

PARLIAMENT OF VICTORIA

**Public Health and Wellbeing Amendment
(Pandemic Management) Bill 2021**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

**Public Health and Wellbeing
Amendment (Pandemic Management)
Bill 2021**

A Bill for an Act to amend the **Public Health and Wellbeing Act 2008** in relation to the effective management of pandemics and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

5

(a) to amend the **Public Health and Wellbeing Act 2008** in relation to the effective management of pandemics; and

10

(b) to amend the **Public Health and Wellbeing Act 2008** in relation to fees for detention of persons in quarantine during the COVID-19 pandemic; and

- 5 (c) to amend the **Infringements Act 2006** to broaden the scope of what constitutes special circumstances in that Act and the **Fines Reform Act 2014** and to make consequential amendments to those Acts for the purposes of the concessional infringement scheme in the **Public Health and Wellbeing Act 2008**; and
- 10 (d) to make consequential amendments to other Acts.

2 Commencement

- 15 (1) Subject to subsections (2), (3) and (4), this Act comes into operation on the day after the day on which it receives the Royal Assent.
- 20 (2) The following provisions come into operation on a day or days to be proclaimed—
- (a) Part 3;
 - (b) Division 3 of Part 4;
 - (c) Division 2 of Part 5;
 - (d) Part 6.
- (3) Division 2 of Part 4 comes into operation on 16 December 2021.
- 25 (4) If a provision mentioned in subsection (2) does not come into operation before the day that is 12 months after the day on which this Act receives the Royal Assent, it comes into operation on that day.

3 Principal Act

30 In this Act, the **Public Health and Wellbeing Act 2008** is called the Principal Act.

Part 2—Amendments relating to pandemic declarations

4 Definitions

- 5 (1) In section 3(1) of the Principal Act **insert** the following definitions—
- "*compliance and enforcement policy* means a policy issued under section 231A;
- contact tracing information* has the meaning given by section 165CB(1);
- 10 *contact tracing purposes*—see section 165CB(2);
- designated health service provider* has the same meaning *health service provider* has in the Health Practitioner Regulation National Law;
- 15 *disease of pandemic potential* see subsection (6);
- 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
- 20 (b) is capable of causing disease in human beings;
- health information* has the same meaning as it has in the **Health Records Act 2001**;
- 25 *Independent Pandemic Management Advisory Committee* means a committee established under section 165CE(1);
- pandemic declaration* has the meaning given by section 165AB(1);
- pandemic disease*—see subsection (5);
- 30 *pandemic information determination* has the meaning given by section 165BT(1);
-

- 5
- pandemic management area*** means an area specified in a pandemic declaration to be an area to which the declaration applies;
- pandemic management general power*** means a power under 165BA(1)(a) or (b);
- pandemic management order power*** means a power under section 165B(1)(a) or (b);
- 10 ***pandemic management power*** means a pandemic management general power or a pandemic management order power;
- pandemic order*** has the meaning given by section 165AI(1);
- Pandemic Order Register*** means the register established under section 165CS;
- 15 ***personal information*** has the same meaning as it has in the **Privacy and Data Protection Act 2014**;
- personal protective equipment*** includes, but is not limited to, face coverings;
- 20 ***protective services officer*** has the same meaning as in the **Victoria Police Act 2013**;
- Scrutiny of Acts and Regulations Committee*** means the Scrutiny of Acts and Regulations Committee of the Parliament;
- 25 ***Worksafe inspector*** means an inspector within the meaning of the **Occupational Health and Safety Act 2004**;
- 30 (2) In section 3(1) of the Principal Act, in the definition of ***community transmission***, for "COVID-19, means transmission of COVID-19" **substitute** "a pandemic disease or a disease of pandemic potential means transmission of the disease".
-

Part 2—Amendments relating to pandemic declarations

- 5
- (3) In section 3(1) of the Principal Act, in the definition of *prescribed senior officer*, after "that Act" **insert** "or is an employee of a health service".
- 10
- (4) In section 3(1) of the Principal Act, in the definition of *serious risk to public health*, for "has or may occur" **insert** "has occurred or may occur".
- 15
- (5) For section 3(4) of the Principal Act **substitute**—
- 20
- "(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."
- 25
- (6) After section 3(4) of the Principal Act **insert**—
- "(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.
- 30
- (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."

5

5 Delegation by Secretary

- (1) After section 19(1)(a) of the Principal Act **insert**—

"(ab) any prescribed senior officer; or".

10

- (2) In section 19(5) of the Principal Act, for "The" **substitute** "Despite subsection (1), the".

6 Chief Health Officer's exercise of certain powers

Before section 20A(a) of the Principal Act **insert**—

15

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

7 Functions and powers of the Chief Health Officer

In section 21(b) of the Principal Act, after "advice to" **insert** "the Premier,".

20

8 Power of delegation

- (1) After section 22(1) of the Principal Act **insert**—

"(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—

25

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

30

(b) a prescribed senior officer."

- (2) In section 22(2) of the Principal Act, after "(1)" **insert** "or (1A)".
-

9 Special powers of Secretary in a state of emergency

- (1) In the heading to section 28 of the Principal Act, after "**emergency**" **insert "or a pandemic"**.
- (2) In section 28 of the Principal Act for "If there is a state of emergency," **substitute** "At any time when there is a state of emergency or when a pandemic declaration is in force,".

10 Secretary may appoint authorised officers

In section 30(1) of the Principal Act, after "**2004**" **insert** ", or an employee of a health service".

11 Application of Division

In section 54(b) of the Principal Act, after "paragraph (a)" **insert** "other than Divisions 7 and 8 of Part 8A (which deals with contact tracing information)".

12 New Part 8A inserted

After Part 8 of the Principal Act **insert**—

"Part 8A—Protection of life and public health during pandemics

Division 1—Objective and interpretation

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

Part 2—Amendments relating to pandemic declarations

- 5
- (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
- 10
- (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
- 15
- (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.
- 20
- (2) The Parliament intends that in the administration of this Part any limitations on the human rights that are protected by the Charter of Human Rights and Responsibilities should be demonstrably justified in accordance with section 7(2) of
- 25
- that Charter.

Division 2—Pandemic declarations

165AB Premier may make a pandemic declaration

- 30
- (1) The Premier may make a declaration under this subsection (a *pandemic declaration*) if the Premier is satisfied that there is a serious risk to public health arising from—
- (a) a pandemic disease; or
- (b) a disease of pandemic potential.

