable excuse, is an offence; and

(b) inform the person that they may refuse or fail to provide any information if providing the information would tend to incriminate them.

Notes

1 This section does not affect the privilege against self-incrimination. See section 212.

2 Section 167 empowers an authorised officer to request information.

S. 188A inserted by No. 15/2022 s. 14.

188A Chief Health Officer may request transfer and further analysis of sample or isolate

(1) If the Chief Health Officer believes it is necessary for the investigation of whether there is a risk to public health, or for the management or control of a risk to public health, the Chief Health Officer may, by writing, request a person to do any of the following—

(a) conduct further analysis of a sample or isolate;

(b) transfer a sample or isolate to a laboratory specified in the written request for further analysis;

(c) notify the Chief Health Officer of the results of the requested analysis;

(d) report any information in relation to the requested analysis in accordance with any reporting requirements specified in the written request.

(2) A person may refuse to comply with a request under subsection (1).

(3) The Chief Health Officer must at the time of making a request under subsection (1) advise the person that the person may refuse to comply with the request.

189 Powers in the case of a risk to public health

If the Chief Health Officer believes that it is necessary to do so to investigate, eliminate or reduce a risk to public health, the Chief Health Officer may authorise—

(a) authorised officers, or a specified class or classes of authorised officers, appointed by the Secretary to exercise any of the public health risk powers; and

S. 189(a) amended by No. 53/2021 s. 13.

(b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or Councils, to exercise any of the public health risk powers.

190 Public health risk powers

(1) The public health risk powers are—

(a) close any premises for the period of time reasonably necessary to investigate, eliminate or reduce the risk to public health;

(b) subject to subsection (5), direct a person or group of persons to enter, not to enter, to remain at, or to leave, any particular premises for the period of time reasonably necessary to investigate, eliminate or reduce the risk to public health;

(c) subject to subsection (7), without a warrant, enter any premises and search for and seize any thing that is necessary for the purpose of investigating, eliminating or reducing the risk to public health;

(d) require the provision of any information needed to investigate, eliminate or reduce the risk to public health;

(e) require a person to provide their name and address for the purpose of investigating, eliminating or reducing the risk to public health;

(f) inspect any premises where the risk to public health may be spread if it is necessary for the purpose of investigating, eliminating or reducing the risk to public health;

(g) require the cleaning or disinfection of any premises where the risk to public health may arise if it is necessary to do so to eliminate or reduce the risk to public health;

(h) require the destruction or disposal of any thing the destruction or disposal of which is necessary to eliminate or reduce the risk to public health;

(i) direct the owner or occupier of any premises to take any action necessary to eliminate or reduce the risk to public health;

(j) direct any other person to take any other action that the authorised officer considers is necessary to eliminate or reduce the risk to public health;

(k) exercise any of the general enforcement powers conferred on an authorised officer by this Act or the regulations.

(2) Before exercising any public health risk power under this section, an authorised officer must, unless it is not practicable to do so, warn the person that a refusal or failure to comply without a reasonable excuse, is an offence.

S. 190(3) amended by No. 29/2011 s. 3(Sch. 1 item 75.2).

(3) Unless subsection (4) applies, before exercising a public health risk power, an authorised officer must briefly explain to any person who is to be subject to the exercise of the power the reason why it is necessary to exercise the power.

(4) An authorised officer is not required to comply with subsection (3) if it is not practicable to do so in the particular circumstances in which the public health risk power is to be exercised.

(5) A direction under subsection (1)(b) to remain at any particular premises must specify the period of time, not exceeding 4 hours, during which the direction must be complied with.

(6) A direction under subsection (1)(b) to remain at any particular premises may be extended as many times as is reasonably necessary for the purpose of investigating, eliminating or reducing the risk to public health but so as not to exceed a continuous period of 12 hours.

(7) An authorised officer may only exercise the power specified in subsection (1)(c) if—

(a) the authorised officer reasonably believes that there may be an immediate risk to public health; and

(b) the entry is necessary to enable the authorised officer to investigate, eliminate or reduce the risk.

(8) Before requiring the provision of any information under subsection (1)(d), an authorised officer must inform the person that they may refuse or fail to provide the information if providing the information would tend to incriminate them.

Notes

1 This section does not affect the privilege against self-incrimination. See section 212.

2 See Part 9 for provisions relating to the exercise of powers by authorised officers.

191 How may an authorisation be given?

(1) An authorisation to exercise any of the public health risk powers for the purposes of section 189 may be given orally or in writing.

(2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.

(3) An authorisation must—

(a) state that the authorisation is given under this Division;

(b) generally describe the risk to public health to which it relates;

(c) if the risk to public health has occurred, name or describe the place at which the risk to public health has occurred;

(d) specify the time at which the authorisation is given;

(e) specify any restrictions or limitations subject to which the public health risk powers may be exercised under the authorisation;

(f) specify the period of time for which the authorisation continues in force.

(4) The Chief Health Officer may extend the period of time for which an authorisation continues in force before the authorisation expires.

192 Assistance

(1) An authorised officer may be assisted by any person in exercising a public health risk power under an authorisation given under section 189.

(2) A request for assistance by a police officer must be made to the Chief Commissioner of Police or a delegate of the Chief Commissioner of Police.

S. 192(2) amended by No. 37/2014 s. 10(Sch. item 136.4).

193 Compliance with direction or requirement

(1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a public health risk power under an authorisation given under section 189.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement.

Division 2—Improvement notices and prohibition notices

194 Secretary or Council may issue improvement notice or prohibition notice

(1) This section applies if the Secretary or a Council believes that a person—

(a) has contravened a provision of this Act or the regulations administered by the Secretary or the Council in circumstances that make it likely that the contravention is continuing or will re-occur; or

(b) is likely to contravene a provision of this Act or the regulations administered by the Secretary or the Council.

(2) If this section applies, the Secretary or the Council, as the case requires, may issue to the person—

(a) an improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention; or

(b) a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until the Secretary or the Council, as the case requires, has certified in writing that the contravention has ceased or that the likelihood of the contravention occurring has passed.

(3) An improvement notice or a prohibition notice must—

(a) state the grounds on which the issue of the improvement notice or prohibition notice is based;

(b) specify the provision of this Act or the regulations that the Secretary or the Council, as the case requires, considers has been or is likely to be contravened;

(c) specify the actions or measures that the person is required to take and the period within which the actions or measures are to be completed;

(d) set out the penalty for contravening the improvement notice or prohibition notice;

(e) state how the person may seek review of the issue of the improvement notice or prohibition notice;

(f) include a statement as to the effect of section 195.

(4) A person to whom an improvement notice or a prohibition notice is issued must comply with the improvement notice or prohibition notice.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

195 Proceedings for offences not affected by notices

The issue of an improvement notice or a prohibition notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice or prohibition notice was issued.

196 Injunction for non-compliance with improvement notice or prohibition notice

(1) The Chief Health Officer, the Secretary or a Council may apply to the Magistrates' Court for an injunction—

(a) compelling a person to comply with an improvement notice or a prohibition notice; or

(b) restraining a person from contravening an improvement notice or a prohibition notice.

(2) The Chief Health Officer, the Secretary or the Council may do so whether or not proceedings have been instituted for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice or prohibition notice was issued.

197 Special provisions relating to nuisances

(1) This section applies if an improvement notice or a prohibition notice is issued in respect of a nuisance.

(2) The Council may cause a complaint to be made to the Magistrates' Court if—

(a) the person on whom the improvement notice or prohibition notice is served does not comply with it; or

(b) in the opinion of the Council the nuisance to which the improvement notice or prohibition notice applies, although abated, is likely to recur.

(3) The Magistrates' Court may summon the person to appear before the Magistrates' Court.

(4) If the Magistrates' Court is satisfied that the nuisance exists or is likely to recur, the Magistrates' Court must order that person to do either or both of the following—

(a) comply with the improvement notice or prohibition notice;

(b) carry out works to prevent the recurrence of the nuisance.

(5) If an order has been made under subsection (4), the Council may—

(a) enter the land to which the order relates and abate the nuisance and do whatever is necessary to execute the order; and

(b) recover the costs and expenses incurred by it from the person on whom the order is made.

(6) If the person on whom the order is made is the owner of the relevant land for the time being, the costs and expenses may at any time be recovered by the Council in a court of competent jurisdiction, after demand from the occupier of the relevant land for the time being, from the rent, to the extent of the amount of rent due, at the time of demand, from the occupier to the owner.

(7) A person who fails to comply with an order under subsection (4) is guilty of an offence unless the person satisfies the Magistrates' Court that the person has, in seeking to comply with the order, exercised due diligence.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

Pt 10 Div. 2A (Heading and ss 197A–197G) inserted by No. 39/2024 s. 104.

Division 2A—Enforceable undertakings

S. 197A inserted by No. 39/2024 s. 104.

197A Power to accept an enforceable undertaking

(1) The Secretary may accept an undertaking given by a regulated person relating to a contravention or alleged contravention of Part 7 or the regulations by the regulated person, under which the regulated person undertakes to take certain action, or not take certain action, to comply with this Act or the regulations.

(2) An enforceable undertaking must—

(a) be in writing; and

(b) state the name of the regulated person; and

(c) be signed by the Secretary and the regulated person; and

(d) specify the date on which the undertaking is given; and

(e) specify the action to be taken or not taken by the regulated person; and

(f) specify the period within which the action is to be taken or not taken by the regulated person; and

(g) include any other prescribed details.

(3) The Secretary may publish details of an enforceable undertaking on the Department's Internet site.

197B Amendment or withdrawal of enforceable undertaking

S. 197B inserted by No. 39/2024 s. 104.

A regulated person, with the Secretary's consent, may by written notice given to the Secretary—

(a) amend an enforceable undertaking given by the person; or

(b) withdraw an enforceable undertaking given by the person.

197C No criminal proceeding if enforceable undertaking is complied with

S. 197C inserted by No. 39/2024 s. 104.

If a regulated person complies with an enforceable undertaking, a criminal proceeding must not be commenced against the person for an offence constituted by the person's contravention or alleged contravention of a provision of Part 7 or the regulations in relation to which the undertaking is given.

197D No criminal proceeding while enforceable undertaking is in force

S. 197D inserted by No. 39/2024 s. 104.

While an enforceable undertaking is in force, a criminal proceeding must not be commenced against a regulated person for an offence constituted by the person's contravention or alleged contravention of a provision of Part 7 or the regulations in relation to which the undertaking is given.

197E Criminal proceeding if enforceable undertaking is withdrawn

S. 197E inserted by No. 39/2024 s. 104.

A criminal proceeding may be commenced against a regulated person for an offence constituted by the person's contravention or alleged contravention of a provision of Part 7 or the regulations in relation to which the undertaking is given if the person withdraws the undertaking.

S. 197F inserted by No. 39/2024 s. 104.

197F Enforcement of enforceable undertaking by Magistrates' Court

(1) If the Secretary reasonably believes that a regulated person has contravened an enforceable undertaking given by the person, the Secretary may apply to the Magistrates' Court for an enforceable undertaking order to enforce the undertaking.

(2) If the Magistrates' Court is satisfied that the regulated person has contravened the enforceable undertaking, the Magistrates' Court may make any of the following orders—

(a) an order that the regulated person must comply with the undertaking;

(b) an order that the regulated person take specified action to comply with the undertaking;

(c) any other order that the Court considers appropriate in the circumstances.

S. 197G inserted by No. 39/2024 s. 104.

197G Enforcement of enforceable undertaking order by Secretary

(1) If the Secretary reasonably believes that a regulated person has contravened an enforceable undertaking order, the Secretary, by written notice given to the regulated person, may—

(a) advise the person of the Secretary's intention to carry out the action required to comply with the order; and

(b) give the person 10 business days after the notice is given to satisfy the Secretary that the person—

(i) has carried out the action required to comply with the order; or

(ii) will carry out the action required to comply with the order within a specified period acceptable to the Secretary.

(2) The Secretary may do any thing that is necessary or expedient to carry out the action required to comply with the order that is still practicable to carry out if a regulated person to whom notice under subsection (1) is given—

(a) does not agree to carry out the action; or

(b) fails to carry out the action within the specified period.

(3) Nothing in this section—

(a) prevents a proceeding from being commenced or continued against a regulated person for the person's contravention of an enforceable undertaking order; or

(b) affects any power of a court in relation to contempt.

(4) If a person is found in contempt of court for contravening an enforceable undertaking order, the Secretary may—

(a) do any thing that is necessary or expedient to carry out the action required to comply with the order that is still practicable to carry out; and

(b) publicise on the Department's Internet site that the regulated person contravened the order.

(5) The Secretary may recover any reasonable costs incurred by the Secretary in taking action under subsection (2) or (4) as a debt due to the Crown and payable by the regulated person.

Pt 10 Div. 2B (Heading and ss 197H, 197I) inserted by No. 39/2024 s. 104.

Division 2B—Information or document production notices

S. 197H inserted by No. 39/2024 s. 104.

197H Power to give information or document production notice

(1) The Secretary may give a written notice to a person requiring the person to provide to the Secretary specified information or information belonging to a specified class of information, or a specified document or a document belonging to a specified class of document, if the Secretary reasonably believes that—

(a) the information or document is in the person's knowledge, possession, custody or control; and

(b) the information is, or the document contains information that is, necessary—

(i) for monitoring a regulated person's compliance with this Act or the regulations; or

(ii) for determining whether the person or another person has committed an offence against Part 7; or

(iii) for determining whether the person or another person has committed an offence against a provision of the regulations that applies to a person described in paragraph (a), (b) or (c) of the definition of ***regulated person***.

(2) An information or document production notice must—

(a) state the name of the person to whom the notice is given; and

(b) specify the grounds on which the notice is given; and

(c) specify the information or document required to be provided or produced under the notice; and

(d) specify the time period, being not less than 10 business days after the notice is given, within which the person must comply with the notice; and

(e) state that it is an offence to contravene the notice without reasonable excuse and that the maximum penalty for the offence is 60 penalty units in the case of a natural person or 300 penalty units in the case of a body corporate; and

(f) include information about the person's right to seek review of the Secretary's decision—

(i) to give the information or document production notice to the person; or

(ii) to give a notice to the person—

(A) amending the period within which the person must comply with the information or document production notice; or

(B) amending or revoking the requirement to provide or produce particular information or a particular document; and

(g) state that a natural person to whom an information or document production notice is given—

(i) may refuse or fail to provide any information specified in the notice if doing so would tend to incriminate the person; and

(ii) may not refuse or fail to produce a document specified in the notice if doing so would tend to incriminate the person; and

(h) include any other prescribed details.

