

Authorised Version

Improving Cancer Outcomes Act 2014

No. 78 of 2014

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Authorised Version



Victoria

Improving Cancer Outcomes Act 2014[†]

No. 78 of 2014

[Assented to 21 October 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to articulate the role and functions of the Secretary to the Department of Health with respect to cancer; and
- (b) to authorise the collection of information relating to cancer by the Secretary in order to perform those functions; and

- (c) to establish a framework for the appropriate management, use and disclosure of that information; and
- (d) to require the Minister to prepare a plan providing a strategic policy framework for cancer in Victoria; and
- (e) to provide for the registration of the Anti-Cancer Council of Victoria as a company limited by guarantee under the Corporations Act; and
- (f) to repeal the **Cancer Act 1958**.

2 Commencement

- (1) This section and section 29 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision of this Act does not come into operation before 1 October 2015, it comes into operation on that day.

3 Definitions

In this Act—

cancer screening means a process in which an individual undergoes testing or procedures in order to determine whether the individual has—

- (a) cancer or a precursor to cancer; or
- (b) any indicator, such as genetic markers or cell abnormalities, that may lead to cancer;

Department means the Department of Health;

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

Health Privacy Principles means the Health Privacy Principles set out in Schedule 1 to the **Health Records Act 2001**;

health service means—

- (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it—
 - (i) to assess, maintain or improve the individual's health; or
 - (ii) to diagnose the individual's illness, injury or disability; or
 - (iii) to treat the individual's illness, injury or disability or suspected illness, injury or disability; or
- (b) a disability service, palliative care service or aged care service; or
- (c) a service, or a class of service, provided in conjunction with an activity or service referred to in paragraph (a) or (b) that is prescribed as a health service;

HPP means a Health Privacy Principle;

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

PART 2—ADMINISTRATION

4 Role and functions of the Secretary

- (1) For the purpose of this Act, the role of the Secretary is—
- (a) to support efforts in Victoria to reduce cancer incidence, morbidity and mortality and to enhance the wellbeing of those affected by cancer and the wellbeing of Victorians generally; and
 - (b) to perform the functions and exercise the powers conferred on the Secretary by this Act or any regulations made under this Act; and
 - (c) to provide advice to the Minister with respect to cancer and to advise the Minister on the operation of this Act and the regulations made under this Act.
- (2) Without limiting subsection (1), the Secretary has the following functions under this Act—
- (a) to plan, develop, co-ordinate, fund, promote, support and enable the provision of health services relating to cancer; and
 - (b) to develop and implement policies, programs and initiatives to support the prevention, early detection, diagnosis and treatment of cancer, the ongoing management of cancer and the ongoing care of those affected by cancer; and
 - (c) to promote awareness and understanding of—
 - (i) cancer prevention; and
 - (ii) cancer screening; and

- (iii) participation in cancer screening; and
- (iv) treatment options; and
- (d) to support initiatives to enhance the quality of life of those affected by cancer; and
- (e) to monitor and evaluate cancer screening participation, cancer incidence and cancer treatment and the outcomes of cancer screening and cancer treatment; and
- (f) to promote continuous improvement in cancer treatment, outcomes and the quality and safety of health services relating to cancer; and
- (g) to undertake, facilitate and support research relating to cancer and the application of that research; and
- (h) to maintain a register of information collected by the Secretary under this Act.

5 Delegation by Secretary

The Secretary by instrument may delegate any power or function of the Secretary under this Act or the regulations made under this Act, other than this power of delegation, to—

- (a) any employee or class of employees employed under Part 3 of the **Public Administration Act 2004**; or
- (b) any person engaged by the Department in a capacity other than as an employee employed under Part 3 of the **Public Administration Act 2004**.

6 Agreement with service provider

- (1) Subject to subsection (2), the Secretary may enter into an agreement with a service provider to perform any of the functions of the Secretary under this Act.

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Part 2—Administration

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- (2) The Secretary must not enter into an agreement referred to in subsection (1) unless satisfied that the agreement imposes obligations on the service provider relating to the confidentiality, privacy and security of any information to be used or collected that comply with this Act and the Health Privacy Principles.
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**PART 3—COLLECTION, USE AND DISCLOSURE OF
INFORMATION**

Division 1—Collection of information

7 Secretary may collect health information

For the purpose of performing the Secretary's functions under this Act, the Secretary may, in accordance with this Part, collect health information about an individual.

8 Mandatory reporting of cancer screening of a prescribed type

- (1) If an individual undergoes cancer screening of a prescribed type, the prescribed person or organisation must report the cancer screening to the Secretary.
- (2) The report of the cancer screening must—
 - (a) be in the prescribed form; and
 - (b) be made within the prescribed time; and
 - (c) include the prescribed information.

9 Mandatory reporting of diagnosis of cancer of a prescribed type

- (1) If an individual is diagnosed with cancer of a prescribed type, the prescribed person or organisation must report the diagnosis to the Secretary.
- (2) For the purposes of subsection (1), a diagnosis of cancer includes a diagnosis of a recurrence of a cancer or a precursor of a prescribed type.
- (3) The report of a diagnosis of cancer or a precursor must—
 - (a) be in the prescribed form; and
 - (b) be made within the prescribed time; and
 - (c) include the prescribed information.