Part 2—Amendments relating to pandemic declarations

- 5
- (2) The Premier must consult with, and consider the advice of, the Minister and the Chief Health Officer before making a pandemic declaration.
- 10
- (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—
- 15
- (a) the pandemic declaration being made on the basis that the Premier was satisfied, 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;
- 20
- (b) the pandemic declaration being made on the basis that the Premier was satisfied, 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.
- 25

165AC Form and content of a pandemic declaration

- 5
- (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;
- 10
- (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
- 15
- 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
- 20
- 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

- 25
- (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
- 30
- (b) if no day is specified in the declaration, immediately upon its making.

- 5
- (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
- 10 (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

- 15 (1) The Premier may vary or extend a pandemic declaration if the Premier is satisfied that there continues to be a serious risk to public health arising from—
- 20 (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
- 25 (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.
- 30 (2) Subsection (1) applies whether or not, at the time of the variation or extension, the disease is present in Victoria.
- (3) The Premier—
- 35 (a) must revoke a pandemic declaration if the Premier is satisfied that there is no longer a serious risk to public health

Part 2—Amendments relating to pandemic declarations

- arising from a pandemic disease or a disease of pandemic potential; and
- 5 (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.
- 10 (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.
- 15 (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.
- 20 (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—
- 25 (a) the variation or extension being made on the basis that the Premier was satisfied, 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;
- 30 (b) the variation or extension being made on the basis that the Premier was satisfied, at the time of the variation or extension, that there was a serious risk to public health arising from a
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pandemic disease, but the disease was a disease of pandemic potential at that time.

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165AF Notification of the making, variation, extension or revocation of a pandemic declaration

- (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
- 15 (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
- 20 (c) in the case of the revocation of a declaration, published in the Government Gazette.
- (2) Production of a Government Gazette purporting to contain—
- 25 (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
- 30 (b) a copy of the declaration is evidence of the terms of the declaration.

165AG Reporting to Parliament in relation to a pandemic declaration

- 35 (1) If a pandemic declaration is made, varied, extended or revoked, the Premier must prepare a report in accordance with this
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Part 2—Amendments relating to pandemic declarations

section on the making, variation, extension or revocation, which must include the following—

- 5 (a) a statement of the reasons for the making, variation, extension or revocation;
- 10 (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.
- 15 (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.
- 20 (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
- 25 (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.
- 30 (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
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Part 2—Amendments relating to pandemic declarations

public health risk powers and the pandemic management powers exercised and the reasons for the exercise of those powers during the period—

- 5
- (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.
- 10
- (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
 - 15 (b) cause a copy of the report to be laid before the House on the next sitting day of the House.
- 20
- (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.

25 **165AH Reports tabled when Parliament is not sitting**

- 30
- (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
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publication of the proceedings of the Parliament, apply to and in relation to the publication of that report as if—

- 5
- (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.
- 10
- (3) For the purposes of section 165AG, a House of the Parliament is not sitting when the House stands adjourned to a date to be fixed by the presiding officer of that House.

Division 3—Pandemic orders

165AI Minister may make a pandemic order

- 15
- (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.
- 20
- (2) Without limiting subsection (1), a pandemic order may include, but is not limited to, an order—
- 25
- (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
- 30
- (b) that requires that the detention of persons in a pandemic management area be extended for the period specified in the order—
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- (i) if the conditions specified in the order are satisfied; or
- (ii) in the circumstances specified in the order; or
- 5 (c) that restricts movement in a pandemic management area; or
- (d) that requires movement in, into or from a pandemic management area; or
- 10 (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
- 15 (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
- 20 (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
- 25 (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
- 30 (j) that requires the quarantining, destruction or other management of disease vectors in a pandemic management area.

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Note

A person can be detained in the exercise of a pandemic management power: see sections 165B(1)(b) and 165BA(1)(b).

5 (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.

10 (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.

165AJ Pandemic order prevails over other subordinate instruments

20 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.

165AK To whom a pandemic order may apply

25 (1) A pandemic order may be expressed to apply to the following—

- (a) all persons;
- (b) specified classes of person;
- (c) specified persons.

30 (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

Part 2—Amendments relating to pandemic declarations

of person identified by one or more of the following—

- 5
- (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;
 - 10 (c) an activity that they have undertaken or are undertaking;
 - (d) their characteristics, attributes or circumstances.
- (4) Without limiting the meaning of the expression *attribute* in subsection (3)—
- 15
- (a) a pandemic order may apply to, differentiate between or vary in its application to persons or classes of person identified by reference to an attribute within the meaning of the **Equal Opportunity Act 2010**; and
 - 20 (b) to avoid doubt, a pandemic order is an enactment for the purposes of section 75(1)(b) of that Act.

25 **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—
- 30
- (a) the serious risk to public health posed by the disease specified in the pandemic declaration to which the proposed pandemic order relates; and

- 5 (b) the public health measures that the Chief Health Officer considers are necessary or appropriate to address this risk.
- 5 (2) In making a pandemic order, the Minister—
- 10 (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
- 10 (b) may have regard to any other matter the Minister considers relevant including, but not limited to, social and economic matters.
- 15 (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**
- 20 (1) A pandemic order must be in writing and must specify the following—
- 25 (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;
- 30 (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.
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Part 2—Amendments relating to pandemic declarations

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- (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

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- (f) may confer powers or impose duties in connection with the pandemic order on any specified person or specified class of persons; and
- 10
- (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
- 15
- (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
- 20
- (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
- 25
- (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

- 30
- (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

- 5 (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

- 10 (1) Subject to subsection (2), the Minister may at any time vary, extend or revoke a pandemic order under this section.
- 15 (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—
- 20 (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
- 25 (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.
- 30

165AP Publication of a pandemic order and associated documents

- 35 (1) The Minister must ensure that before a pandemic order or a variation, extension or revocation of a pandemic order comes into
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Part 2—Amendments relating to pandemic declarations

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.

- 5 (2) Subject to subsection (5), the Minister must ensure that within 14 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
- 10 Internet site maintained by the Department—
- 15 (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;
 - 20 (c) in the case of the making, variation or extension of the order, an explanation of—
 - 25 (i) the human rights that are protected by the Charter of Human Rights and Responsibilities that are or may be limited by the order; and
 - (ii) how any such limitations are demonstrably justified in accordance with section 7(2) of the Charter of Human Rights and Responsibilities.
- (3) If—
- 35 (a) more than one pandemic order is made, varied, extended or revoked on the same day; and
-

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- (b) the Chief Health Officer's advice, the statement of reasons or the explanation applies to more than one of the orders—
- 5 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)—
- 10 (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
- 15 (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
- 20 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
- 25 the variation, but the Minister must ensure that within 14 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
- 30 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.