(3) The Secretary may give a written notice to a person to whom an information or document production notice is given—

(a) amending the period within which the person must comply with the notice; or

(b) amending or revoking the requirement to provide or produce particular information or a particular document; or

(c) withdrawing the notice.

S. 197I inserted by No. 39/2024 s. 104.

197I Offence to contravene information or document production notice

A person to whom an information or document production notice is given must not contravene the notice without reasonable excuse.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Division 3—Emergency powers

198 Declaration of a state of emergency

S. 198(1) amended by Nos 56/2011 s. 31, 73/2013 s. 102.

(1) The Minister may, on the advice of the Chief Health Officer and after consultation with the Minister and the Emergency Management Commissioner under the **Emergency Management Act 2013**, declare a state of emergency arising out of any circumstances causing a serious risk to public health.

(2) Subject to subsection (3), the Minister may at any time revoke or vary a declaration under this section.

(3) The Minister must consult with the Minister and the Emergency Management Commissioner under the **Emergency Management Act 2013** before varying a declaration under this section to extend the emergency area.

S. 198(3) amended by Nos 56/2011 s. 31, 73/2013 s. 102.

(4) Immediately upon the making, revocation or variation of a declaration under this section, a state of emergency exists, ceases to exist or exists as so varied for the purposes of this Part.

(5) As soon as practicable after the making, revocation or variation of a declaration under this section, the Minister must cause notice of the making, revocation or variation of the declaration to be—

(a) broadcast from a broadcasting station in Victoria; and

(b) in the case of the making or variation of a declaration, published with a copy of the declaration in the Government Gazette; and

(c) in the case of the revocation of a declaration, published in the Government Gazette.

(6) Production of a Government Gazette purporting to contain—

(a) notice of the making, revocation or variation of a declaration under this section is evidence of that making, revocation or variation; and

(b) a copy of the declaration under this section is evidence of the terms of the declaration.

(7) A declaration under this section—

(a) must specify the emergency area in which the state of emergency exists being throughout Victoria or in specified areas of Victoria;

(b) continues in force for the period not exceeding 4 weeks specified in the declaration;

S. 198(7)(c) amended by Nos 24/2020 s. 5(1), 7/2021 s. 3, 53/2021 s. 36(1).

(c) may be extended by another declaration for further periods not exceeding 4 weeks but the total period that the declaration continues in force cannot exceed 6 months.

S. 198(8) amended by Nos 24/2020 s. 5(2), 53/2021 s. 36(2).

(8) If a state of emergency is declared under this section, the Minister must report on the state of the emergency and the public health risk powers and emergency powers exercised to both Houses of Parliament—

(a) if Parliament is then sitting, as soon as practicable after the declaration is made or varied; and

(b) if Parliament is not then sitting, as soon as practicable after the next meeting of the Parliament.

S. 198(8A)(8B) inserted by No. 24/2020 s. 5(3), repealed by No. 53/2021 s. 36(3).

* * * * *

(9) A declaration under this section does not derogate from or limit any provisions relating to the declaration of an emergency under any other Act.

199 Chief Health Officer may authorise exercise of certain powers

(1) This section applies if—

(a) a state of emergency exists under section 198; and

(b) the Chief Health Officer believes that it is reasonably necessary to grant an authorisation under this section to eliminate or reduce a serious risk to public health.

S. 199(1)(b) amended by No. 24/2020 s. 6.

(2) If this section applies, the Chief Health Officer may, for the purpose of eliminating or reducing the serious risk to public health, authorise—

(a) authorised officers, or a specified class or classes of authorised officers, appointed by the Secretary to exercise any of the public health risk powers and emergency powers; and

S. 199(2)(a) amended by No. 53/2021 s. 14.

(b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or Councils to exercise any of the public health risk powers and emergency powers.

(3) The Chief Health Officer may at any time revoke or vary an authorisation given under this section.

200 Emergency powers

(1) The emergency powers are—

(a) subject to this section, detain any person or group of persons in the emergency area for the period reasonably necessary to eliminate or reduce a serious risk to public health;

(b) restrict the movement of any person or group of persons within the emergency area;

(c) prevent any person or group of persons from entering the emergency area;

(d) give any other direction that the authorised officer considers is reasonably necessary to protect public health.

(2) Unless subsection (3) applies, before any person is subject to detention under subsection (1)(a), an authorised officer must briefly explain the reason why it is necessary to detain the person.

(3) If in the particular circumstances in which the power to detain the person is to be exercised, it is not practicable to briefly explain the reason why it is necessary to detain the person before the power is exercised, the authorised officer must do so as soon as is practicable.

(4) Before exercising any emergency powers under this section, an authorised officer must, unless it is not practicable to do so, warn the person that a refusal or failure to comply without a reasonable excuse, is an offence.

(5) An authorised officer must facilitate any reasonable request for communication made by a person subject to detention under subsection (1)(a).

(6) An authorised officer must at least once every 24 hours during the period that a person is subject to detention under subsection (1)(a) review whether the continued detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health.

(7) An authorised officer must as soon as is reasonably practicable give written notice to the Chief Health Officer—

(a) that a person has been made subject to detention under subsection (1)(a);

(b) that following a review under subsection (6) a person is to continue to be subject to detention under subsection (1)(a).

(8) A notice under subsection (7) must include—

(a) the name of the person being detained; and

(b) a brief statement as to the reason why the person is being, or continues to be, subject to detention under subsection (1)(a).

(9) The Chief Health Officer must as soon as is reasonably practicable advise the Minister of any notice received under subsection (7).

(10) Despite subsection (7), if the authorised officer is the Chief Health Officer, the Chief Health Officer must, as soon as is reasonably practicable—

S. 200(10) inserted by No. 24/2020 s. 7.

(a) advise the Minister in writing that a person has been made subject to detention under subsection (1)(a) or that following a review under subsection (6) a person is to continue to be subject to detention under subsection (1)(a); and

(b) include in the advice the name of the person being detained and a brief statement as to the reason why the person is being, or continues to be, subject to detention under subsection (1)(a).

200A Information to be given to detained persons

S. 200A inserted by No. 7/2021 s. 3A.

(1) As soon as practicable after a person is made subject to detention under section 200(1)(a), the person must be provided with the following information in a form that the person is capable of understanding—

(a) the purpose of the detention and its terms;

(b) any exemptions that may be available to the person in respect of the detention;

(c) an explanation of the person's rights and entitlements in relation to making a complaint or seeking a review of the decision

to make the person subject to detention including, but not limited to—

(i) the process for making a complaint or seeking an exemption; and

(ii) the process for making an application for review under section 200B.

S. 200A(1A) inserted by No. 53/2021 s. 14A.

(1A) Without limiting subsection (1)(c), an explanation under that subsection must include an explanation of the following rights that the person has, or may have, and the processes in respect of those rights—

(a) the right to complain to the Ombudsman under the **Ombudsman Act 1973**;

(b) the right to make a complaint under section 185 of this Act;

(c) the right to seek a review in a court.

(2) Nothing in this section limits the requirements under this Act or any other Act in respect of information to be given to a person who is subject to detention under section 200(1)(a) including, but not limited to, the information required to be given to the person under section 200.

S. 200B inserted by No. 7/2021 s. 3A.

200B Applications may be made for review of certain decisions in relation to a person subject to detention

S. 200B(1) amended by No. 53/2021 s. 14B(1)(2).

(1) A person who is subject to detention under section 200(1)(a) may make an application to the Detention Appeals Registrar for a review by a Detention Appeals Officer of—

(a) the decision under section 200(1)(a) to make the person subject to detention including, but not limited to, in respect of the following—

(i) the reasons for the detention;

(ii) the period of the detention;

(iii) the place of the detention;

(iv) the conditions of the detention; or

(b) a decision under section 200(1)(d) that relates to the person's detention.

(2) An application under subsection (1) cannot be made in respect of a decision under section 200(6) that the continued detention of a person is reasonably necessary to eliminate or reduce a serious risk to public health.

(3) A person who is subject to detention under section 200(1)(a) and has made an application under subsection (1) may make further applications under subsection (1) in respect of that detention if—

(a) the most recent application made by the person has been determined; and

(b) since the most recent application was determined, new and materially different circumstances have arisen that affect the person in respect of the detention.

(4) An application under subsection (1)—

(a) must be in writing; and

(b) must specify the grounds on which the application is made; and

(c) if the application is a further application of the kind permitted by subsection (3), must include a description of the new and materially different circumstances that have arisen and affect the person in respect of the detention; and

(d) must include any prescribed information; and

(e) may include any other information that the person making the application considers appropriate.

S. 200B(5) amended by No. 53/2021 s. 14B.

(5) The Detention Appeals Registrar must ensure that an application made under subsection (1) is referred to a Detention Appeals Officer immediately after the application is received.

S. 200BA inserted by No. 53/2021 s. 14C.

200BA Secretary and Detention Appeals Registrar to provide relevant information and assistance to Detention Appeals Officers

(1) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with all relevant information in their possession including, but not limited to, documents and information mentioned in section 200C(3)(ab), as soon as reasonably practicable after an application under section 200B is received by the Detention Appeals Registrar.

(2) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with any information requested by the Detention Appeals Officer under section 200C(3)(b) within 24 hours after receiving the request.

(3) The Secretary and the Detention Appeals Registrar must provide all reasonable assistance requested by a Detention Appeals Officer for the purposes of the Detention Appeals Officer considering and deciding applications for review.

(4) The provision of information under subsection (1) or (2) is authorised or required by law for the purposes of the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**.

200C Detention Appeals Officer must decide applications

S. 200C (Heading) substituted by No. 53/2021 s. 14D(1).

S. 200C inserted by No. 7/2021 s. 3A.

(1) This section applies if an application in respect of a decision is referred to a Detention Appeals Officer under section 200B(5).

S. 200C(1) amended by No. 53/2021 s. 14D(2).

(2) The Detention Appeals Officer must use their best endeavours to decide the application, and advise the applicant in writing of the decision and the reasons for it, and the review rights available to the applicant, within 72 hours after the application was received by the Detention Appeals Registrar or within such longer period as is requested by the applicant.

S. 200C(2) amended by No. 53/2021 s. 14D(2)(3).

(3) In deciding the application, the Detention Appeals Officer—

S. 200C(3) amended by No. 53/2021 s. 14D(2).

(a) must consider the information included in the application; and

(ab) may consider any documents and other information relied upon by the authorised officer who detained the person or extended the detention of the person under section 200 and may consider any other information in relation to the person's detention; and

S. 200C(3)(ab) inserted by No. 53/2021 s. 14D(4).

(ac) must take reasonable steps to contact the applicant in relation to the application; and

S. 200C(3)(ac) inserted by No. 53/2021 s. 14D(4).

(b) may make such further inquiries and seek such further information in relation to any aspect of the application as the Detention

S. 200C(3)(b) amended by No. 53/2021 s. 14D(2).

Appeals Officer thinks fit including, but not limited to, making inquiries to or seeking information from persons with expertise in public health.

S. 200C(4) amended by No. 53/2021 s. 14D(2).

(4) The Detention Appeals Officer may decide—

(a) to affirm the decision under review; or

S. 200C(4)(b) amended by No. 53/2021 s. 14D(2), substituted by No. 53/2021 s. 14D(5).

(b) subject to subsections (6), (7) and (8), to vary or cease the person's detention.

S. 200C(5) amended by No. 53/2021 s. 14D(2).

(5) A decision by a Detention Appeals Officer to affirm a decision made by an authorised officer is taken to be a decision of that authorised officer.

S. 200C(6) inserted by No. 53/2021 s. 14D(6).

(6) A Detention Appeals Officer must not vary or cease a person's detention under subsection (4)(b) unless the Detention Appeals Officer has consulted and considered the advice of the Chief Health Officer about the proposed variation or cessation.

Note

The Chief Health Officer can delegate powers, duties and functions: see section 22.

S. 200C(7) inserted by No. 53/2021 s. 14D(6).

(7) If a Detention Appeals Officer consults the Chief Health Officer about the proposed variation or cessation of a person's detention, the Chief Health Officer must make their best endeavours to provide oral or written advice about the proposed variation or cessation within 24 hours.

S. 200C(8) inserted by No. 53/2021 s. 14D(6).

(8) If the Chief Health Officer provides oral advice under subsection (7), a written record of the advice must be prepared as soon as practicable—

(a) by the Chief Health Officer; or

(b) by the Detention Appeals Officer, who must provide a copy of the written record to the Chief Health Officer for the endorsement of the Chief Health Officer.

* * * * *

S. 200D inserted by No. 7/2021 s. 3A, repealed by No. 53/2021 s. 14E.

200E Detention not unlawful merely because of a decision on review

S. 200E inserted by No. 7/2021 s. 3A.

If a person makes an application under section 200B(1) for review of a decision, and the detention of the person ceases because of a decision made on the review, the detention of the person is not unlawful merely because of the decision made on the review.

201 How may an authorisation be given?

(1) An authorisation to exercise any of the public health risk powers or emergency powers for the purposes of section 199 may be given orally or in writing.

(2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.

(3) An authorisation must—

(a) state that the authorisation is given under this Division;

(b) generally describe the serious risk to public health to which it relates;

(c) if the serious risk to public health has occurred, name or describe the place at which the serious risk to public health has occurred;

(d) specify the time at which the authorisation is given;

(e) specify any restrictions or limitations to which of the public health risk powers or emergency powers may be exercised under the authorisation;

(f) specify the period of time for which the authorisation continues in force.

(4) The Chief Health Officer may extend the period of time for which an authorisation continues in force before the authorisation expires.

202 Assistance

(1) An authorised officer may be assisted by any person in exercising a power under an authorisation given under section 199.

S. 202(2) amended by No. 37/2014 s. 10(Sch. item 136.4).

(2) A request for assistance by a police officer must be made to the Chief Commissioner of Police or a delegate of the Chief Commissioner of Police.

203 Compliance with direction or other requirement

(1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement.

204 Compensation

(1) A person who suffers loss as a result of a decision by the Chief Health Officer to give an authorisation to an authorised officer under this Division may apply to the Secretary for compensation if the person considers that there were insufficient grounds for the giving of that authorisation.

(2) If the Secretary decides that there were insufficient grounds for the giving of an authorisation to an authorised officer under this Division, the Secretary is to pay just and reasonable compensation to the applicant.