10 Direction to provide further information

- (1) The Secretary may direct a person or organisation to provide further information in relation to an individual who—
 - (a) has undergone cancer screening of a type prescribed for the purposes of section 8; or
 - (b) has been diagnosed with cancer or a precursor of a type prescribed for the purposes of section 9.
- (2) The Secretary may give a direction under subsection (1)—
 - (a) to resolve any uncertainties, inconsistencies or ambiguities associated with; or
 - (b) to ensure the accuracy, integrity and completeness of—

information provided to the Secretary under section 8 in relation to cancer screening or under section 9 in relation to a cancer diagnosis.
- (3) The Secretary may give a direction under subsection (1) to a person or organisation other than the person who reported the cancer screening or the cancer diagnosis.

11 Authority to collect information about Victorian residents

- (1) The Secretary may collect information about Victorian residents from cancer screening registers and cancer registers maintained in other jurisdictions.

- (2) For the purpose of performing the Secretary's functions under this Act, the Secretary may collect information about Victorian residents from any other source.

Example

The Secretary may collect information from the National HPV Vaccination Program Register.

- (3) Information referred to in subsection (1) or (2) may include personal information or health information about an individual.

12 Protection of persons from whom information is collected

- (1) This section applies to a person or organisation that, in accordance with this Act, provides information that is authorised or required to be provided under this Act.
- (2) The providing of the information—
- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person or organisation; and
 - (b) does not make the person or organisation subject to any liability in respect of it; and
 - (c) does not constitute a contravention of any other Act or law (including common law).

Division 2—Management of collected information

13 Collected information to be held on register or registers

The Secretary must ensure that all information collected under this Act is recorded and maintained on a register or registers.

Division 3—Use and disclosure of information

14 Circumstances in which Secretary may use and disclose health information

- (1) The Secretary may use and disclose health information about an individual collected under this Act for the purpose of performing the Secretary's functions under this Act.
- (2) The Secretary may use and disclose health information collected under this Act about an individual for any other purpose—
 - (a) with the consent of—
 - (i) the individual; or
 - (ii) if the individual is deceased—the individual's legal representative; or
 - (b) if the information is used or disclosed in accordance with HPP 2.2.
- (3) Nothing in this Act prevents the Secretary from using and disclosing information about an individual collected under this Act if the identity of the individual is not apparent, and cannot reasonably be ascertained, from the information.

15 Disclosure of information

- (1) Without limiting section 14(1), the Secretary may disclose information collected under this Act in any of the following circumstances—
 - (a) where the purpose of the disclosure is to enable the recipient of the information—
 - (i) to determine whether a person who has been screened for cancer has cancer, a precursor to cancer, a genetic marker to cancer or cell abnormalities which may lead to the development of cancer; or

- (ii) to provide appropriate follow-up and clinical management of a person who has been screened for cancer;
 - (b) where the information relates to a person who has been screened for cancer in Victoria and the disclosure is to a person or organisation responsible for maintaining or managing a cancer screening register in another jurisdiction;
 - (c) where the information relates to a person who has been diagnosed with cancer in Victoria and the disclosure is to a person or organisation responsible for maintaining or managing a cancer register in another jurisdiction;
 - (d) where the disclosure is to the Australian Institute of Health and Welfare or to a successor in law to that body.
- (2) The disclosure of information by the Secretary under this Division is at the discretion of the Secretary.

16 Fees for provision of information to third parties

- (1) Subject to subsection (2), the Secretary may require a charge to be paid by a third party for the reasonable costs incurred in providing to the third party information collected under this Act.
- (2) The charge required to be paid must not exceed the prescribed amount (if any).

17 Access to health information

Subject to section 16 of the **Health Records Act 2001**, Part 5 of that Act applies to the health information relating to an individual collected by the Secretary under this Act as if the Secretary were an organisation to which that Act applies.

PART 4—CANCER PLAN AND EXPERT GROUPS

18 Minister to prepare cancer plan

- (1) The Minister must prepare a plan that provides a strategic policy framework for cancer in Victoria—
 - (a) no later than 12 months after the commencement of this Act; and
 - (b) every 4 years after the preparation of the first plan.
- (2) A plan prepared under subsection (1) must—
 - (a) report on the status and burden of cancer in Victoria by drawing on the information collected by the Secretary under this Act; and
 - (b) establish Victoria's objectives and policy priorities with respect to cancer; and
 - (c) state how these objectives and policy priorities will be achieved based on available evidence; and
 - (d) specify how the State intends to work with other parties to achieve these objectives and policy priorities.
- (3) The Minister must cause a plan prepared under subsection (1) to be tabled in each House of Parliament within 7 sitting days after its preparation.

19 Minister may establish expert group

- (1) The Minister may, by Order published in the Government Gazette, establish an expert group in respect of cancer.
- (2) An Order under subsection (1) must specify the functions of the expert group.