165AQ Tabling in Parliament of documents relating to a pandemic order

- 5
- (1) The Minister must ensure that within 6 sitting days after a pandemic order or a variation, extension or revocation of a pandemic order comes into force—
- 10
- (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
- 15
- (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.
- 20
- (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

25

However, the Scrutiny of Acts and Regulations Committee may report on a failure to comply under section 165AS, which is a precondition for disallowance under section 165AU.

165AR Publication of a pandemic order in the Government Gazette

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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.

5

Division 4—Scrutiny, suspension and disallowance of pandemic orders

165AS Consideration of pandemic orders by Parliament

- 10 (1) The Scrutiny of Acts and Regulations Committee may report to each House of Parliament if the Scrutiny of Acts and Regulations Committee considers that a pandemic order or an instrument that extends, varies or revokes a pandemic order
- 15 laid before Parliament under section 165AQ(1)(a)—
- (a) does not appear to be within the powers conferred by this Act; or
- 20 (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
- 25 (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
- 30 (c) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities.

- 5
- (2) A report of the Scrutiny of Acts and Regulations Committee under this section may contain such recommendations as the 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.

10 **165AT Suspension of pandemic order or part of a pandemic order, etc.**

- (1) If the Scrutiny of Acts and Regulations Committee—
- 15 (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
- 20 (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
- 25 that extends, varies or revokes a pandemic order, should be suspended pending the consideration by the Parliament of the pandemic order or instrument—
- 30 the Scrutiny of Acts and Regulations 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
- 35 the case requires, be suspended.
-

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- 5 (2) If the Scrutiny of Acts and Regulations 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—
- 10 (a) the Scrutiny of Acts and Regulations 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
- 15 (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.
- 20
- 25 (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
- 30 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.
- 35 (4) As from the date on which the Order referred to in subsection (3) is published, the provision in a report of the Scrutiny of Acts and Regulations Committee providing for the
-

suspension ceases to have any force or effect.

- 5 (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.

10 **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—
- 15 (a) in a report under section 165AS, the Scrutiny of Acts and Regulations Committee has recommended that the pandemic order or the instrument be disallowed in whole or in part; or
- 20 (b) there was a failure to comply with section 165AQ and the Scrutiny of Acts and Regulations Committee has reported that failure to each House of the Parliament.
- 25 (2) A pandemic order or instrument to which this section applies is disallowed in whole or in part if—
- 30 (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—
- 35 (i) if the pandemic order or instrument and associated documents were laid before each House of the Parliament in
-

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- 5 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;
- 10 (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
15 accordance with section 165AR;
and
- 20 (b) the resolution is passed by each House
on or before the 12th sitting day of each
House after the giving of the notice of
the resolution.
- 25 (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.
- 30 (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.
- 35 (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

- 5 (b) the calculation of sitting days of the
House is to be made as if there had
been no prorogation or dissolution.

**165AV Effect of disallowance and Clerk to
publish notice of disallowance**

- 10 (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.
- 15 (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
20 by the instrument or part of the instrument,
as the case requires, had not been made.
- 25 (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.
- 30 (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.
- 35 (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

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165AW Chief Health Officer may authorise exercise of certain powers

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- (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.

15

- (2) The Chief Health Officer may, for the purpose of eliminating or reducing the serious risk to public health, authorise—

20

- (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

25

- (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.

30

- (3) The Chief Health Officer may at any time revoke or vary an authorisation given under this section.

165AX How may an authorisation be given?

- 5
- (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—
- 10
- (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
- 15
- (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
- 20
- (e) specify the period of time for which the authorisation continues in force.

165AY Chief Health Officer may extend authorisation

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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

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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

5 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

(1) The *pandemic management order powers* are as follows—

10 (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;

15 (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
20 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).

25 (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
30 action that authorised officer believes is reasonably necessary to ensure compliance with, or limit non-compliance, by the person with a pandemic order.

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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).

- 5 (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.

10 **165BA Pandemic management general powers**

- (1) The *pandemic management general powers* are as follows—
- 15 (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;
- 20 (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
- 25 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
- 30 (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

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- (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,
-

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that event (including, but not limited to, a direction to restrict movement, require movement or limit entry); or

5 (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

10 (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—

15 (i) are located in the immediate vicinity of the authorised officer; or

(ii) are present at a particular premises.

20 (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).

165BB Warning before giving a direction

25 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.

30

165BC Assistance

(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.

5

Note

Division 4A of Part 11 contains general provisions relating to compliance and enforcement.

Division 6—Special protections in respect of powers of detention

10

165BD When detention commences

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—

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- (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.
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165BE Requirement to isolate or quarantine not of itself detention

5

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.

10

165BF Pandemic management powers that involve detention

15

(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—

20

- (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.

25

(2) A notice under this subsection must be in writing and must state the following—

30

- (a) the purpose of the detention and its terms;
- (b) any exemptions that may be available to the person in respect of the detention;

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- 5 (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
- 10 (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.
- 15
- 20 (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
- 25 (b) the person to whom it is given must be provided with reasonable assistance to understand the explanation or notice.
- 30 (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
- (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.

165BG Authorised officers must facilitate communication and review detention

- 10
- (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).
- 15
- (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.
- 20
- (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.

25

165BH Reports by authorised officers to Chief Health Officer about exercise of pandemic management powers that involve detention

- 30
- (1) An authorised officer must, as soon as is reasonably practicable, give written notice to the Chief Health Officer of each of the following—
- 35
- (a) that a person has been detained in the exercise of a pandemic management power under section 165B(1)(b) or 165BA(1)(b);

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- (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).
- 5 (2) A notice under subsection (1) must include—
- (a) the name of the person being detained; and
- 10 (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—
- 15 (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—
- 20 (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);
- 25 (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
- 30 (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

- 5
- (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 Secretary for a review by a Detention Review Officer of the detention including, but not limited to, in respect of the following—
- 10
- (a) the reasons for the detention;
 - (b) the period of the detention;
 - (c) the place of the detention;
 - (d) the conditions of the detention;
 - 15 (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—
- 20
- (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
 - 25 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
 - 30 (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
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that have arisen and affect the person in respect of the detention; and

(d) must include any prescribed information; and

5 (e) may include any other information that the person making the application considers appropriate.

10 (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

15 (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.

20 (5) The Secretary must ensure that an application made under subsection (1) is referred to a Detention Review Officer immediately after the application is received.

25 **165BJ Detention Review Officer must decide applications**

(1) This section applies if an application in respect of a decision is referred to a Detention Review Officer under section 165BI(5).