(3) The Secretary must send notice in writing of the decision under subsection (2) as to the payment of compensation under this section to each applicant for the payment of compensation.

(4) The Secretary is taken to have refused to pay any compensation if the Secretary has not decided an application for compensation under this section within—

(a) 28 days of receiving the application; or

(b) the period agreed to by the Secretary and the applicant for the payment of compensation under subsection (5).

(5) The Secretary and the applicant for the payment of compensation may agree that the Secretary may decide the applicant's application for the payment of compensation within a period that is greater than the 28 days specified in subsection (4)(a).

(6) The Secretary must inform each applicant for the payment of compensation in writing of the applicant's right to apply to VCAT for a review.

(7) An applicant for the payment of compensation under this section who is dissatisfied with a decision by the Secretary as to the refusal to pay compensation or as to the amount of compensation may apply to the VCAT for a review of the decision.

(8) An application for review must be made within 28 days of the latest of—

(a) the day on which the decision is made; or

(b) the day on which the person was notified under subsection (6) of the right to apply for a review; or

(c) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Part 11—General provisions

Division 1—Reviews and appeals

205 Review by a Council

(1) In this section—

decision means a decision made by a Council under section 74 or 76 in respect of the issue, variation, transfer, renewal, cancellation or suspension of a registration;

person aggrieved means the person who is the applicant for, or the holder of, the registration in respect of which the decision was made.

(2) A person aggrieved by a decision may within 28 days of being notified of the decision apply to the Council for a review of the decision.

(3) On receiving an application under subsection (2), the Council must review the decision.

(4) The Council is taken to have affirmed the decision if the Council has not determined an application under this section within—

(a) 28 days of receiving the application; or

(b) the period agreed to by the Council and the applicant under subsection (5).

(5) The Council and the applicant may agree that the Council may determine the applicant's application within a period that is greater than the 28 days specified in subsection (4)(a).

(6) The Council may—

(a) make a decision affirming, varying or revoking the decision; and

(b) if the Council revokes the decision, make any other decision as the Council considers appropriate under the provision under which the decision was made.

(7) The Council must within the period applying under subsection (4) give the applicant for review a written statement of the decision and the reasons for the decision.

(8) The Council must inform an applicant for review in writing of the applicant's right to apply to VCAT for a review under section 207.

206 Review by the Secretary

(1) In this section—

S. 206(1) def. of *decision* substituted by No. 39/2024 s. 105(1).

decision means a decision made by the Secretary—

(a) to certify an approved auditor or revoke an approved auditor's certification under section 94; or

(b) to issue, vary, renew, cancel or suspend a pest control licence under section 101 or 105; or

(c) to give an information or document production notice; or

(d) to give a notice—

(i) amending the period within which a person must comply with an information or document production notice; or

(ii) amending or revoking the requirement to provide or produce particular information or a particular document under an information or document production notice;

person aggrieved means—

S. 206(1) def. of *person aggrieved* substituted by No. 39/2024 s. 105(2).

(a) a person who is the applicant for, or the holder of a certification as an approved auditor; or

(b) a person who is the applicant for, or the holder of, a pest control licence; or

(c) a person to whom an information or document production notice is given.

(2) A person aggrieved by a decision may within 28 days of being notified of the decision apply to the Secretary for a review of the decision.

(3) On receiving an application under subsection (2), the Secretary must review the decision.

(4) The Secretary is taken to have affirmed the decision if the Secretary has not determined an application under this section within—

(a) 28 days of receiving the application; or

(b) the period agreed to by the Secretary and the applicant under subsection (5).

(5) The Secretary and the applicant may agree that the Secretary may determine the application within a period that is greater than the 28 days specified in subsection (4)(a).

(6) The Secretary may—

(a) make a decision affirming, varying or revoking the decision; and

(b) if the Secretary revokes the decision, make any other decision as the Secretary considers appropriate under the provision under which the decision was made.

(7) The Secretary must within the period applying under subsection (4) give the applicant for review a written statement of the decision and the reasons for the decision.

(8) The Secretary must inform an applicant for review in writing of the applicant's right to apply to VCAT for a review under section 207.

207 Review by VCAT

(1) This section applies to a decision—

(a) made by a Council to cancel or suspend a registration under section 76; or

(b) made by a Council on an application under section 205; or

(c) made by the Secretary to revoke the certification of a person as an approved auditor under section 94; or

(d) made by the Secretary to cancel or suspend a pest control licence under section 105; or

(e) made by the Secretary on an application under section 206.

(2) The person who made the application in respect of the decision to which this section applies may apply to VCAT for a review of the decision.

(3) An application for review must be made within 28 days of the latest of—

(a) the day on which the decision is made; or

(b) if applicable, the day the person was notified under section 205(8) or 206(8) of the right to apply for a review under this section; or

(c) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

208 Appeal against improvement notice or prohibition notice

(1) A person on whom an improvement notice or prohibition notice is served may appeal to the Magistrates' Court within 21 days after the improvement notice or prohibition notice is served on the person.

(2) The Magistrates' Court must—

(a) reconsider the decision to issue the improvement notice or prohibition notice;

(b) hear any relevant evidence tendered by the applicant or any person on behalf of the person who issued the improvement notice or prohibition notice;

(c) affirm or revoke the issue of the improvement notice or prohibition notice.

(3) Unless the Magistrates' Court otherwise orders, the appeal does not affect the status of the improvement notice or prohibition notice pending the determination of the appeal.

(4) The decision of the Magistrates' Court on an appeal takes effect from the date that the decision is made.

(5) The costs of and incidental to an appeal are in the discretion of the Magistrates' Court.

S. 208(6) inserted by No. 69/2009 s. 54(Sch. Pt 1 item 47.1).

(6) Nothing in subsection (2)(b) prevents the application of Part 3.10 of the **Evidence Act 2008** to an appeal under this section.

Division 2—Infringements

209 Infringements

(1) The Secretary may serve an infringement notice on any person that the Secretary has reason to believe has committed a prescribed offence.

(2) A Council may serve an infringement notice on any person that the Council has reason to believe has committed a prescribed offence.

(3) An offence referred to in subsection (1) or (2) for which an infringement notice may be issued is an infringement offence within the meaning of the **Infringements Act 2006**.

(4) The infringement penalty for an offence against a prescribed offence is the prescribed penalty.

(5) In this section, ***prescribed offence*** means—

(a) in relation to a Council, an offence against Part 6, 9 or 10 (or any regulations made under Part 6, 9 or 10) which is prescribed for the purposes of this section and is committed wholly or partly in the Council's municipal district; and

(b) in relation to the Secretary, an offence against this Act (other than section 61) or the regulations which is prescribed for the purposes of this section, wherever committed.

Note

See the **Infringements Act 2006** for provisions relating to infringement notices.

Division 3—Offences

210 False or misleading information

(1) A person must not—

(a) give information that is false or misleading in a material particular; or

(b) make a statement that is false or misleading in a material particular; or

(c) produce a document that is false or misleading in a material particular—

to the Secretary, a Council, the Chief Health Officer or an authorised officer under this Act or the regulations without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A person must not make an entry in a document required to be kept by this Act or the regulations that is false or misleading.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) In a proceeding for an offence against subsection (1) or (2) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.

211 Destroying or damaging records

A person must not, without lawful authority, destroy or damage any record required to be kept in accordance with this Act or the regulations.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

212 Protection against self-incrimination

(1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.

(2) However, subsection (1) does not apply to—

(a) the production of a document or part of a document that the person is required by this Act or the regulations to produce; or

(b) the giving of a person's name or address in accordance with this Act or the regulations.

S. 212A inserted by No. 53/2021 s. 15.

212A Abrogation of privilege against self-incrimination

(1) A person is not excused from complying with a requirement under or for the purposes of Part 8A to provide information on the ground that the information—

(a) might incriminate the person; or

(b) may make the person liable to a penalty.

(2) Information provided by a natural person in compliance with the requirement—

(a) is not admissible in evidence against the natural person in a criminal proceeding, other than a proceeding in respect of the

provision of false or misleading information; and

(b) must not be used in any action, proceeding or process that may make the person liable to a criminal penalty, other than a proceeding in respect of the provision of false or misleading information.

213 Legal professional privilege and client legal privilege not affected

S. 213 (Heading) amended by No. 69/2009 s. 54(Sch. Pt 1 item 47.2).

Nothing in this Act or the regulations—

(a) entitles or requires a person to disclose information that is the subject of legal professional privilege or client legal privilege; or

S. 213(a) amended by No. 69/2009 s. 54(Sch. Pt 1 item 47.3).

(b) affects the law or practice relating to legal professional privilege or client legal privilege.

S. 213(b) amended by No. 69/2009 s. 54(Sch. Pt 1 item 47.3).

214 Offences by corporations

(1) If a corporation is guilty of an offence against this Act or the regulations, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

(2) If in a proceeding for an offence against this Act or the regulations it is necessary to establish the intention of a corporation, it is sufficient to show that an employee or agent of the corporation had that intention.

(3) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or the regulations.

(4) In this section, ***officer***—

(a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and

(b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—

but does not include an employee of the corporation.

215 Persons who are liable for offences

(1) If two or more persons are responsible for the same offence against this Act or the regulations, each of those persons is liable to the penalty provided by this Act or the regulations for that offence and the liability of each of them is independent of the liability of any other person.

(2) If this Act or the regulations provide that a person is guilty of an offence and the person who is guilty of the offence is a partnership, firm, unincorporated body or association, the reference to a person must be construed as a reference to each member of the partnership or firm or of the committee of management of the unincorporated body or association who knowingly authorised or permitted the commission of the offence.

(3) If in any proceeding for an offence against this Act or the regulations against a person who is a partnership, firm, unincorporated body or association it is necessary to establish the state of mind of the partnership, firm, unincorporated

body or association, it is sufficient to show that an employee or agent of the partnership, firm, unincorporated body or association had that state of mind.

Division 4—Proceedings and legal matters

216 Responsible agency for the Crown

(1) If the Crown is to be served with an infringement notice, or proceedings are brought against the Crown, for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in the infringement notice or any document initiating, or relating to, the proceedings.

(2) In this section, the responsible agency in respect of an offence is the agency of the Crown—

(a) whose acts or omissions are alleged to constitute the offence; or

(b) if that agency has ceased to exist, that is the successor of that agency; or

(c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

(3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.

(4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

217 Infringement and other notices may be issued to the Crown

(1) The Crown in any capacity may be issued with an infringement notice for an offence against this Act or the regulations.

(2) If an improvement notice or a prohibition notice is to be issued to the Crown, the improvement notice or prohibition notice may be issued to the agency of the Crown that would be the responsible agency under section 216 if the Crown were prosecuted for an offence of contravening the notice.

218 Proceedings against successors to public bodies

(1) Proceedings for an offence against this Act or the regulations that were instituted against a public body before its dissolution, or that could have been instituted against a public body if not for its dissolution, may be continued or instituted against its successor if the successor is a public body.

(2) An infringement notice served on a public body for an offence against this Act or the regulations is taken to be an infringement notice served on its successor if the successor is a public body.

(3) Any penalty paid by a public body in respect of an infringement notice is taken to be a penalty paid by its successor if the successor is a public body.

(4) In this section, ***public body*** means—

(a) a body corporate representing the Crown; or

(b) a State owned enterprise or reorganising body within the meaning of the **State Owned Enterprises Act 1992**; or

(c) a Council; or

(d) a public entity within the meaning of the **Public Administration Act 2004**.

219 Power to bring proceedings

S. 219(1) amended by No. 37/2014 s. 10(Sch. item 136.4).

(1) The Secretary, an authorised officer appointed by the Secretary or a police officer may bring proceedings for an offence under this Act (other than section 61) or the regulations wherever committed.

(2) A Council or an authorised officer appointed by the Council may bring proceedings for any of the following—

(a) an offence against Part 6, 9 or 10 (or any regulations made under Part 6, 9 or 10) committed wholly or partly in the Council's municipal district;

(b) an offence relating to an improvement notice or a prohibition notice issued by the Council.

220 Time within which proceedings for offences may be brought

S. 220 amended by No. 68/2009 s. 97(Sch. item 99).

Despite section 7(1) of the **Criminal Procedure Act 2009**—

(a) proceedings for an offence against section 127, 130(2), 130(5), 159(1), 159(2), 159(3), 159(4), 160(1) or 160(2) may be commenced within 2 years of the commission of the alleged offence; and

(b) proceedings for an offence against section 155 may be commenced within 3 years of the commission of the alleged offence.

221 Service of notices, orders and other documents

(1) Any notice, order or other document under this Act or the regulations required or authorised to be given or served to or upon any person may be served by—

(a) giving it or serving it personally on the person; or

(b) sending it by post or electronic communication to the person at that person's usual or last known place of residence or business; or

(c) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently at least 16 years old; or

(d) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently at least 16 years old.

(2) This section is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.

(3) If a notice, order or other document is addressed to the owner or occupier of premises, the notice, order or document may be served by—

(a) delivering the notice, order or other document or a true copy to a person on the premises who is apparently at least 16 years old; or

(b) if there is no person on the premises who can be so served, by fixing the notice, order or other document on some conspicuous part of the premises.

(4) If a notice, order or other document is required to be given to or served on a person whose name and address are unknown, the notice, order or other document may be served by publishing the notice, order or other document in—

(a) the Government Gazette; and

(b) a newspaper generally circulating in Victoria 3 times at intervals of not less than one week between any 2 publications.

(5) Any notice, order or other document required to be given to or served on the owner or occupier of any premises may if the name of the owner or occupier is not known be addressed to the owner or occupier by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice, order or other document is given without further name or description.

(6) If there are more owners or occupiers than one it is sufficient if the notice, order or other document is served on any one of them and the name of any one of them is specified with the addition of the words "and others".

(7) Non-service on the owner does not affect the validity of service on the occupier.

(8) Non-service on the occupier does not affect the validity of service on the owner.

S. 221(8) amended by No. 56/2012 s. 23.

(9) Instead of attending at any proceedings under this Act or the regulations, a person who gives or serves any notice, order or other document under this Act or the regulations may make an affidavit that—

(a) identifies and is endorsed on, or attached to, a true copy of the original notice, order or other document; and

(b) states the time and manner in which the original notice, order or other document was given or served.

(10) A document purporting to be an affidavit under subsection (9) is to be received in any proceedings and is evidence of the statements contained in the document.