30 (2) Subject to subsection (5), the Detention Review Officer must use their best endeavours to decide the application, and advise the applicant in writing of the decision and the reasons for it, within—

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- 5
- (a) 24 hours after the application was received by the Secretary; or
 - (b) if the application is received by the Secretary after 5.00 p.m. on a particular day, within 24 hours of 9.00 a.m. on the following day.
- 10
- (3) In deciding the application, the Detention Review Officer—
- (a) must consider the information included in the application; and
 - (b) may consider any other matter the Detention Review Officer considers relevant, including but not limited to general information provided to the Detention Review 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 Review Officer thinks fit including, but not limited to, making inquiries of or seeking information from persons with expertise in public health.
- 15
- 20
- 25
- (4) The Detention Review Officer may decide—
- (a) not to vary the person's detention; or
 - (b) to refer the application to the Chief Health Officer, accompanied by such non-binding recommendations as the Detention Review Officer considers appropriate (if any).
- 30
- (5) If an application is referred to the Chief Health Officer under subsection (4)(b), the Detention Review Officer referring the application is not required to give written
- 35
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reasons to the applicant, but must advise the applicant—

- (a) that the application has been referred; and
- 5 (b) that the Chief Health Officer is required by section 165BK(1) to provide written reasons for the decision of the Chief Health Officer.

165BK Review referred to Chief Health Officer

10 (1) If a Detention Review Officer refers an application in respect of the detention of a person to the Chief Health Officer under section 165BJ(4)(b), the Chief Health Officer must use their best endeavours to
15 decide the application, and advise the applicant in writing of the decision and the reasons for it, within—

- 20 (a) 24 hours after the application was referred by the Detention Review Officer; or
- (b) if the application is referred by the Detention Review Officer after 5.00 p.m. on a particular day, within 24 hours of 9.00 a.m. on the following
25 day.

(2) The Chief Health Officer may decide—

- (a) not to vary the person's detention; or
- (b) to vary the person's detention; or
- (c) that the person's detention is to cease.

30 **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.

165BM Detention guidelines and standards

- 5 (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).
- 10 (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**
- 15 For example, matters could include the provision of psychological support and contact with other persons.
- 20 (4) In performing functions and exercising powers under this Act, a person must have regard to any guidelines and standards issued under subsection (1).
- 25 (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.
- 30 (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 6—Offences, penalties and related matters

165BN Failure to comply with pandemic order, direction or other requirement

5 (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.

10 Penalty: In the case of a natural person, 120 penalty units;
In the case of a body corporate, 600 penalty units.

15 (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.

165BO Aggravated offence of failure to comply with pandemic order, direction or other requirement

20 (1) A person commits an offence if—
(a) the person 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; and
25 (b) the person knows or ought to know that the failure to comply is likely to cause a serious risk to the health of another individual.

30 Penalty: In the case of a natural person, 500 penalty units or imprisonment for 2 years;

Penalty: In the case of a body corporate, 2500 penalty units or a fine determined in accordance with section 165BP.

5

(2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for failing to comply.

(3) For the purposes of this section—

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

15

(a) the location, immediacy and seriousness of the threat to the health of another individual;

20

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

25

(c) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of another individual.

165BP Commercial benefits penalty order

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(1) A court that finds a body corporate guilty of an offence under section 165BO may make an order under this section on application by the prosecutor.

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(2) The court may make an order under this section requiring the body corporate to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the

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gross commercial benefit that was obtained, or obtainable, by the body corporate or a related body corporate from the commission of the offence.

- 5 (3) In estimating the gross commercial benefit that was obtained or obtainable from the commission of the offence, the court may take into account—
- 10 (a) benefits of any kind, whether monetary or otherwise; and
- (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved or achievable because of the commission of the offence; and
- 15 (c) any other matter that it considers relevant.
- (4) Nothing in this section prevents the court from ordering payment of an amount that is—
- 20 (a) less than 3 times the estimated gross commercial benefit; or
- (b) less than the estimated gross commercial benefit.
- 25 (5) For the purposes of subsection (2), *related body corporate* has the same meaning as it has in the Corporations Act.

165BQ Alternative verdicts

30 If, on the trial of a person charged with an offence against section 165BO, the trier of fact is not satisfied that the person committed the offence, but is satisfied that the person committed an offence against section 165BN, the trier of fact may find the person not guilty of the offence charged but guilty

of an offence against section 165BN, and the person is liable to punishment accordingly.

Division 7—Information sharing

165BR Secretary and Chief Health Officer may collect, use and disclose information

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The Secretary and the Chief Health Officer may collect, hold, manage, use, disclose or transfer information if this is reasonably necessary for—

10

- (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.

165BS Provision of information etc. is authorised by law

15

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—

20

- (a) the **Privacy and Data Protection Act 2014**; and
- (b) the **Health Records Act 2001**.

25

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—

30

- 5 (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.
- 10 (2) An application for a pandemic information determination must specify—
- (a) the act or practice to which the determination would apply; and
- 15 (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
- 20 (d) the reasons for seeking the determination.
- (3) A pandemic information determination may relate to personal information or health information or both.
- 25 **165BU Information Commissioner may make a pandemic information determination**
- (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.
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- 35
-

- 5
- (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
- 10 (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
- 15 (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.
- 20
- (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.
- 25
- (5) A pandemic information determination must include a statement of reasons for making the determination.
- 30 **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
- 35 comply with the Information Privacy Principles, approved codes of practice and
-

Health Privacy Principles to the extent specified in the determination.

165BW Duration of a pandemic information determination

5 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
- 10 (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.

15 **165BX Variation of a pandemic information determination**

- (1) The Minister may apply to the Information Commissioner to vary a pandemic information determination.
 - 20 (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.
 - 25 (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
 - 30 (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
 - 35
-

- (c) may have regard to any other matter the Information Commissioner considers relevant.

165BY Revocation of a pandemic information determination

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The Information Commissioner must revoke a pandemic information determination if satisfied that—

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- (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

15

- (b) the reasons set out in the application for the determination no longer apply.

165BZ Procedures before variation or revocation of a pandemic information determination

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- (1) Before revoking a pandemic information determination, the Information Commissioner must give the Minister written notice stating—

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- (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.

30

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- 5 (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.
- 10 (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.
- 15 (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.
- 20 (5) An instrument varying or revoking a pandemic information determination must include a statement of reasons for the variation or revocation.
- 25 **165C Publication of a pandemic information determination and an instrument of variation or revocation**
- 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—
- 30 (a) a copy of the pandemic information determination as made or varied, or the instrument of revocation;
- 35 (b) a statement of reasons for the making, variation or revocation of the pandemic information determination;

- 5
- (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.