222 Validity and effect of notices, orders and other documents

(1) The validity of any notice, order or other document or of the service of the notice, order or other document is not affected by any error, misdescription or irregularity which in the opinion of the court is not likely to mislead or which in fact does not mislead.

(2) If due service of a notice, order or other document required under this Act or the regulations to be given or served on any owner or occupier has been once made on any owner or occupier, the notice, order or other document is binding on all persons claiming by from or under that owner or occupier and on all subsequent owners or occupiers to the same extent as if served on each of those persons respectively.

223 Evidence of signatures

A signature purporting to be the signature of the Minister, the Secretary, the Chief Health Officer, an authorised officer or an analyst is evidence of the signature it purports to be.

224 Certificate of examination and analysis

(1) This section applies to the following—

(a) proceedings under section 122 (application to VCAT for review of a public health order);

(b) proceedings under section 196 (application for an injunction to compel compliance with, or to restrain a contravention of, an improvement notice or a prohibition notice);

(c) proceedings under section 197 (special provisions relating to nuisances);

(d) proceedings under section 208 (appeal against an improvement notice or a prohibition notice);

(e) proceedings for an offence against this Act or the regulations.

(2) A certificate of examination and analysis signed by an analyst stating any of the following matters is evidence of the matter—

(a) the analyst's qualifications;

(b) the analyst took, or received from a stated person, a thing or sample;

(c) a thing or sample was examined, analysed, measured or tested at a stated place on a stated day or during a stated period;

(d) the methodology used to examine, analyse, measure or test a thing or sample;

(e) the results of the examination, analysis, measurement or test.

225 Evidentiary certificate signed by the Secretary

(1) This section applies to the following—

(a) proceedings under section 122 (application to VCAT for review of a public health order);

(b) proceedings under section 196 (application for an injunction to compel compliance with, or to restrain a contravention of, an improvement notice or a prohibition notice);

(c) proceedings under section 208 (appeal against an improvement notice or a prohibition notice);

(d) proceedings for an offence against this Act or the regulations brought under section 219(1).

(2) A certificate signed by the Secretary stating any of the following matters is evidence of the matter—

(a) a stated document is one of the following things made, given or issued under this Act or the regulations—

(i) an appointment or a decision;

(ii) a notice, direction or requirement;

(iii) a registration, licence or authority;

(iv) a record or an extract from a record;

(v) a register or an extract from a register;

(b) a stated document is a copy of a thing referred to in paragraph (a);

(c) on a stated day, or during a stated period, a stated person was or was not the holder of a registration, licence or authority;

(d) on a stated day, or during a stated period, a registration, licence or authority—

(i) was or was not in force; or

(ii) was or was not subject to a stated condition;

(e) on a stated day, or during a stated period, a registration or licence was suspended;

(f) on a stated day a registration or licence was cancelled, varied, transferred or surrendered;

(g) on a stated day, or during a stated period, an appointment as an authorised officer or analyst was, or was not, in force for a stated person;

(h) on a stated day, a stated person was given a stated notice or direction under this Act;

(i) on a stated day, a stated requirement was made of a stated person;

(j) a stated amount is payable under this Act or the regulations by a stated person and has not been paid.

226 Evidentiary certificate signed by Chief Executive Officer of a Council

(1) This section applies to the following—

(a) proceedings under section 196 (application for an injunction to compel compliance with, or to restrain a contravention of, an improvement notice or a prohibition notice);

(b) proceedings under section 197 (special provisions relating to nuisances);

(c) proceedings under section 208 (appeal against an improvement notice or a prohibition notice);

(d) proceeding for an offence against this Act or the regulations brought under section 219(2).

(2) A certificate signed by the Chief Executive Officer of a Council stating any of the following matters is evidence of the matter—

(a) a stated document is one of the following things made, given or issued under this Act or the regulations—

(i) an appointment or a decision;

(ii) a notice, direction or requirement;

(iii) a registration;

(iv) a record or an extract from a record;

(v) a register or an extract from a register;

(b) a stated document is a copy of a thing referred to in paragraph (a);

(c) on a stated day, or during a stated period, a stated person was or was not the holder of a registration;

(d) on a stated day, or during a stated period, a registration—

(i) was or was not in force; or

(ii) was or was not subject to a stated condition;

(e) on a stated day, or during a stated period, a registration was suspended;

(f) on a stated day a registration was cancelled, varied, transferred or surrendered;

(g) on a stated day, or during a stated period, an appointment as an authorised officer or analyst was, or was not, in force for a stated person;

(h) on a stated day, a stated person was given a stated notice or direction under this Act;

(i) on a stated day, a stated requirement was made of a stated person;

(j) a stated amount is payable under this Act or the regulations by a stated person and has not been paid.

227 Protection of person giving certain information

The giving of information that is authorised or required to be given under this Act in accordance with this Act—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; or

(b) does not make the person by whom it is given subject to any liability in respect of it; or

(c) does not constitute a contravention of any other Act or law (including common law).

227AA Immunity

S. 227AA inserted by No. 15/2022 s. 24.

(1) The Chief Health Officer, a delegate of the Chief Health Officer, an authorised officer appointed under section 30(1) or a Detention Appeals Officer is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or

S. 227AA(1)(a) amended by No. 39/2024 s. 117.

(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to the Chief Health Officer, a delegate of the Chief Health Officer, an authorised officer appointed under section 30(1) or a Detention Appeals Officer attaches instead to the Crown.

(3) This section does not apply to anything done or omitted to be done to which section 165CU applies by a person to whom section 165CU applies.

Pt 11 Div. 4A (Heading and ss 227A, 227B) inserted by No. 53/2021 s. 17.

Division 4A—General provisions relating to assistance powers

S. 227A inserted by No. 53/2021 s. 17.

227A Provisions relating to requests for assistance

(1) A request for assistance under section 165BC, 192 or 202—

(a) may relate generally to the exercise of powers in relation to a particular pandemic or emergency, or in relation to the exercise of particular public health risk powers, emergency powers or pandemic management powers, and must be made by the Secretary if it relates generally to the exercise of powers; and

(b) need not be made on each occasion assistance is required in the exercise of such powers.

(2) A request for assistance under section 165BC, 192 or 202 that does not relate generally to the exercise of powers as mentioned in subsection (1) does not need to be made by the Secretary, but may be made by an authorised officer.

(3) A person to whom a request for assistance is made has and may exercise any powers that the person has and may exercise under any other law of Victoria, subject to any limitations that apply in relation to the exercise of the powers under the other law, unless the request is made of the person in a personal capacity.

(4) A person to whom a request for assistance is made—

(a) may provide assistance before, during or after the exercise of the powers in relation to which the request is made; and

(b) need not be in the physical presence of an authorised officer when providing the assistance.

(5) Assistance that may be provided includes, but is not limited to, monitoring or ensuring compliance with a pandemic order or a direction given by the person who requested the assistance.

227B Assistance by police officers

S. 227B inserted by No. 53/2021 s. 17.

(1) Without limiting section 165BC, 192 or 202, if a request for assistance is made of a police officer in relation to the exercise of a power under this Act and it is reasonably necessary to assist an authorised officer in exercising the power, the police officer may provide assistance by doing one or more of the following—

(a) effecting warrantless entry into premises pursuant to a specific request from an authorised officer;

(b) compelling a person to provide the person's name, address and any other information;

(c) using reasonable force.

(2) Without limiting subsection (1)(c), a police officer may use reasonable force to detain a person under or for the purposes of Part 8A, and to take that person to—

(a) a place where the person is to be detained; or

(b) a place where the person is required to be under a pandemic order or under a direction given in the exercise of a pandemic management power.

(3) Despite subsections (1)(c) and (2), those subsections do not permit a police officer to exercise reasonable force to assist in the exercise of a power to require a person to undertake an examination, test, pharmacological treatment or prophylaxis.

Division 5—Costs

228 Recovery of costs

(1) If a person is found guilty of an offence against this Act or the regulations, the Secretary or the Council may seek the reimbursement of costs incurred by the Secretary or the Council as a result of the contravention.

(2) If the Secretary or a Council is awarded legal costs in any proceedings for an offence against this Act or the regulations, the Secretary or the Council may seek payment for the cost of any work conducted by the Secretary or the Council.

(3) For the purposes of this section, ***work conducted by the Secretary or the Council*** means any analysis, measurement, recording, evaluation, testing or inspection conducted by the Secretary or the Council through any officers, employees or agents.

229 Actions to ensure compliance with direction, requirement or notice

(1) This section applies if a person fails to comply with—

(a) a direction or requirement under section 190 or 200; or

(b) an improvement notice or a prohibition notice issued in respect of a contravention to which section 193 or 203 applies.

(2) If this section applies, the Chief Health Officer may authorise a person or a Council to take the actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice.

(3) An authorisation under subsection (2) authorises the person or Council to take the actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice.

(4) Without limiting the generality of subsection (2), actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice include—

(a) entering onto any relevant land;

(b) executing or performing any action which is necessary to give effect to the direction, requirement, improvement notice or prohibition notice.

230 Cost recovery in respect of failure to comply with direction, requirement or notice

(1) Any reasonable costs incurred under section 229 are a debt payable to the Secretary or the Council by the person given the direction or who was subject to the requirement, improvement notice or prohibition notice.

(2) Any reasonable costs incurred under section 229 in relation to any premises—

(a) are until recovered a charge on the relevant land; and

(b) may at any time be recovered by the Secretary or the Council in a court of competent jurisdiction—

(i) from the owner of the relevant land for the time being; or

(ii) after demand from the occupier of the relevant land for the time being, from the rent, to the extent of the amount of rent due, at the time of demand, from the occupier to the owner.

(3) In this section, ***reasonable costs*** means—

(a) the costs and expenses of taking the actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice; and

(b) all other costs and expenses lawfully incurred by the Secretary or the Council in respect of any premises whether or not any judgment or order has been obtained; and

(c) interest at the percentage rate per annum fixed in accordance with section 2 of the **Penalty Interest Rates Act 1983**.

231 Expenses recoverable by a Council in the abatement of any nuisance

(1) Subject to subsection (2), if it is provided by or under this Act or the regulations that any works for the abatement of any nuisance may be done by the Council at the expense of the occupier of any land, the occupier may—

(a) recover the expenses from the owner as money paid to his or her use; or

(b) deduct the expenses from, or set off against, any rent due or to become due.

(2) Subsection (1) does not apply in the case of a contravention of section 61 by the occupier.

(3) Subsection (1) applies despite any covenant or agreement to the contrary.

(4) For the purposes of this section, ***occupier*** includes—

(a) the person in occupation of any premises;

(b) any person in possession of the premises;

(c) any agent receiving rent for the premises.

Division 5A—Compliance and enforcement policy

Pt 11 Div. 5A (Heading and s. 231A) inserted by No. 53/2021 s. 18.

231A Secretary may develop compliance and enforcement policy

S. 231A inserted by No. 53/2021 s. 18.

(1) The Secretary may make a policy (a ***compliance and enforcement policy***) to promote compliance with, and enforcement of, this Act or specified provisions of this Act including, but not limited to a compliance and enforcement policy in relation to a particular pandemic, emergency or public health risk.

(2) A compliance and enforcement policy—

(a) must set out options for promoting compliance with, and enforcement of, this Act or specified provisions of this Act; and

(b) must set out guidance on how persons involved in compliance and enforcement functions may or must use those options to promote compliance with, and enforcement of, this Act or specified provisions of this Act; and

(c) may set out guidance on any other matters relevant to compliance with, and enforcement of, this Act or specified provisions of this Act.

(3) A compliance and enforcement policy may—

(a) set out guidance in relation to the issuing of infringement notices, and

(b) provide that any part of the policy is taken to be an enforcement agency guideline or policy for the purposes of section 9 of the **Infringements Act 2006**;

(4) If a compliance and enforcement policy provides that any part of the policy is taken to be an enforcement agency guideline or policy for the purposes of section 9 of the **Infringements Act 2006**—

(a) a person who issues, or considers whether or not to issue, an infringement notice under this Act must have regard to the compliance and enforcement policy; and

(b) if there is a conflict between the compliance and enforcement policy and any other enforcement agency guideline or policy, the compliance and enforcement policy prevails.

(5) The Secretary must publish a compliance and enforcement policy on an Internet site maintained by the Department.

(6) A person who performs a function or exercises a power under this Act must have regard to any applicable compliance and enforcement policy in performing the function or exercising the power.

(7) A compliance and enforcement policy relating to the COVID-19 pandemic—

(a) must be published not later than 90 days after the commencement of this section; and

(b) must promote compliance with, and enforcement of, this Act or specified provisions of this Act in its application to the COVID-19 pandemic;

(c) without limiting subsections (2), (3) and (4), must set out guidance on how persons involved in compliance and enforcement functions in relation to the COVID-19 pandemic are to consider the impacts of the performance of those functions upon vulnerable persons and communities.

Division 6—Regulations

232 General

(1) The Governor in Council may make regulations for or with respect to—

(a) prescribing forms to be used for the purposes of this Act;

(b) prescribing fees for the purposes of this Act;

(c) prescribing the keeping and the form of any records or other documents as may be necessary for the administration of this Act;

(d) the collection, provision, transfer, disclosure or use of information for the purposes of this Act;

(e) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.

(2) Regulations made under this Act—

(a) may be of general or of specially limited application;

(b) may differ according to differences in time, place or circumstance;

(c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or specified class of persons;

(d) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such extent as is specified;

(e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;

(f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time;

(g) may impose a penalty not exceeding 20 penalty units for any contravention of the regulations.

(3) Despite anything to the contrary in Division 5 of Part 2 of the **Infringements Act 2006**, regulations prescribing an amount as the infringement penalty for an offence may—

S. 232(3) inserted by No. 7/2021 s. 3B.

(a) prescribe a lower amount of penalty for an offence committed by a person under the age of 18 years; and

(b) specify the circumstances in which the different amounts of penalty apply.

233 Consultative Councils

Without limiting the generality of section 232, the regulations may prescribe—

(a) the procedure of meetings of a Consultative Council;

(b) a Consultative Council to be a prescribed Consultative Council;

(c) the powers and duties of a Consultative Council in the performance of the functions of the Consultative Council;

(d) the powers and duties of a Council Chairperson or other member of a Consultative Council in the performance of his or her functions as a member of the Consultative Council;

(e) fees, travelling allowances and other allowances (including the reimbursement of expenses) to be paid to members of a Consultative Council or of a sub-committee, other than a member who is an officer or

employee (within the meaning of section 4(1) of the **Public Administration Act 2004**) of the Department;

(f) conditions of confidentiality and safe custody of information held or used by a Consultative Council;

(g) conditions in respect of the operation by CCOPMM of the perinatal data collection unit;

(h) conditions under which access to information held by a Consultative Council for the purpose of medical research and studies is to be permitted.

234 General requirements relating to public health and wellbeing

Without limiting the generality of section 232, the regulations may prescribe—

(a) the procedure for a public inquiry;

(b) requirements and procedures for preventing, controlling or minimising public health risks, including risks posed by infectious diseases.

235 Nuisances, prescribed accommodation and registered premises

Without limiting the generality of section 232, the regulations may prescribe—

(a) matters in respect of the prevention and abatement of nuisances;

(b) the following matters in respect of prescribed accommodation—

(i) requirements relating to the issue, transfer or renewal of a registration of prescribed accommodation, including requirements relating to an application for issue, transfer or renewal;

(ia) accommodation that is lower risk prescribed accommodation;

S. 235(b)(ia) inserted by No. 15/2022 s. 15.

(ib) criteria that determines whether accommodation is lower risk prescribed accommodation;

S. 235(b)(ib) inserted by No. 15/2022 s. 15.

(ii) the number of people who can be accommodated in or at any premises that are, or form part of, prescribed accommodation;

(iii) the keeping of a register of people who are accommodated in prescribed accommodation;

(iv) the hygiene, sanitation and cleanliness requirements for prescribed accommodation;

(v) the provision of a proper supply of water for the use of people accommodated in prescribed accommodation;

(vi) the provision of suitable facilities for cooking, washing and bathing for the use of people accommodated in prescribed accommodation;

(vii) interior finishes of premises comprising or forming part of prescribed accommodation;

(viii) the safety requirements for prescribed accommodation;

(ix) the maintenance of prescribed accommodation;

(x) the requirements applying in respect of the advertising of prescribed accommodation;

(xi) obligations that apply to a registration holder or class of registration holder;

(c) the following matters in respect of registered premises—

(i) requirements relating to the issue, transfer or renewal of a registration of registered premises, including requirements relating to an application for issue, transfer or renewal;

(ii) the conditions that apply in respect of the use, cleanliness and safety of registered premises;

(iii) prescribing equipment standards in respect of equipment provided on the registered premises;

(iv) safeguards of the health of persons likely to be using registered premises;

(v) the information to be provided to users of registered premises;

(vi) age restrictions for users of registered premises;

(vii) the requirements applying in respect of the advertising of registered premises;

(viii) the qualifications or training that a person conducting or employed at a business required to be registered under this Act must obtain;

(ix) obligations that apply to a registration holder or class of registration holder.

236 Cooling tower systems

Without limiting the generality of section 232, the regulations may prescribe—

(a) requirements in respect of cooling tower systems including—

(i) matters relating to water quality, routine inspections, cleaning, testing and water sampling;

(ii) remedial actions including cleaning and disinfection;

(iii) the giving of notice of the detection of legionella to the Secretary and the details to be included in the notice;

(b) risk management requirements for cooling tower systems, including requirements in relation to the following—

(i) matters to be included in risk management plans;

(ii) the preparation, review and audit of risk management plans;

(iii) the keeping of risk management plans;

(iv) the keeping of records relating to the operation, repair, maintenance, service and testing of cooling tower systems;

(v) the construction, installation, operation, maintenance, repair, service and testing of cooling tower systems;

(vi) control measures used in respect of a cooling tower system;

(c) requirements in relation to approved auditors;

(d) fees for the certification of persons as approved auditors.

237 Pest control

Without limiting the generality of section 232, the regulations may prescribe—

(a) requirements relating to applicants for pest control licences;

(b) limitations, obligations or requirements imposed on pest control licences.

238 Management and control of infectious disease, micro-organisms and medical conditions

(1) Without limiting the generality of section 232, the regulations may prescribe—

(a) a definition of ***immunised*** in relation to each vaccine-preventable disease;

(b) an infectious disease as a notifiable condition;

(c) a medical condition as a notifiable condition;

(d) a micro-organism as a notifiable micro-organism;

(e) the period within which notification details of any notifiable condition or notifiable micro-organism required to be given by the regulations must be given;

(f) notification details for any notifiable condition or notifiable micro-organism;

(g) the manner of making a notification of any notifiable condition or notifiable micro-organism;

(h) persons or classes of persons who must notify the Secretary of any notifiable condition or notifiable micro-organism;

(i) matters relating generally to the giving of information by the Secretary to other persons in relation to any notifiable condition or notifiable micro-organism;

(j) matters relating generally to the notification of any notifiable condition or notifiable micro-organism;

(k) matters relating generally to the collection and analysis of information about infectious diseases;

(ka) for the purposes of Division 3A of Part 8—

S. 238(1)(ka) inserted by No. 4/2018 s. 24(1).

(i) the manner of making a notification that a person has anaphylaxis;

(ii) the notification details for a person having anaphylaxis;

(iii) the period within which notification details for a person having anaphylaxis must be given;

(iv) the persons or classes of persons to whom the Secretary may provide information under section 130C;

* * * * *

S. 238(1)(l) repealed by No. 22/2019 s. 6(3).

(m) an infectious disease as a specified infectious disease for the purposes of Division 5 of Part 8;

(n) vaccine-preventable diseases for the purposes of Division 7 of Part 8;

(o) a disease to be a prescribed disease;

S. 238(1)(o) amended by Nos 4/2018 s. 24(2), 22/2019 s. 4(2).

(p) the conditions to apply in respect of prescribed pathology services performing tests for the purposes of this Act;

S. 238(1)(q) substituted by No. 15/2022 s. 16(a).

(q) matters relating to laboratory services (including a laboratory service within the meaning of section 130(9)) or pathology services—

(i) forwarding a prescribed class of samples, isolates and prescribed information to a person providing a laboratory service (including a laboratory service within the meaning of section 130(9)) or pathology service for the purposes of this Act; or

(ii) undertaking further analysis for the purposes of this Act;

S. 238(1)(r) substituted by No. 15/2022 s. 16(b).

(r) matters relating to the provision of prescribed information to the Secretary by laboratory services (including a laboratory service within the meaning of section 130(9)) or pathology services;

(s) the prescribed information which the person in charge of a pathology service is required to provide in the prescribed manner within the prescribed period to the prescribed person if—

(i) the test is performed in Victoria by the pathology service or outside Victoria at the request of the Victorian pathology service; and

(ii) it appears to the pathology service that the person from whom the sample was taken does not have a permanent or temporary postal address in Victoria (on the basis of postal address provided by the person, if any); and

(iii) the sample was not taken in Victoria; and

(iv) the result of the test indicates that the person has, or may have, a notifiable condition;

(t) the prescribed information which a person is required to provide in the prescribed manner within the prescribed period if—

(i) that person provides a food sample or isolate to an interstate or overseas laboratory for testing; and

(ii) the interstate or overseas laboratory detects or isolates a prescribed micro-organism or declared micro-organism;

(u) the preparation, keeping and use of pathogenic micro-organisms or other material capable of causing disease in human beings;

(v) the diagnosing of infectious diseases;

(w) the retention of immunisation status certificates by persons in charge of primary schools;

(x) the persons to whom and the circumstances in which the person in charge of a primary school must allow access to immunisation status certificates;

(y) matters relating to the closing of primary schools, education and care service premises and children's services centres because of an infectious disease;

S. 238(1)(y) amended by No. 80/2011 s. 79(Sch. item 5.2).

(z) matters relating to the regulation or restriction of attendance at a primary school, an education and care services premises or children's services centre because of an infectious disease.

S. 238(1)(z) amended by No. 80/2011 s. 79(Sch. item 5.3).

(2) Without limiting the generality of section 232, the regulations may prescribe—

(a) generally the procedures to be taken to stop, limit or prevent the spread of infectious disease including the use, cleaning, maintenance, examination, testing and decontamination of any place, system or thing likely to give rise to, harbour, propagate or contribute to the spread of, any infectious disease and the keeping of records in relation to those procedures;

(b) in the case of premises where infectious diseases may be spread which are premises on which a business is conducted or to which the public has access, requirements to be observed by the proprietor of the business or by the occupier of the premises, including requirements relating to—

(i) if the premises is to be required to be registered, the registration of the premises;

(ii) cleanliness and hygiene;

(iii) activities conducted or engaged in which are likely to increase the risk of the spread of infectious diseases;

(iv) the provision at the premises of information about infectious diseases;

(v) the general safeguarding of the health of persons likely to be using the premises;

S. 238(2)(b)(vi) amended by No. 7/2022 s. 75(a).

(vi) the preparation, maintenance and availability of records in relation to the premises or anything at the premises.

* * * * *

S. 238(2)(c) repealed by No. 7/2022 s. 75(b).

238A Fees payable in relation to quarantine detention

S. 238A inserted by No. 44/2020 s. 3.

(1) Without limiting the generality of section 232, the regulations may prescribe fees relating to a quarantined person's detention at a specified place of detention.

(2) Without limiting subsection (1), the regulations may—

(a) prescribe amounts as fees by reference to—

(i) the types of goods and services associated with the detention of a quarantined person at a specified place of detention, including goods and services supplied to a quarantined person during that detention;

Examples

Costs of accommodation at a hotel, cost of meals.

(ii) whether a quarantined person is detained with one or more other persons at a specified place of detention that is shared accommodation;

Example

Shared accommodation may be—

- 2 persons in a hotel room;
- 4 persons in an apartment.

(b) prescribe—

(i) specific fees;

(ii) maximum or minimum fees;

(iii) maximum and minimum fees;

(iv) scales of fees.

(3) Fees prescribed by regulations made under this section must be reasonably referrable to the costs incurred by the State in detaining a quarantined person at a specified place of detention.

(4) Regulations made under this section—

(a) may have a retrospective effect to 7 December 2020; and

(b) may provide that fees relating to a quarantined person's detention at a specified place of detention apply, and are payable in relation to that detention, on and from 7 December 2020.

(5) In this section, ***quarantined person*** and ***specified place of detention*** have the same meaning as in Part 14.

S. 238B inserted by No. 44/2020 s. 3.

238B Waiver of fees payable in relation to quarantine detention

S. 238B(1) amended by No. 53/2021 s. 43.

(1) Without limiting the generality of section 232, the regulations may prescribe matters that COVID-19 Quarantine Victoria must or may have regard to in making a decision under section 259 or 260A, including—

(a) the circumstances of a person to whom a relevant invoice relates;

Example

Whether a person is experiencing economic hardship is a circumstance of a person.

(b) whether a person to whom a relevant invoice relates is an eligible person within the meaning of the **State Concessions Act 2004**.

(2) In this section—

COVID-19 Quarantine Victoria has the same meaning as in Part 14;

relevant invoice has the same meaning as in Part 14.

238C Payment of fees

S. 238C inserted by No. 44/2020 s. 3.

Without limiting the generality of section 232, the regulations may prescribe the method for, or the manner of, payment of fees liable to be paid under section 257 including—

(a) the payment of such fees by instalments or under payment plans;

(b) applications for and the approval of the payment of such fees under payment plans;

(c) information to be provided in applications referred to in paragraph (b);

(d) matters to be considered in the approval of the payment of such fees under payment plans;

(e) the contents or conditions applying to approved payment plans;

(f) periods of time within which such fees must be paid.

238D Certain requirements under Subordinate Legislation Act 1994 disapplied

S. 238D inserted by No. 44/2020 s. 3, substituted by No. 53/2021 s. 42.

The following are not required for the first proposed statutory rule that is to be made under section 238A, 238B or 238C after the commencement of section 42 of the **Public Health and Wellbeing Amendment (Pandemic Management) Act 2021**—

(a) consultation under section 6 of the **Subordinate Legislation Act 1994**;

(b) preparation of a regulatory impact statement under section 7 of the **Subordinate Legislation Act 1994**.

S. 238E inserted by No. 44/2020 s. 3, repealed by No. 53/2021 s. 44.

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239 Fees

(1) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) scales of fees;

(e) the payment of fees either generally or under specified conditions or in specified circumstances, including conditions or circumstances relating to the late lodgement of an application, or the late payment of fees, under this Act;

(f) the reduction, waiver or refund, in whole or in part, of the fees.

(2) If under subsection (1)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—

(a) in respect of certain matters or transactions or classes of matters or transactions; or

(b) in respect of certain documents or classes of documents; or

(c) when an event happens; or

(d) in respect of certain persons or classes of persons; or

(e) in respect of any combination of matters, transactions, documents, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person.

(3) A fee that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.

Part 12—Miscellaneous

Division 1—General

240 Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 124 or 142.

241 Repeal of certain provisions

(1) Division 4 of Part IV of the **Health Act 1958** is **repealed**.

(2) Division 7A of Part IV of the **Health Act 1958** is **repealed**.

(3) Part XIII of the **Health Act 1958** is **repealed**.

(4) Part XV of the **Health Act 1958** is **repealed**.

242 Repeal and saving

(1) The **Health Act 1958** is **repealed**.

(2) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances authorised, appointed or created by or under the **Health Act 1958** or existing or continuing under that Act immediately before the commencement of this section continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if that Act had not been so repealed.

(3) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the **Health Act 1958** is to be construed as a reference to this Act, unless the contrary intention appears.

(4) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to any regulations made under the **Health Act 1958** is to be construed as a reference to the regulations made under this Act, unless the contrary intention appears.

(5) Nothing in this section or sections 242, 243 or 244 limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

243 Transitional provisions—Health Act 1958

(1) On and from the commencement of this section—

(a) a Consultative Council established under section 24(1)(a) of the **Health Act 1958** as in force immediately before that commencement is to be taken to have been established under section 33(1)(a) with the same members on the same terms and conditions;

(b) a Consultative Council appointed under section 24(1)(b) of the **Health Act 1958** as in force immediately before that commencement is to be taken to have been appointed under section 33(1)(b) with the same members on the same terms and conditions;

(c) the person who was the Chairman of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity established under section 162C of the **Health Act 1958** as in force immediately before that commencement is to be taken to be the Chairperson of CCOPMM on the same terms and conditions;

(d) a person who was a member of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity established under section 162C of the **Health Act 1958** as in force immediately before that commencement is to be taken to be a member of CCOPMM on the same terms and conditions.