10

Division 8—Safeguards for contact tracing information

165CA Objective

The objectives of this Division are—

- 15
- (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.
- 20
- 25

165CB Meaning of *contact tracing information*

- (1) In this Act—

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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

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a pandemic declaration relates, being information that—

5

(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

10

(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.

15

(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—

20

(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

25

(b) the identification, notification or communication referred to in paragraph (a) is or was about one or more individuals who —

30

(i) are, or at any time may be or may have been, infected with the pandemic disease or disease of pandemic potential; or

35

- 5 (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

A person commits an offence if—

- 10 (a) the person uses or discloses contact tracing information; and
(b) the use or disclosure is not authorised under section 165CD.

15 **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

- 20 (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
25 (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
30 information is for a *permitted purpose* if the use or disclosure—

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- 5
- (a) is with the consent of any individual whose identity is apparent, or can reasonably be ascertained, from the information; or
- 10
- (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—
- 15
- (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
- 20
- (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.

25

Division 9—Independent Pandemic Management Advisory Committee

165CE Establishment of Independent Pandemic Management Advisory Committee

- 30
- (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

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- 5 pandemic disease or the disease of pandemic potential to which the pandemic declaration relates.
- 5 (2) If the Minister establishes an Independent Pandemic Management Advisory Committee the Minister must, by Order published in the Government Gazette—
- 10 (a) appoint as members of the committee persons whom the Minister considers have skills, knowledge or experience relevant to the committee's functions; and
- 15 (b) specify the period of appointment and the terms and conditions of the appointment.
- 20 (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.
- 25 (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—
- 30 (a) public health;
- (b) infectious diseases;
- (c) primary care;
- (d) emergency care;
- (e) critical care;
- (f) law;
- (g) human rights;
-

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- (h) the interests and needs of traditional owners and Aboriginal Victorians;
 - (i) the interests and needs of vulnerable communities.
- 5 (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.
- 10 (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.
- 15 (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.
- 20 **165CF Functions of an Independent Pandemic Management Advisory Committee**
- 25 (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
 - 30 (b) to prepare and provide reports to the Minister including, but not limited to, reports that make non-binding recommendations.

- 5
- (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.
- 10
- (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

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Within 6 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

20

165CH Application of Division

- (1) This Division applies if—
- 25
- (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
- 30
- (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.

- 5
- (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—
- 10
- (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.

165CI Authorised officers

15

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—

20

- (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;
- 25
- (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;
- 30
- (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).
- 35
-

165CJ Directions of Chief Health Officer

5 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—

- 10 (a) as if the direction were a pandemic order in the same terms made under section 165AI(1); and
- 15 (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

20 (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—

- 25 (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
- 30 (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.
- 35

- (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

5

- (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)—

10

- (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

15

- (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).

20

- (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).

25

- (3) An application referred under section 200C(4)(b), which had not been determined as at the pandemic start time, is taken on and after the pandemic start time to have been referred under section 165BJ(4)(b).

30

- (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.

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- 5
- (5) A decision made before the pandemic start time on a referral under section 200D is taken, on and after the pandemic start time, to have been made under section 165BK.
- (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.

165CM Exemptions in relation to detention

- 10
- (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
- 15
- (b) as at the pandemic start time, the reasons for not detaining the person remain applicable—
- 20
- 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.
- 25

165CN Secretary may appoint authorised officers

30

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—

- 5
- (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;
 - 10 (e) an employee in the public sector of a State other than Victoria, or a territory;
 - (f) a designated health service provider.

15 **165CO Limitation on the powers that may be conferred on authorised officers appointed as permitted by section 165CN**

- 20 (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—
- 25 (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);
 - 30 (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);

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5 (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.

10 (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.

15 (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

165CP Interaction of powers

20 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.

165CQ Interaction between pandemic order and other directions

25 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

30 The following instruments are not legislative instruments within the meaning of the **Subordinate Legislation Act 1994**—

(a) a pandemic declaration;

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- (b) an instrument of variation, extension or revocation of a pandemic declaration;
- (c) a pandemic order;
- 5 (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;
- 10 (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

- 15 (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;
 - 20 (b) all pandemic orders as in force from time to time;
 - (c) all instruments that vary, extend or revoke a pandemic order;
 - 25 (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.
 - 30

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- 5
- (2) The Pandemic Order Register must be made available to the public free of charge on an Internet site maintained by the Department.
- 10
- (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.
- 15
- (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.
- 20
- 165CT Disapplication of certain requirements in relation to certain incorporated matter**
- 25
- (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).
- 30
- (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.

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- 5 (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

- 10 (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 Review Officer.
- 15 (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—
- 20 (a) in the exercise of a power or the discharge of a duty in relation to the pandemic disease or disease of pandemic potential—
- 25 (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
- 30 (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.

- 5 (3) Any liability resulting from an act or omission that would but for subsection (2) attach to a person attaches instead to the Crown.

165CV Gazette notices

- 10 (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
- 15 (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.
- 20

165CW Invalidity of declaration not to affect validity of things done

25 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.

30

165CX Review of Part

- (1) The Minister must arrange for a review to be conducted of the operation of this Part.
-

(2) The review must commence no later than 2 years after the day on which this Part commences.

5 (3) The Minister must cause a copy of a report of the review to be laid before each House of Parliament as soon as reasonably practicable after the review is completed."

13 Powers in the case of a risk to public health

10 In section 189(a) of the Principal Act, after "officers" **insert** ", or a specified class or classes of authorised officers,".

14 Chief Health Officer may authorise exercise of certain powers

15 In section 199(2)(a) of the Principal Act, after "officers" **insert** ", or a specified class or classes of authorised officers,".

15 New section 212A inserted

After section 212 of the Principal Act **insert**—

20 **"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—

- 25 (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—

- 30 (a) is not admissible in evidence against the natural person in a criminal proceeding, other than a proceeding in

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respect of the provision of false or misleading information; and

- 5 (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."

16 New section 219A inserted

10 After section 219 of the Principal Act **insert—**

"219A Proceeding for aggravated offence

Proceedings for an offence against section 165BO must not be brought unless the bringing of the proceeding is approved—

- 15 (a) by the Secretary, if the proceeding is brought by an authorised officer or by a Council; or
- 20 (b) by the Chief Commissioner of Police, if the proceeding is brought by a police officer."

17 New Division 4A of Part 11 inserted

After section 227 of the Principal Act **insert—**

"Division 4A—General provisions relating to assistance powers

25 **227A Provisions relating to requests for assistance**

- (1) A request for assistance under section 165BC, 192 or 202 —
- 30 (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
-

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- or pandemic management powers, and must be made by the Secretary if it relates generally to the exercise of powers; and
- 5 (b) need not be made on each occasion assistance is required in the exercise of such powers.
- 10 (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.
- 15 (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.
- 20 (4) A person to whom a request for assistance is made—
- 25 (a) may provide assistance before, during or after the exercise of the powers in relation to which the request is made; and
- 30 (b) need not be in the physical presence of an authorised officer when providing the assistance.
- 35 (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

- 5
- (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—
- 10
- (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;
- 15
- (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—
- 20
- (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.
- 25
- (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.
- 30

18 New Division 5A of Part 11 inserted

After section 231 of the Principal Act **insert—**

"Division 5A—Compliance and enforcement policy

5 **231A Secretary may develop compliance and enforcement policy**

- 10 (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.
- 15 (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
- 20 (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
- 25 (c) may set out guidance on any other matters relevant to compliance with, and enforcement of, this Act or specified provisions of this Act.
- 30 (3) A compliance and enforcement policy may—
- (a) set out guidance in relation to the issuing of infringement notices, and

Part 2—Amendments relating to pandemic declarations

- 5 (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**;
- 10 (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**—
- 15 (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
- 20 (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.
- 25 (5) The Secretary must publish a compliance and enforcement policy on an Internet site maintained by the Department.
- 30 (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

- 5
- (b) must promote compliance with, and enforcement of, this Act or specified provisions of this Act in its application to the COVID-19 pandemic;
- 10
- (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."

19 Insertion of new section 248C

Before Part 13 of the Principal Act **insert**—

15 **"248C Authorised officers appointed under old section 30(1A)**

- 20
- (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.
- 25
- (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.

30 **248D Transitional regulations**

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

Part 2—Amendments relating to pandemic declarations

- 5
- 10
- 15
- (2) Regulations made under subsection (1) may be retrospective in operation to the commencement of section 1 of this Act.
 - (3) Regulations made under subsection (1) have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities) or in any subordinate instrument or policy under this Act as in force immediately before the commencement of section 1 of this Act.
 - (4) Without limiting this section, regulations made under subsection (1) may continue in effect for a period of not more than 12 months beginning on the day on which this section expires.
 - (5) This section expires on the second anniversary of the day on which all the provisions of this Act have come into operation."

Part 3—Amendments relating to concessional infringement scheme

20 Definitions

- 5 In section 3(1) of the Principal Act **insert** the following definitions—
- "*attachment of debts direction* has the same meaning as it has in the **Fines Reform Act 2014**;
- 10 *attachment of earnings direction* has the same meaning as it has in the **Fines Reform Act 2014**;
- Director, Fines Victoria* means the person employed as Director, Fines Victoria under section 4 of the **Fines Reform Act 2014**;
- 15 *enforcement agency* has the same meaning as it has in the **Infringements Act 2006**;
- fine* has the same meaning as it has in the **Fines Reform Act 2014**;
- 20 *Health Privacy Principles* has the same meaning as it has in the **Health Records Act 2001**;
- Information Privacy Principles* has the same meaning as it has in the **Privacy and Data Protection Act 2014**;
- 25 *infringement fine* has the same meaning as it has in the **Infringements Act 2006**;
- infringement penalty* has the same meaning as it has in the **Infringements Act 2006**;
- land charge* has the same meaning as it has in the **Fines Reform Act 2014**;
- 30 *seven-day notice* has the same meaning as it has in the **Fines Reform Act 2014**;
-

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

21 New Part 8B inserted

5 After section 165CX of the Principal Act insert—

**"Part 8B—Concessional
infringement scheme**

165CY Eligible offences

- 10 (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
- 15 (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.
- 20 (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
- 25 under section 165DC(1).

165CZ Application for determination

- 30 (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).

5

(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—

10

(a) be in writing; and

(b) provide evidence that the applicant is a prescribed person or a person included in a prescribed class; and

15

(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.

20

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—

25

(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;

30

(c) a land charge has been recorded;

(d) property has been seized under a vehicle seizure and sale notice;

- 5
- (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;
- 10
- (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**;
- 15
- (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

20

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

- 25
- (1) If an application is made under section 165CZ(1) the Director, Fines Victoria—
- 30
- (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
- 35
- (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—

5

(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—

10

(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

15

(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)—

20

(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.

25

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—

30

(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.
- 5 (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.
- 10 (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
- 15 (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.
- 20 (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.
- 25 (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.
- 30 **165DD Director must give notice if applicant is an eligible person**
- (1) This section applies if the Director, Fines Victoria determines—
- 35 (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.
- 5 (2) The Director, Fines Victoria must, by writing, notify the following of the determination—
- (a) the applicant; and
- 10 (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.
- 15 (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).
- 20

165DE Director must give notice if applicant is not an eligible person

- 25 (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—
- 30 (a) the applicant;
- (b) any enforcement agency to which the Director, Fines Victoria has given a direction under section 165DB(1)(b).
- 35
-

- 5
- (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—
- 10
- (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
- 15
- (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**.
- 20
- (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.
- 25
- (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 4—Consequential amendments relating to Parts 2 and 3

Division 1—Consequential amendments relating to Part 2

5 **22 Approval of service as a youth control order planning meeting program**

In section 480A(1)(a) and (b) of the **Children, Youth and Families Act 2005**, for "Department of Health and Human Services" **substitute** "Department of Health".

10

23 Isolation for detection, prevention or mitigation of COVID-19 or other infectious disease

In section 600M(4) of the **Children, Youth and Families Act 2005**—

15

(a) after paragraph (a) **insert**—

"(ab) any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; and";

20

(b) in paragraph (b), for "Department of Health and Human Services" **substitute** "Department of Health".

24 Entitlements of person placed in isolation under section 600M

25

In section 600N(3) of the **Children, Youth and Families Act 2005**—

(a) after paragraph (a) **insert**—

30

"(ab) any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; or";

(b) in paragraph (b), for "Department of Health and Human Services" **substitute** "Department of Health".

5 **25 Matters to which regard may be had in exercise of powers**

In section 112U of the **Corrections Act 1986**—

(a) after paragraph (a) **insert**—

10 "(ab) any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; and";

(b) in paragraph (b), for "Department of Health and Human Services" **substitute** "Department of Health".

15 **26 Temporary measures in response to COVID-19 pandemic**

In section 7A(3) of the **Court Security Act 1980**—

(a) in paragraph (b)—

20 (i) for "Part 10" **substitute** "Part 8A or 10";

(ii) for "premises." **substitute** "premises; and";

(b) after paragraph (b) **insert**—

25 "(c) the following of any relevant pandemic order made under Part 8A of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic at the court premises."