(2) Subsection (3) applies if—

(a) a Consultative Council established under section 24(1)(a) of the **Health Act 1958** or appointed under section 24(1)(b) of the **Health Act 1958** is a prescribed Consultative Council immediately before the commencement of this section and the Order under section 33(1)(a) establishing a prescribed Consultative Council under this Act specifies that subsection (3) applies; and

(b) any document or other information provided to that Consultative Council under the **Health Act 1958** is in the possession of that Consultative Council immediately before that commencement.

(3) If this subsection applies, any document or other information referred to in subsection (2)(b) is to be taken to have been provided to the prescribed Consultative Council under this Act.

(4) On and from the commencement of this section, the following are to be taken to be registered under Part 6 on the same terms and conditions which applied immediately before that commencement—

(a) prescribed accommodation that was registered under Division 1 of Part XII of the **Health Act 1958** as in force immediately before that commencement;

(b) premises that were registered under Part XIX of the **Health Act 1958** as in force immediately before that commencement.

(5) An application for the issue, transfer or renewal of registration of prescribed accommodation or premises made under the **Health Act 1958** which has not been dealt with before the commencement of this section is to be taken to have been made under this Act.

(6) An application for a pest control licence made under the **Health Act 1958** which has not been dealt with before the commencement of this section is to be taken to have been made under this Act.

(7) For the purposes of section 101(4), the Secretary must take into account the number of times that an application by a person to whom section 101(3) applies has been previously granted under section 108C(2A) of the **Health Act 1958**.

(8) An Order or authorisation made or given under Division 2A of Part VI of the **Health Act 1958** which is in force immediately before the commencement of this section is to be taken to have been made or given under Division 5 of Part 8.

(9) An order made under Division 3 of Part VI of the **Health Act 1958** which is in force immediately before the commencement of this section is to be taken to have been made under Division 2 of Part 8.

(10) An application under section 122 of the **Health Act 1958** for a review of an order which has not been determined before the commencement of this section is to be determined in accordance with that section as if the **Health Act 1958** had not been **repealed**.

(11) An appeal under section 122 of the **Health Act 1958** to the Supreme Court against an order which has not been determined before the commencement of this section is to be determined in accordance with that section as if the **Health Act 1958** had not been **repealed**.

244 Transitional provisions for blood and tissue donations

(1) Division 7 of Part VI of the **Health Act 1958** as in force immediately before the commencement of section 150 continues to apply in respect of any proceedings in an action referred to in section 132 or 133 of that Act commenced before that commencement as if the **Health Act 1958** had not been repealed.

(2) Sections 135 and 136 of the **Health Act 1958** as in force immediately before the commencement of section 150 continue to apply to any donation where the donor statement was signed before that commencement as if the **Health Act 1958** had not been repealed.

(3) Section 151 does not apply in relation to—

(a) a Hepatitis C infection that occurred or was transmitted by a blood donation made before 5 February 1990;

(b) a HIV infection that occurred or was transmitted by a blood donation made before 30 June 1985.

(4) Section 152 does not apply in relation to—

(a) a Hepatitis C infection that occurred or was transmitted by a tissue donation made before 16 May 1995;

(b) a HIV infection that occurred or was transmitted by a tissue donation made before 15 May 1990.

(5) For the purposes of section 151, if a blood donation occurred—

(a) on or after 15 May 1990 but before the commencement of section 150, the form approved by the Secretary and published in the Government Gazette is the prescribed form for the purposes of the table to section 132 of the **Health Act 1958** that applied at the time that the donation occurred;

(b) on or after 30 June 1985 but before 15 May 1990, the form approved by the Secretary and published in the Government Gazette is the prescribed form for the purposes of section 139A of the **Health Act 1958** that applied at the time that the donation occurred.

(6) For the purposes of section 152, if a tissue donation occurred before the commencement of section 150 but on or after 15 May 1990, the form approved by the Secretary and published in the Government Gazette is the prescribed form for the purposes of the table to section 133 of the **Health Act 1958** that applied at the time that the donation occurred.

(7) If the testing of a sample occurred before the commencement of section 150, the testing of the sample was conducted in an approved manner if the sample was tested—

(a) in relation to a test for Hepatitis C for the purposes of section 151, on or after 5 February 1990 but before 26 November 1991, using the ABBOTT HCV EIA test;

(b) in relation to a test for Hepatitis C for the purposes of section 151, on or after 26 November 1991 but before 16 May 1995

using the ABBOTT HCV EIA Second Generation test;

(c) in relation to a test for Hepatitis C for the purposes of section 151, on or after 16 May 1995 but before the commencement of section 150 in a manner approved by the Secretary under section 132 of the **Health Act 1958** that applied at the time that the test occurred;

(d) in relation to a test for Hepatitis C for the purposes of section 152, on or after 16 May 1995 but before the commencement of section 150 in a manner approved by the Secretary under section 133 of the **Health Act 1958** that applied at the time that the test occurred;

(e) in relation to a test for HIV for the purposes of section 151 or 152 conducted on or after 15 May 1990 but before the commencement of section 150 in a manner approved by the Secretary under section 132 or 133 of the **Health Act 1958** that applied at the time that the test occurred;

(f) in relation to a test for HIV for the purposes of section 151 conducted on or after 30 June 1985 but before 15 May 1990, in accordance with the requirements under section 139A of the **Health Act 1958** that applied at the time that the test occurred.

(8) If a donation of semen was used before the commencement of section 150—

(a) for the purposes of paragraph (c)(ii) of column 2 of Table 2 in the Schedule, the prescribed period is 6 months;

(b) for the purposes of paragraph (c)(iv) of column 2 of Table 2 in the Schedule, the prescribed quarantine period is 6 months.

(9) If a blood donation occurred before the commencement of section 150 but on or after 15 May 1990—

(a) in respect of which the defence under Item 2, column 2, paragraph (c) of the table to section 132 of the **Health Act 1958** applied at the time that the donation occurred, that defence is a defence in the proceedings for the purposes of section 151; or

(b) in respect of which the defence under Item 3, column 2 of the table to section 132 of the **Health Act 1958** applied at the time that the donation occurred, because it incorporated Item 2, column 2, paragraph (c) of the table, that defence is a defence in the proceedings for the purposes of section 151.

(10) In this section—

S. 244(10) inserted by No. 15/2022 s. 17.

HIV means the human immuno-deficiency virus which is a causative agent of the acquired immune deficiency syndrome and other related conditions.

245 Saving and transitional—Cooling tower systems

(1) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **Building Act 1993** or existing or continuing under that Act immediately before the commencement of section 248 continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if that Act had not been amended by section 248.

(2) On the commencement of section 248, the Building Commission must provide any documents or other records kept by the Building Commission in respect of the administration of Parts 5A, 5B and 5C of the **Building Act 1993** to the Secretary.

(3) For the purposes of Division 1 of Part 7, the Secretary is the successor in law of the Building Commission.

(4) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

S. 246 expired by force of No. 46/2008 s. 246(4).

* * * * *

S. 246A inserted by No. 29/2010 s. 6.

246A Abolition of body corporate known as Secretary to the Department of Human Services

(1) On the commencement day—

(a) the Secretary to the Department of Human Services body corporate is dissolved;

(b) the Secretary body corporate becomes the successor in law of the Secretary to the Department of Human Services body corporate.

(2) Subject to subsection (1), on the commencement day—

(a) all property and rights vested immediately before that day in the Secretary to the Department of Human Services body corporate vest in the Secretary body corporate;

(b) all liabilities of the Secretary to the Department of Human Services body corporate existing immediately before that

day become liabilities of the Secretary body corporate;

(c) the Secretary body corporate is taken to be the lessee under any lease of which the Secretary to the Department of Human Services body corporate was the lessee immediately before that day;

(d) the Secretary body corporate is taken to be the licensee under any licence of which the Secretary to the Department of Human Services body corporate was the licensee immediately before that day.

(3) Nothing effected by this section is to be regarded as placing any person in breach of or as constituting a default under any provision of a lease or licence, including any provision prohibiting, restricting or regulating the assignment of the lease or licence.

(4) Property vested in the Secretary to the Department of Human Services body corporate vests in the Secretary body corporate under subsection (2) whether the property is registered—

(a) in the name of "Secretary to the Department of Human Services"; or

(b) in the name of "Secretary to the Department of Health and Community Services"; or

(c) in the name of "Department of Human Services"; or

(d) in the name of "Secretary, the Department of Human Services"; or

(e) in the name of "Chief General Manager of the Department of Health"; or

(f) in the name of "Health Commission of Victoria"; or

(g) in a name that is substantially the same as any name referred to in paragraphs (a) to (f).

(5) This section is subject to—

(a) section 225B of the **Disability Act 2006**; and

(b) section 612 of the **Children, Youth and Families Act 2005**.

(6) In this section—

commencement day means the day on which section 6 of the **Health and Human Services Legislation Amendment Act 2010** comes into operation;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

Secretary to the Department of Human Services body corporate means the body corporate referred to in section 16, as in force before the commencement day.

S. 246B inserted by No. 29/2010 s. 6.

246B Action by Registrar of Titles

On being requested to do so and on delivery of any relevant instrument or document, the Registrar of Titles must make any recordings in the Register that are necessary because of the operation of section 246A.

246C Taxes

S. 246C inserted by No. 29/2010 s. 6.

No duty or other tax is chargeable under any Act in respect of anything done under section 246A or in respect of any act or transaction connected with or necessary to be done by reason of section 246A, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with, the transfer of property to the Secretary body corporate.

246D Property etc. vests subject to encumbrances

S. 246D inserted by No. 29/2010 s. 6.

(1) Subject to section 225B of the **Disability Act 2006** and section 612 of the **Children, Youth and Families Act 2005**, if, under section 246A, property and rights vest in the Secretary body corporate or liabilities become liabilities of the Secretary body corporate—

(a) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

(b) the rights to which the Secretary to the Department of Human Services body corporate was entitled in respect of those liabilities immediately before they ceased to be liabilities of that body corporate vest in the Secretary body corporate.

(2) In this section ***Secretary to the Department of Human Services body corporate*** means the body corporate referred to in section 16, as in force before the commencement day.

246E Periodic registrations

S. 246E inserted by No. 11/2015 s. 10.

On and after 1 March 2016, a registration issued, transferred or renewed under Division 4 of Part 6 that was in force immediately before 1 March 2016 is taken to be a registration issued, transferred or renewed on a periodic basis.

New s. 247 inserted by No. 44/2020 s. 4.

247 Transitional provision—Repeal of Part 14—detention has not ended or invoice not given

(1) This section applies if—

(a) a quarantined person's period of detention at a specified place of detention does not end before the repeal of Part 14; or

(b) a quarantined person's period of detention at a specified place of detention has ended and a relevant invoice has not been given to them under section 258 before the repeal of Part 14.

(2) Despite the repeal of Part 14, that Part (including any regulations made for the purposes of that Part) continues to apply on and after that repeal in relation to that person.

(3) In this section, ***quarantined person***, ***relevant invoice*** and ***specified place of detention*** have the meanings they had under Part 14 immediately before its repeal.

New s. 248 inserted by No. 44/2020 s. 4.

248 Transitional provision—Repeal of Part 14—application for waiver of fees

(1) This section applies if an application has been made under section 259 before the repeal of Part 14 and that application has not been determined by COVID-19 Quarantine Victoria before that repeal.

(2) Despite the repeal of Part 14, that Part (including any regulations made for the purposes of that Part) continues to apply on and after that repeal for the purposes of that application.

(3) In this section, ***COVID-19 Quarantine Victoria*** has the meaning it had under Part 14 immediately before its repeal.

246F Transitional provision—Public Health and Wellbeing Amendment Act 2021

S. 246F inserted by No. 2/2021 s. 5.

(1) In this section—

amending Act means the **Public Health and Wellbeing Amendment Act 2021**;

commencement day means the day on which Part 2 of the amending Act comes into operation.

(2) Division 1 of Part 6, as in force immediately before the commencement day, continues to apply on and after that day to a notification or complaint that has been made but not resolved under that Division immediately before that day.

(3) Division 1 of Part 6, as amended by section 4 of the amending Act, applies to any notification or complaint made under that Division on or after the commencement day regardless of when the nuisance constituting the notification or complaint arose.

248A Transitional provision—Meaning of *quarantined person*

S. 248A inserted by No. 53/2021 s. 45.

If a person is a quarantined person within the meaning of section 256 immediately before the commencement of section 47 of the **Public Health and Wellbeing Amendment (Pandemic Management) Act 2021**, the person is taken to be a quarantined person within the meaning of section 256 after that commencement.

248B Transitional provision—Payment reminder notices for unpaid quarantine detention fees

S. 248B inserted by No. 53/2021 s. 45.

If a person is liable to pay fees under section 257 and an amount of the fees remains unpaid immediately before the commencement of section 52 of the **Public Health and Wellbeing Amendment (Pandemic Management)**

Act 2021, COVID-19 Quarantine Victoria may issue payment reminder notices to the person in accordance with sections 260B and 260C as if the person became liable to pay the fees on or after that commencement.

S. 248C inserted by No. 53/2021 s. 19.

248C Authorised officers appointed under old section 30(1A)

(1) If, on 16 December 2021 a pandemic declaration is in force, the appointment of an authorised officer under section 30(1A) that was in force immediately before 16 December 2021 continues in force on and after that day as if the appointment had been made, on the same terms, under section 30(1) as permitted by section 165CN.

(2) For the purposes of subsection (1), the reference to section 30(1A) is a reference to section 30(1A) as notionally inserted by section 250 of this Act as in force immediately before 16 December 2021.

S. 248CA inserted by No. 53/2021 s. 19.

248CA Applications made under old section 200B

(1) If, immediately before the commencement day, an application made by a person under section 200B of the old Act had not been determined, the old Act continues to apply in relation to the determination of the application.

(2) In this section—

commencement day means the day on which Part 2 of the **Public Health and Wellbeing Amendment (Pandemic Management) Act 2021** came into operation;

old Act means this Act, and regulations and instruments made under this Act, as in force immediately before the commencement day.

* * * * *

S. 248D inserted by No. 53/2021 s. 19, expired by force of No. 46/2008 s. 248D(5).

248E Transitional provision—Public Health and Wellbeing Amendment Act 2022

S. 248E inserted by No. 15/2022 s. 25.

Section 227AA does not apply to any proceeding commenced, but not concluded, before the day on which that section comes into operation.

248F Transitional provision—Public Health and Wellbeing Amendment Act 2022

S. 248F inserted by No. 15/2022 s. 18.

(1) In this section—

commencement day means the day on which section 10 of the **Public Health and Wellbeing Amendment Act 2022** comes into operation.

(2) Section 133, as in force immediately before the commencement day, continues to apply on and after that day to a proceeding—

(a) to which that section applied immediately before the commencement day; and

(b) that was commenced but not completed before the commencement day.

* * * * *

Pt 12 Div. 2 (Heading and ss 247–266) amended by No. 29/2011 s. 3(Sch. 1 item 75.3), repealed by No. 46/2008 s. 293.

Pt 12 Div. 3 (Heading and s. 267) repealed by No. 46/2008 s. 293.	*	*	*	*	*
Pt 12 Div. 4 (Heading and ss 268–292) amended by Nos 76/2008 s. 158, 29/2011 s. 3(Sch. 1 item 75.4), repealed by No. 46/2008 s. 293.	*	*	*	*	
Pt 12 Div. 5 (Heading and s. 293) repealed by No. 46/2008 s. 293.	*	*	*	*	*

* * * * *

Pt 13 (Headings and new ss 249–254) inserted by No. 27/2020 s. 16, amended by No. 7/2021 s. 4, repealed by No. 46/2008 s. 254 (as amended by No. 7/2021 s. 4).

Pt 14 (Heading and ss 255–264) inserted by No. 44/2020 s. 5.

Part 14—Fees relating to detention in quarantine during COVID-19 pandemic

New s. 255 inserted by No. 44/2020 s. 5.

255 Definitions

In this Part—

S. 255 def. of *contact details* inserted by No. 53/2021 s. 46(a).

contact details, in relation to a person liable to pay fees under section 257, means the following—

(a) the person's telephone number;

(b) the person's email address;

(c) the person's postal address;

COVID-19 Quarantine Victoria means the Administrative Office established under section 11 of the **Public Administration Act 2004** by Order in Council published on 1 December 2020 in Government Gazette S 622;

S. 255 def. of *first payment reminder notice* inserted by No. 53/2021 s. 46(a).

first payment reminder notice means a payment reminder notice issued under section 260B;

S. 255 def. of *further payment reminder notice* inserted by No. 53/2021 s. 46(a).

further payment reminder notice means a payment reminder notice issued under section 260C;

quarantined person has the meaning given by section 256;

relevant invoice—see section 258(1);

specified place of detention, in relation to a quarantined person, means the place where the quarantined person is to be detained as specified—

S. 255 def. of *specified place of detention* substituted by No. 53/2021 s. 46(b).

(a) by an authorised officer under section 200(1); or

(b) in a pandemic order under section 165AI or by an authorised officer in the exercise of a pandemic management order power under section 165B(1)(b);

(c) by an authorised officer in the exercise of a pandemic management general power under 165BA(1)(b).

256 Meaning of *quarantined person*

New s. 256 inserted by No. 44/2020 s. 5.

A ***quarantined person*** is a person—

(a) who has arrived in Victoria from—

(i) overseas; or

(ii) another State or a Territory after travelling directly to Victoria after arriving from overseas in that State or Territory; and

(b) who, for the purpose of eliminating or reducing the serious risk to public health posed by the COVID-19 pandemic, is detained—

S. 256(b) substituted by No. 53/2021 s. 47.

(i) under section 200(1), on or after 7 December 2020, at a place specified by an authorised officer pursuant to that section; or

(ii) under section 165B(1)(b) or 165BA(1)(b) at a place specified in a pandemic order or by an authorised officer.

New s. 257 inserted by No. 44/2020 s. 5.

257 Liability to pay quarantine detention fees

(1) A quarantined person is liable to pay to the State the prescribed fees relating to the quarantined person's detention at a specified place of detention.

(2) If the quarantined person is a child, the parents of the child are jointly and severally liable to pay to the State the prescribed fees relating to that child's detention at a specified place of detention.

(3) Despite subsections (1) and (2), if 2 or more adults are detained together at a specified place of detention that is shared accommodation, whether or not with any children, all the adults are jointly and severally liable to pay to the State the prescribed fees relating to each person's detention at that specified place.

S. 257(4) inserted by No. 53/2021 s. 48.

(4) Despite subsections (1), (2) and (3), if any other person has provided written notice to COVID-19 Quarantine Victoria stating that the person accepts liability to pay to the State the prescribed fees relating to a quarantined person's detention at a specified place of detention, that other person is liable to pay those fees.

New s. 258 inserted by No. 44/2020 s. 5.

258 COVID-19 Quarantine Victoria to invoice quarantined persons for fees relating to detention

S. 258(1) amended by No. 53/2021 s. 49(1).

(1) Subject to subsection (1A), COVID-19 Quarantine Victoria must give a person who is liable to pay prescribed fees under section 257 an invoice (a ***relevant invoice***) that contains the prescribed information.

S. 258(1A) inserted by No. 53/2021 s. 49(2).

(1A) COVID-19 Quarantine Victoria is not required to give a person an invoice—

(a) if the fees prescribed for the purposes of section 257 that the person is liable to pay are nil; or

(b) if payment of all of the fees that the person is liable to pay is waived under section 260A; or

(c) in any other prescribed circumstance.

(2) If 2 or more adults are jointly and severally liable to pay prescribed fees under section 257(2) or (3)—

(a) COVID-19 Quarantine Victoria may give any one of the adults a relevant invoice; and

(b) the relevant invoice is taken to have been given to each of the adults for the purposes of sections 261 and 262.

(3) If COVID-19 Quarantine Victoria gives a relevant invoice under subsection (2), the relevant invoice must, in addition to the prescribed information, state—

(a) the name of every other person who is jointly and severally liable to pay the prescribed fees and, in the case of a parent who is jointly and severally liable to pay the prescribed fees relating to their child's detention, the name of the child; and

(b) the amount of the fees relating to the detention at the specified place of every other person who is jointly and severally liable to pay the prescribed fees or the child, as the case requires, that are owing.

S. 258A inserted by No. 53/2021 s. 50.

258A COVID-19 Quarantine Victoria may obtain contact details required

(1) COVID-19 Quarantine Victoria may request a prescribed body to provide it with the contact details of a person liable to pay fees under section 257 if COVID-19 Quarantine Victoria—

(a) requires those details to give the person an invoice under section 258; and

(b) has made reasonable attempts to obtain those details from the person directly; and

(c) despite its reasonable attempts, has not obtained those details.

(2) A prescribed body may provide COVID-19 Quarantine Victoria with the contact details requested if it is satisfied that the request has been made in accordance with subsection (1).

(3) COVID-19 Quarantine Victoria may only use or disclose a person's contact details provided under subsection (2)—

(a) to give the person an invoice under section 258; or

(b) to recover fees that the person is liable to pay under section 257; or

(c) for another purpose permitted by law.

(4) For the purposes of the **Privacy and Data Protection Act 2014** and any other Act—

(a) the provision of a person's contact details under subsection (2) is taken to be a disclosure authorised by law; and

(b) the use or disclosure of a person's contact details under subsection (3) is taken to be a use or disclosure authorised by law.

(5) Subject to this section, COVID-19 Quarantine Victoria must comply with the Information Privacy Principles in respect of the use and disclosure of a person's contact details.

259 Waiver of fees—application

S. 259 (Heading) substituted by No. 53/2021 s. 51(1).

New s. 259 inserted by No. 44/2020 s. 5.

S. 259(1) amended by No. 53/2021 s. 51(2).

(1) A person liable to pay prescribed fees under section 257, other than a person liable under section 257(4), may apply to COVID-19 Quarantine Victoria for the waiver of payment of all or part of the fees.

(2) An application must—

(a) contain the prescribed information; and

(b) be made within the prescribed period.

Note

Information contained in an application may be required to be verified by statutory declaration—see section 260.

(3) On receiving an application under this section, COVID-19 Quarantine Victoria, subject to and in accordance with the regulations (if any), may—

(a) waive payment of all or part of the fees; or

(b) refuse to waive payment of the fees.

(4) COVID-19 Quarantine Victoria must give notice of its decision under subsection (3) in accordance with the regulations.

(5) A notice under subsection (4) must—

(a) state the decision of COVID-19 Quarantine Victoria; and

(b) contain any other prescribed information.

New s. 260 inserted by No. 44/2020 s. 5.

260 Verification of waiver application information by statutory declaration

COVID-19 Quarantine Victoria may require verification, by a statutory declaration, of any information contained in or accompanying an application under section 259.

S. 260A inserted by No. 53/2021 s. 52.

260A Waiver of fees—own initiative

(1) On its own initiative and having regard to any prescribed matters or circumstances, COVID-19 Quarantine Victoria may waive payment of all or part of the fees that a person is liable to pay under section 257.

(2) Subject to subsection (3), COVID-19 Quarantine Victoria must give notice of a waiver under subsection (1) in accordance with the regulations.

(3) COVID-19 Quarantine Victoria is not required to give notice of a waiver under subsection (1)—

(a) if it is impractical or inappropriate to do so; or

(b) in the prescribed circumstances.

(4) A notice required under subsection (2) must contain the prescribed information (if any).

S. 260B inserted by No. 53/2021 s. 52.

260B Issue of first payment reminder notice

(1) COVID-19 Quarantine Victoria may issue a first payment reminder notice to a person who is liable to pay fees under section 257 if—

(a) an invoice has been given to the person in accordance with section 258; and

(b) the relevant date by which an amount of the fees must be paid has passed; and

(c) that amount of the fees has not been paid in full; and

(d) there are no pending waiver applications or payment plan applications relating to that amount of the fees.

(2) For the purposes of subsection (1)(b), the relevant date is—

(a) if any waiver applications or payment plan applications have been made relating to that amount of the fees, the date specified for that amount in the most recent decision of COVID-19 Quarantine Victoria on an application relating to that amount; or

(b) in any other case, the date specified in the invoice given under section 258.

(3) If COVID-19 Quarantine Victoria issues a first payment reminder notice under subsection (1), the date by which the person must pay the amount of the fees is extended to the date specified in the notice.

(4) For the purposes of subsection (3), the date specified in the first payment reminder notice must be at least 30 days after the date on which the first payment reminder notice is issued.

(5) A first payment reminder notice under subsection (1) must—

(a) be in writing; and

(b) explain the circumstances in which the person may become liable to pay the further payment reminder notice fee under section 260D; and

(c) contain the prescribed information (if any).

S. 260C inserted by No. 53/2021 s. 52.

260C Issue of further payment reminder notice

(1) COVID-19 Quarantine Victoria may issue a further payment reminder notice to a person who is liable to pay fees under section 257 if—

(a) the relevant date by which an amount of the fees must be paid (being an amount for which a first payment reminder notice was previously issued) has passed; and

(b) that amount of the fees has not been paid in full; and

(c) there are no pending waiver applications or payment plan applications relating to that amount of the fees.

(2) For the purposes of subsection (1)(a), the relevant date is—

(a) if any waiver applications or payment plan applications have been made relating to that amount of the fees since the first payment reminder notice was issued, the date specified for that amount in the most recent decision of COVID-19 Quarantine Victoria on an application relating to that amount; or

(b) in any other case, the date specified in the first payment reminder notice.

(3) If COVID-19 Quarantine Victoria issues a further payment reminder notice under subsection (1), the date by which the person must pay the amount of the fees is extended to the date specified in the notice.

(4) For the purposes of subsection (3), the date specified in the further payment reminder notice must be at least 30 days after the date on which the further payment reminder notice is issued.

(5) A further payment reminder notice under subsection (1) must—

(a) be in writing; and

(b) explain that the person is liable to pay the further payment reminder notice fee under section 260D in respect of that notice; and

(c) contain the prescribed information (if any).

(6) COVID-19 Quarantine Victoria must not issue more than one further payment reminder notice to a person under this section.

260D Further payment reminder notice fee

S. 260D inserted by No. 53/2021 s. 52.

(1) A person issued with a further payment reminder notice under section 260C is liable to pay the prescribed further payment reminder notice fee in respect of that notice.

(2) The prescribed further payment reminder notice fee—

(a) must be reasonably referrable to the costs incurred by the State in recovering the unpaid amount of the fees that the person is liable to pay under section 257; and

(b) on the issue of the further payment reminder notice, is added to and taken to be a part of the fees that the person is liable to pay under section 257.

261 Payment of fees

New s. 261 inserted by No. 44/2020 s. 5, amended by No. 53/2021 s. 53.

A person liable to pay fees under section 257 must pay the fees, or any part of the fees not waived under section 259 or 260A, to the State subject to and in accordance with the regulations.

New s. 262 inserted by No. 44/2020 s. 5.

262 Recovery of unpaid fees

An amount not paid by a person under section 261—

(a) is a debt due to the State; and

(b) may be recovered by COVID-19 Quarantine Victoria, for and on behalf of the State, in a court of competent jurisdiction.

New s. 263 inserted by No. 44/2020 s. 5.

263 Delegation

The Administrative Office Head within the meaning of the **Public Administration Act 2004** of COVID-19 Quarantine Victoria, by instrument, may delegate to any employee or class of employees employed under Part 3 of that Act any power, duty or function of the Administrative Office Head or COVID-19 Quarantine Victoria under this Part, other than this power of delegation.

New s. 264 inserted by No. 44/2020 s. 5, repealed by No. 53/2021 s. 54.

* * * * *

Schedule

Sch. amended by Nos 13/2010 s. 51(Sch. item 44.5), 15/2022 s. 19.

TABLE 1

Item	*Column 1* *Person against whom action brought*	*Column 2* *Defences*	*Column 3* *Exception to defences*
1	The Society, a health service or an employee, agent or voluntary worker of the Society or a health service.	The Society or health service— (a) before taking the blood from a donor obtained a statement from the donor which is in the approved form and published in the Government Gazette; and (b) before supplying the blood or a blood product— (i) caused a sample; or (ii) in the case of a blood product, caused a sample of each unit of blood from which the product was derived— to be tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of a prescribed disease; and (c) obtained a negative result from that test or each of those tests.	After the Society or health service supplied blood, the Society or health service had reasonable grounds for believing that the blood was likely to contain a prescribed disease and did not take all reasonable steps— (a) to find out whether the blood, or a blood product derived from that blood, had been given to a person; and (b) to ensure that any remaining part of the blood, or a blood product derived from that blood, is not given to any person.