27 Definitions

In section 42C of the **Evidence (Miscellaneous Provisions) Act 1958**, in the definition of *exceptional circumstances*, after paragraph (a) insert—

5

"(ab) a pandemic declaration made under section 165AB of the **Public Health and Wellbeing Act 2008** in an area where an accused is required to appear before a court or required to transit through in order to appear before a court; or".

10

28 Power to issue prohibition notice

For section 190 of the **Occupational Health and Safety Act 2004** substitute—

15

'190 Power to issue prohibition notice

Section 112 has effect as if the following subsection were inserted after section 112(1)—

20

"(1A) For the purposes of subsection (1), a failure to comply with any of the following is taken to be an activity that involves an immediate risk to the health or safety of a person—

25

(a) a pandemic order relating to the COVID-19 pandemic made under section 165AI of the **Public Health and Wellbeing Act 2008**;

30

(b) a direction relating to the COVID-19 pandemic given by an authorised officer under section 200(1)(d), 165B(1)(a) or 165BA(1)(a) of the **Public Health and Wellbeing Act 2008**."'

35

29 Power to give directions

For section 191 of the **Occupational Health and Safety Act 2004** substitute—

'191 Power to give directions

5 Section 120 has effect as if the following subsection were inserted after section 120(1)—

10 "(1A) For the purposes of subsection (1), a failure to comply with any of the following is taken to be an activity that involves an immediate risk to the health or safety of a person—

15 (a) a pandemic order relating to the COVID-19 pandemic made under section 165AI of the **Public Health and Wellbeing Act 2008**;

20 (b) a direction relating to the COVID-19 pandemic given by an authorised officer under section 200(1)(d), 165B(1)(a) or 165BA(1)(a) of the **Public Health and Wellbeing Act 2008**."

30 Repeal of Part

25 In section 192 of the **Occupational Health and Safety Act 2004**, for "16 December 2021" substitute "26 April 2022".

31 Scrutiny of Acts and Regulations Committee

In section 17 of the **Parliamentary Committees Act 2003**, after paragraph (e) insert—

30 "(ea) the functions conferred on the Committee by the **Public Health and Wellbeing Act 2008**;"

32 Exception to compliance with certain inspection requirements when an emergency declaration is in force

5 In section 197H(3) of the **Planning and Environment Act 1987**, in the definition of *emergency declaration*, after paragraph (a) insert—

10 "(ab) a pandemic declaration under section 165AB of the **Public Health and Wellbeing Act 2008**; or".

33 Declaration of emergency situation

In section 105A(6) of the **Public Administration Act 2004**, before paragraph (a) insert—

15 "(aa) a pandemic declaration under section 165AB of the **Public Health and Wellbeing Act 2008**;".

34 Powers of public sector body Heads in emergency situations

20 (1) In section 105E(2) of the **Public Administration Act 2004**, for "an employee" (wherever occurring) substitute "a public sector employee".

(2) In section 105E(3) of the **Public Administration Act 2004**, for "An employee" substitute "A public sector employee".

25 (3) In section 105E(4) of the **Public Administration Act 2004**, for "an employee" substitute "a public sector employee".

30 (4) In the example at the foot of section 105E(4) of the **Public Administration Act 2004**, for "An employee" substitute "A public sector employee".

35 Duties and powers of protective services officers

In section 52(5) of the **Victoria Police Act 2013**—

- 5
- (a) in the definition of *emergency*, after paragraph (b) **insert**—
- "(ba) a pandemic declaration being made under section 165AB of the **Public Health and Wellbeing Act 2008**; or";
- 10
- (b) in the definition of *emergency area*, after paragraph (b) **insert**—
- "(ba) in the case of a pandemic declaration being made under section 165AB of the **Public Health and Wellbeing Act 2008**, the pandemic management area to which the declaration applies; or".
- 15

Division 2—Consequential amendment that commences on 16 December 2021

36 Declaration of a state of emergency

- 20
- (1) In section 198(7)(c) of the Principal Act **omit** all the words and phrases from and including "or" to and including "21 months".
- (2) In section 198(8) of the Principal Act, for "Subject to subsections (8A) and (8B), if" **substitute** "If".
- 25
- (3) Sections 198(8A) and (8B) of the Principal Act are **repealed**.

Division 3—Consequential amendments relating to Part 3

37 Definitions

- 30
- In section 3 of the **Fines Reform Act 2014**, after paragraph (a) of the definition of *finer application* **insert**—
-

"(ab) under section 165CZ(1) of the **Public Health and Wellbeing Act 2008**; or".

38 Functions and powers of the Director

5 After section 5(2)(hb) of the **Fines Reform Act 2014** insert—

"(hc) to perform functions under Part 8B of the **Public Health and Wellbeing Act 2008**;"

39 Delegation

10 (1) In section 8(1) of the **Fines Reform Act 2014** for "or the **Infringements Act 2006**" (where twice occurring) substitute ", the **Infringements Act 2006** or Part 8B of the **Public Health and Wellbeing Act 2008**".

15 (2) In section 8(2) of the **Fines Reform Act 2014** after "Part 5" insert "", or under Part 8B of the **Public Health and Wellbeing Act 2008**,".

(3) After section 8(2) of the **Fines Reform Act 2014** insert—

20 "(2A) The Director may delegate any powers or functions under Part 8B of the **Public Health and Wellbeing Act 2008** other than this power of delegation to a contractor within the meaning of section 173A".

40 Extended period for registration

25 After subsection 17(c) of the **Fines Reform Act 2014** insert—

30 "(ca) in the case of an applicant for determination under section 165DC(1) of the **Public Health and Wellbeing Act 2008**, in respect of which a direction has been given to an enforcement agency under section 165DB(1)(b), no more than 6 months after the date of service of the notice of the outcome of the application given to the

applicant under section 165DD(2)(a) or
165DE(2)(a), as the case requires; or".

41 Offence to give false information

5

In section 184 of the **Fines Reform Act 2014**
after "Act" **insert** "or under Part 8B of the **Public**
Health and Wellbeing Act 2008".

Part 5—Amendments relating to quarantine detention fees during the COVID-19 pandemic

Division 1—Certain requirements disapplied

5 **42 Section 238D substituted**

For section 238D of the Principal Act
substitute—

**"238D Certain requirements under Subordinate
Legislation Act 1994 disapplied**

10 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
15 (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
20 **Subordinate Legislation Act 1994."**

Division 2—Other matters

**43 Waiver of fees payable in relation to quarantine
detention**

25 In section 238B of the Principal Act, after
"section 259" **insert** "or 260A".

44 Section 238E repealed

Section 238E of the Principal Act is **repealed**.