Item	*Column 1* *Person against whom action brought*	*Column 2* *Defences*	*Column 3* *Exception to defences*
2	A health service or another body at whose premises— (a) blood supplied by the Society or a health service; or (b) a blood product derived from blood supplied by the Society or a health service— is administered or supplied to a person.	Either— (a) when the blood or blood product was administered or supplied, there was attached to the container in which the blood or blood product was contained a certificate purporting to have been issued at the laboratory at which a sample of the blood was tested stating— (i) in the case of blood, that a sample of the blood; and (ii) in the case of a blood product, that a sample of each unit of blood from which the blood product was derived— was tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of a prescribed disease and that the result of the test was negative; or	If, at any time up to and including the time at which the blood or blood product was administered or used, the health service or other body at whose premises the blood or blood product was administered or used— (a) had been informed that the blood or blood product was likely to contain a prescribed disease; and (b) did not take reasonable steps to ensure that the blood or blood product was not administered to, or used by, any person.

Item	*Column 1* *Person against whom action brought*	*Column 2* *Defences*	*Column 3* *Exception to defences*
		(b) the Society or health service from which the blood or blood product was supplied— (i) before taking the blood from a donor obtained a statement from the donor which is in the approved form and published in the Government Gazette; and (ii) before supplying the blood or a blood product— (A) caused a sample; or (B) in the case of a blood product, caused a sample of each unit of blood from which the product was derived— to be tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of a	

Item	Column 1 Person against whom action brought	Column 2 Defences	Column 3 Exception to defences
		prescribed disease; and	
		(iii) obtained a negative result from that test or each of those tests; or	
		(c) before taking the blood from a donor—	
		(i) the Society or health service obtained a statement from the donor which is in the approved form and published in the Government Gazette; and	
		(ii) the blood was required to be administered urgently; and	
		(iii) it was not reasonably practicable to obtain all the required blood from a source which has been tested in the manner which is approved by the Secretary and published in the Government Gazette;	

Item	*Column 1* *Person against whom action brought*	*Column 2* *Defences*	*Column 3* *Exception to defences*
3	A registered medical practitioner, nurse, midwife or registered pharmacist or a person acting on behalf of a registered medical practitioner, nurse, midwife or registered pharmacist who administered or supplied to a person— (a) blood supplied by the Society or a health service; (b) or a blood product derived from blood so supplied.	The defences set out in column 2 of item 2.	If, at any time up to and including the time at which the blood or blood product was administered or used, the registered medical practitioner, nurse, midwife or registered pharmacist or other person— (a) had been informed that the blood or blood product was likely to contain a prescribed disease; and (b) did not take reasonable steps to ensure that the blood or blood product was not administered to, or used by, any person.

TABLE 2

Item	*Column 1* *Person against whom action brought*	*Column 2* *Defences*	*Column 3* *Exception to defences*
1	A health service, registered medical practitioner or a person dealing with tissue.	Either— (a) in the case of tissue (other than semen) taken from a living person— (i) the donor completed a statement which is in the approved form and published in the Government Gazette before the tissue was taken; and (ii) a sample of the donor's blood was tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of a prescribed disease; and (iii) the result of the test was negative; or (b) in the case of tissue (other than semen) taken from the body of a dead person— (i) a sample of the blood of the dead person was tested in a manner which	The health service or other person had reasonable grounds for believing that the tissue or semen was likely to contain a prescribed disease and did not take reasonable steps to ensure that the tissue or semen was not used in a way that might infect the person with a prescribed disease.

Item	Column 1 Person against whom action brought	Column 2 Defences	Column 3 Exception to defences
		is approved by the Secretary and published in the Government Gazette for the presence of a prescribed disease; and (ii) the result of the test was negative; and (iii) the registered medical practitioner who transplanted the tissue made, or is satisfied that another person made, reasonable enquiries about the behaviour of the dead person to find out whether that person was at a high risk of being infected with a prescribed disease; or (c) in the case of the use of semen in the carrying out of artificial insemination or a fertilisation procedure—	

Item	*Column 1* *Person against whom action brought*	*Column 2* *Defences*	*Column 3* *Exception to defences*
		(i) before the semen was provided by a donor, the donor completed a statement which is in the approved form and published in the Government Gazette; and (ii) at the time of the donation and, upon the expiry of the prescribed period after that time, a sample of the donor's blood was tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of a prescribed disease; and (iii) the results of the tests were negative; and (iv) the semen was not used until after the prescribed quarantine period.	

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 8 May 2008

Legislative Council: 26 June 2008

The long title for the Bill for this Act was "A Bill for an Act to enact a new legislative scheme which promotes and protects public health and wellbeing in Victoria, to amend the **Health Act 1958**, the **Food Act 1984** and certain other Acts, to repeal the **Health Act 1958** and consequentially amend certain other Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 8 May 2008

Legislative Council: 26 June 2008

Absolute majorities:

Legislative Assembly: 26 June 2008

Legislative Council: 21 August 2008

The **Public Health and Wellbeing Act 2008** was assented to on 2 September 2008 and came into operation as follows:

Sections 1–3, 246, 249, 254, 255, 263–266 on 1 January 2009: Special Gazette (No. 365) 12 December 2008 page 1; rest of Act on 1 January 2010: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Public Health and Wellbeing Act 2008** by Acts and subordinate instruments.

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date:	2.9.08
Commencement Date:	S. 246(4) on 1.1.09: Special Gazette (No. 365) 12.12.08 p. 1; s. 293 on 1.1.10: s. 2(2); s. 254 inserted on 21.10.20 by No. 27/2020 s. 16: s. 2; s. 248D inserted on 8.12.21 by No. 53/2021 s. 19: s. 2(1)
Note:	S. 246(4) provided that s. 246 expired on 1.1.11; s. 293 repealed Pt 12 Divs 2–5 (ss 247–293) on 1.7.11; s. 254 (as amended by No. 7/2021 s. 4) repealed Pt 13 (ss 249–251, 254) on 16.12.21; s. 248D(5) provided that s. 248D expired on 30.8.24
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Assisted Reproductive Treatment Act 2008, No. 76/2008

Assent Date:	11.12.08
Commencement Date:	Ss 157, 158 on 1.1.10: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Coroners Act 2008, No. 77/2008

Assent Date:	11.12.08
Commencement Date:	S. 129(Sch. 2 item 21) on 1.11.09: s. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date:	24.11.09
Commencement Date:	S. 97(Sch. item 99) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date:	24.11.09
Commencement Date:	S. 54(Sch. Pt 1 item 47), (Sch. Pt 2 item 40) on 1.1.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date:	30.3.10
Commencement Date:	S. 51(Sch. item 44) on 1.7.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date:	8.6.10
Commencement Date:	Ss 3–6 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date:	28.9.10
Commencement Date:	S. 81(Sch. item 9) on 1.11.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Statute Law Revision Act 2011, No. 29/2011

Assent Date:	21.6.11
Commencement Date:	S. 3(Sch. 1 item 75.4) on 2.9.08: s. 2(2)(g); s. 3(Sch. 1 item 75.3) on 31.12.09: s. 2(2)(f); s. 3(Sch. 1 items 75.1, 75.2) on 22.6.11: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Emergency Management Legislation Amendment Act 2011, No. 56/2011

Assent Date:	2.11.11
Commencement Date:	S. 31 on 3.11.11: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Children's Services Amendment Act 2011, No. 80/2011

Assent Date:	21.12.11
Commencement Date:	S. 79(Sch. item 5) on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health Professions Registration (Repeal) Act 2012, No. 27/2012

Assent Date:	29.5.12
Commencement Date:	S. 22 on 1.7.12: s. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Residential Tenancies and Other Consumer Acts Amendment Act 2012, No. 56/2012

Assent Date:	18.9.12
Commencement Date:	S. 23 on 19.9.12: s. 2(1); ss 19, 20, 22 on 31.3.13: Special Gazette (No. 444) 19.12.12 p. 1; s. 21 on 1.8.13: Special Gazette (No. 277) 30.7.13 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date:	18.12.12
Commencement Date:	S. 296 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Emergency Management Act 2013, No. 73/2013

Assent Date:	3.12.13
Commencement Date:	S. 102 on 1.7.14: Special Gazette (No. 148) 13.5.14 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date:	25.3.14
Commencement Date:	S. 160(Sch. 2 item 79) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 136) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date:	2.9.14
Commencement Date:	S. 140(Sch. 3 item 39) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Inquiries Act 2014, No. 67/2014

Assent Date:	23.9.14
Commencement Date:	S. 147(Sch. 2 item 30) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (Hairdressing Registration) Act 2015, No. 11/2015

Assent Date:	21.4.15
Commencement Date:	Ss 3–10 on 1.3.16: s. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Statute Law Revision Act 2015, No. 21/2015

Assent Date:	16.6.15
Commencement Date:	S. 3(Sch. 1 item 43) on 1.8.15: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (No Jab, No Play) Act 2015, No. 55/2015

Assent Date:	27.10.15
Commencement Date:	Ss 4–8 on 1.1.16: Special Gazette (No. 403) 15.12.15 p. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015, No. 66/2015

Assent Date:	1.12.15
Commencement Date:	Ss 3–5 on 2.5.16: Special Gazette (No. 114) 26.4.16 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health Complaints Act 2016, No. 22/2016

Assent Date:	3.5.16
Commencement Date:	S. 243 on 1.2.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Family Violence Protection Amendment Act 2017, No. 19/2017

Assent Date:	16.5.17
Commencement Date:	Ss 59, 60 on 17.5.17: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health Legislation Amendment (Quality and Safety) Act 2017, No. 52/2017
(as amended by No. 4/2018)

Assent Date:	24.10.17
Commencement Date:	Ss 90–94 on 1.7.18: s. 2(4); ss 95, 96 never proclaimed, repealed by No. 4/2018 s. 28
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health and Child Wellbeing Legislation Amendment Act 2018, No. 4/2018

Assent Date:	27.2.18
Commencement Date:	Ss 16, 17, 20, 22, 23 on 28.2.18: s. 2(1); ss 18, 19, 21, 24 on 1.11.18: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date:	27.2.18
Commencement Date:	S. 68(Sch. 2 item 103) on 1.3.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Audit Amendment Act 2019, No. 12/2019

Assent Date:	4.6.19
Commencement Date:	S. 24 on 1.7.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Guardianship and Administration Act 2019, No. 13/2019

Assent Date:	4.6.19
Commencement Date:	S. 221(Sch. 1 item 42) on 1.3.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment Act 2019, No. 22/2019

Assent Date:	20.8.19
Commencement Date:	S. 7 on 21.8.19: s. 2(1); ss 4–6 on 15.12.19: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Children's Services Amendment Act 2019, No. 37/2019

Assent Date:	6.11.19
Commencement Date:	S. 21 on 17.5.20: Special Gazette (No. 232) 12.5.20 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Local Government Act 2020, No. 9/2020

Assent Date:	24.3.20
Commencement Date:	S. 390(Sch. 1 items 82.1, 82.2) on 6.4.20; s. 390(Sch. 1 item 82.6) on 1.5.20: Special Gazette (No. 150) 24.3.20 p. 1; s. 390(Sch. 1 items 82.3–82.5) on 24.10.20: s. 2(3)(f)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (State of Emergency Extension and Other Matters) Act 2020, No. 24/2020

Assent Date:	8.9.20
Commencement Date:	Ss 3–7 on 9.9.20: s. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020

Assent Date:	20.10.20
Commencement Date:	S. 16 on 21.10.20: s. 2
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Food Amendment Act 2020, No. 38/2020

Assent Date:	1.12.20
Commencement Date:	Ss 53, 54 on 1.7.21: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (Quarantine Fees) Act 2020, No. 44/2020

Assent Date:	9.12.20
Commencement Date:	Ss 3−5 on 7.12.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment Act 2021, No. 2/2021

Assent Date:	9.2.21
Commencement Date:	Ss 4, 5 on 1.7.21: Special Gazette (No. 243) 25.5.21 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (State of Emergency Extension) Act 2021, No. 7/2021

Assent Date:	10.3.21
Commencement Date:	Ss 3, 3B, 4 on 11.3.21: s. 2(1); ss 2A, 2B, 3A on 20.4.21: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Planning and Environment Amendment Act 2021, No. 12/2021

Assent Date:	23.3.21
Commencement Date:	S. 61 on 24.3.21: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment (Pandemic Management) Act 2021, No. 53/2021

Assent Date:	7.12.21
Commencement Date:	Ss 4−15, 17–19, 42 on 8.12.21: s. 2(1); ss 43−54 on 8.12.21: Special Gazette (No. 693) 7.12.21 p. 1; s. 36 on 16.12.21: s. 2(3); ss 20, 21 on 30.8.22: Special Gazette (No. 438) 30.8.22 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health Legislation Amendment (Quality and Safety) Act 2022, No. 4/2022

Assent Date:	1.3.22
Commencement Date:	Ss 12, 13 on 30.11.22: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Sex Work Decriminalisation Act 2022, No. 7/2022

Assent Date:	1.3.22
Commencement Date:	Ss 72–75 on 1.12.23: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Regulatory Legislation Amendment (Reform) Act 2022, No. 13/2022

Assent Date:	29.3.22
Commencement Date:	S. 56 on 30.3.22: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Public Health and Wellbeing Amendment Act 2022, No. 15/2022

Assent Date:	12.4.22
Commencement Date:	Ss 20–25 on 13.4.22: s. 2(1); ss 4, 10−13, 16−19 on 1.10.22: Special Gazette (No. 489) 20.9.22 p. 2; s. 9 on 1.1.23: Special Gazette (No. 489) 20.9.22 p. 2; ss 5–8, 14, 15 on 15.2.23: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Mental Health and Wellbeing Act 2022, No. 39/2022

Assent Date:	6.9.22
Commencement Date:	S. 858 on 1.9.23: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023, No. 17/2023

Assent Date:	27.6.23
Commencement Date:	S. 68 on 28.6.23: s. 2(1); ss 61, 62 on 1.7.24: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Victorian Institute of Forensic Medicine Act 2024, No. 34/2024

Assent Date:	17.9.24
Commencement Date:	Ss 56, 57 on 1.7.25: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

Health Legislation Amendment (Regulatory Reform) Act 2024, No. 39/2024

Assent Date:	29.10.24
Commencement Date:	Ss 117, 118 on 30.10.24: s. 2(1); ss 103–105 on 1.3.25: Special Gazette (No. 700) 17.12.24 p. 1
Current State:	This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

3 Explanatory details

No entries at date of publication.