45 New sections 248A and 248B inserted

At the end of Part 12 of the Principal Act **insert**—

**"248A Transitional provision—Meaning of
*quarantined person***

5 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
10 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
15 reminder notices for unpaid quarantine
detention fees**

20 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
25 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."

30 46 Definitions

In section 255 of the Principal Act—

(a) **insert** the following definitions—

"*contact details*, in relation to a person liable
35 to pay fees under section 257, means
the following—

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(a) the person's telephone number;

(b) the person's email address;

(c) the person's postal address;

5 *first payment reminder notice* means a
payment reminder notice issued under
section 260B;

further payment reminder notice means a
payment reminder notice issued under
section 260C;"

10 (b) for the definition of *specified place of
detention substitute*—

 "*specified place of detention*, in relation to a
quarantined person, means the place
where the quarantined person is to be
15 detained as specified—

(a) by an authorised officer under
section 200(1); or

20 (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);

25 (c) by an authorised officer in the
exercise of a pandemic
management general power under
165BA(1)(b)."

47 Meaning of *quarantined person*

For section 256(b) of the Principal Act
substitute—

30 "(b) who, for the purpose of eliminating or
reducing the serious risk to public health
posed by the COVID-19 pandemic, is
detained—

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COVID-19 pandemic

- 5
- (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."

48 Liability to pay quarantine detention fees

- 10 After section 257(3) of the Principal Act **insert**—
- 15 "(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."

49 COVID-19 Quarantine Victoria to invoice quarantined persons for fees relating to detention

- 20 (1) In section 258(1) of the Principal Act, before "COVID-19" **insert** "Subject to subsection (1A),".
- (2) After section 258(1) of the Principal Act **insert**—
- 25 "(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."
- 30

50 New section 258A inserted

After section 258 of the Principal Act **insert**—

**"258A COVID-19 Quarantine Victoria may
obtain contact details required**

- 5
- (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—
- 10
- (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
- 15
- (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).
- 20
- (3) COVID-19 Quarantine Victoria may only use or disclose a person's contact details provided under subsection (2)—
- 25
- (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
- 30
- (c) for another purpose permitted by law.
- (4) For the purposes of the **Privacy and Data Protection Act 2014** and any other Act—
-

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COVID-19 pandemic

- 5 (a) the provision of a person's contact details under subsection (2) is taken to be a disclosure authorised by law; and
- 5 (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.
- 10 (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."

51 Waiver of fees

- 15 (1) For the heading to section 259 of the Principal Act **substitute—**
"Waiver of fees—application".
- 20 (2) In section 259(1) of the Principal Act, after "section 257" **insert** ", other than a person liable under section 257(4),".

52 New sections 260A to 260D inserted

After section 260 of the Principal Act **insert—**

"260A Waiver of fees—own initiative

- 25 (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.
- 30 (2) Subject to subsection (3), COVID-19 Quarantine Victoria must give notice of a waiver under subsection (1) in accordance with the regulations.

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COVID-19 pandemic

- 5
- (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).

10 **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—
- 15
- (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
- 20
- (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.
- 25
- (2) For the purposes of subsection (1)(b), the relevant date is—
- 30
- (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

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COVID-19 pandemic

Victoria on an application relating
to that amount; or

(b) in any other case, the date
specified in the invoice given
under section 258.

5

(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.

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(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.

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(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

20

(c) contain the prescribed information
(if any).

25

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—

30

(a) the relevant date by which an
amount of the fees must be paid
(being an amount for which a first

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COVID-19 pandemic

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- 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.

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COVID-19 pandemic

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- (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).
- 10
- (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

- 15
- (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.
- 20
- (2) The prescribed further payment reminder notice fee—
- (a) must be reasonably referable 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."
- 25
- 30

53 Payment of fees

In section 261 of the Principal Act, after "259" insert "or 260A".

54 Section 264 repealed

Section 264 of the Principal Act is **repealed**.

**Part 6—Amendment of Infringements
Act 2006 and Fines Reform Act 2014**

5 **Division 1—Amendment of Infringements Act 2006**

55 Definitions

(1) In section 3(1) of the **Infringements Act 2006**,
for the definition of *special circumstances*
substitute—

10 "*special circumstances* has the meaning given by
section 3A;"

(2) Section 3(3) of the **Infringements Act 2006** is
repealed.

56 New section 3A inserted

15 After section 3 of the **Infringements Act 2006**
insert—

"3A Meaning of *special circumstances*

(1) In this Act, *special circumstances*, in
relation to a person, means—

20 (a) a mental or intellectual disability,
disorder, disease or illness where the
disability, disorder, disease or illness
contributes to the person having a
significantly reduced capacity to—

25 (i) understand that conduct
constitutes an offence; or
(ii) control conduct that constitutes an
offence; or

30 (b) a serious addiction to drugs, alcohol or
a volatile substance within the meaning
of section 57 of the **Drugs, Poisons**

and Controlled Substances Act 1981

where the serious addiction contributes to the person having a significantly reduced capacity to—

- 5
- (i) understand that conduct constitutes an offence; or
 - (ii) control conduct that constitutes an offence; or
- 10
- (c) homelessness determined in accordance with the prescribed criteria (if any) where the homelessness contributes to the person having a significantly reduced capacity to control conduct that constitutes an offence; or
- 15
- (d) family violence within the meaning of section 5 of the **Family Violence Protection Act 2008** where the person is a victim of family violence and the family violence contributes to the
- 20
- person having a significantly reduced capacity to control conduct that constitutes an offence; or
- 25
- (e) circumstances experienced by the person that—
 - (i) are long-term in nature; and
 - (ii) make it impracticable for the person to pay the infringement penalty and any applicable fees or otherwise deal with the
- 30
- infringement notice under this Act or the **Fines Reform Act 2014**; and
- 35
- (iii) do not solely or predominantly relate to the person's financial circumstances.
-

5

(2) Nothing in subsection (1) is to be taken as limiting any power of the Court to consider the circumstances of any person in a proceeding before the Court under this Act or any other Act."

Division 2—Amendment of Fines Reform Act 2014

57 FVS application

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For the note at the foot of section 10M(3) of the **Fines Reform Act 2014** substitute—

"**Note**

See section 3A(1)(d) of the **Infringements Act 2006**."

Part 7—Repeal of this Act

58 Repeal of this Act

5

This Act is **repealed** on the first anniversary of the first day on which all of its provisions are in operation.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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.