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- (3) Without limiting subsection (2), the functions of an expert group may include—
- (a) developing best practice clinical guidelines in relation to cancer; and
 - (b) recommending to the Minister that certain research be conducted in relation to that cancer.

20 Members of expert group

The Minister may, by Order published in the Government Gazette, appoint members of an expert group on the terms and conditions specified in the Order.

21 Minister may give direction to expert group

The Minister may give a written direction to an expert group to consider and report on any matter related to cancer specified in the direction.

**PART 5—REGISTRATION OF CANCER COUNCIL
VICTORIA AS COMPANY**

22 Definitions

(1) In this Part—

Anti-Cancer Council of Victoria means the Anti-Cancer Council of Victoria, as established under the **Anti-Cancer Council Act 1936** and continued by the **Cancer Act 1958**;

registration day has the same meaning as in section 5H(1)(b)(i) of the Corporations Act;

specified day means the day specified by the Minister in an Order made under section 24(1).

(2) Words and expressions used in the Corporations Act and this Part have the same meaning in this Part as in the Corporations Act except to the extent that the context or the subject matter otherwise requires.

23 Deemed registration company

For the purposes of section 5H of the Corporations Act—

- (a) the Anti-Cancer Council of Victoria is a deemed registration company; and
- (b) the specified day is the registration day; and
- (c) the Anti-Cancer Council of Victoria is to be registered as a company limited by guarantee; and
- (d) the company's proposed name is "Cancer Council Victoria".

24 Order specifying registration day

- (1) The Minister may, by Order published in the Government Gazette, specify a day on which the Anti-Cancer Council of Victoria is taken to be registered as a company limited by guarantee under the name "Cancer Council Victoria" for the purposes of section 5H of the Corporations Act.
- (2) The Minister must not make an Order under subsection (1) unless satisfied that the Anti-Cancer Council of Victoria has complied with section 5H(2) and (3) of the Corporations Act.
- (3) The Minister must provide ASIC with a copy of an order made under this section as soon as practicable after the making of the Order.
- (4) Failure to provide a copy of the Order to ASIC under subsection (3) does not affect the validity of the Order.

25 Corporate continuity

- (1) On and after the specified day, the deemed registration company that is the Cancer Council Victoria is, despite the change of name, taken to be a continuation of, and the same legal entity as, the Anti-Cancer Council of Victoria.
- (2) Without limiting subsection (1), registration of the Cancer Council Victoria as a company limited by guarantee under the Corporations Act is not taken to affect—
 - (a) the existing rights, property and assets, or debts, liabilities and obligations of the Anti-Cancer Council of Victoria; or
 - (b) any legal proceeding by or against the Anti-Cancer Council of Victoria; or

- (c) the employment, or entitlements as an employee, of a person who was an employee of the Anti-Cancer Council of Victoria immediately before the registration day; or
 - (d) any arrangement, agreement or contract entered into by or on behalf of the Anti-Cancer Council of Victoria as in force immediately before the registration day.
- (3) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to Corporations legislation.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

26 Superseded references

- (1) On and after the registration day, in any Act (other than this Act), subordinate instrument or any other document of any kind, unless the context otherwise requires, a reference to the Anti-Cancer Council of Victoria is taken to be a reference to the Cancer Council Victoria so far as it relates to any period after that date.
- (2) On and after the registration day, each old instrument continues to have effect according to its tenor as if a reference in the instrument to the Anti-Cancer Council of Victoria were a reference to the Cancer Council Victoria.
- (3) Without limiting the effect of subsection (2), on and after the registration day, an instrument creating a trust in relation to the Anti-Cancer Council of Victoria continues to have effect

according to its tenor as if the trust were in relation to the Cancer Council Victoria.

(4) In this section—

old instrument means an instrument subsisting immediately before the registration day—

- (a) to which the Anti-Cancer Council of Victoria was a party; or
- (b) that was given to or in favour of the Anti-Cancer Council of Victoria; or
- (c) that refers to the Anti-Cancer Council of Victoria; or
- (d) under which—
 - (i) money is, or may become, payable to or by the Anti-Cancer Council of Victoria; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the Anti-Cancer Council of Victoria.

27 Member of Anti-Cancer Council of Victoria or committee ceases to hold office

On and after the registration day—

- (a) a person holding office as a member of the Anti-Cancer Council of Victoria ceases to hold that office; and
- (b) a person holding office as a member of a committee of the Anti-Cancer Council of Victoria ceases to hold that office.

PART 6—GENERAL

28 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following—
- (a) the types of cancer screening that must be reported to the Secretary;
 - (b) for a report to the Secretary of a cancer screening of a prescribed type—
 - (i) the person or organisation that must report the cancer screening; and
 - (ii) the form of the report; and
 - (iii) the time in which the report must be provided to the Secretary; and
 - (iv) the information to be included in the report;
 - (c) the types of cancer or precursor for which a diagnosis must be reported to the Secretary;
 - (d) for a report to the Secretary of a diagnosis of cancer or a precursor of a prescribed type—
 - (i) the person or organisation that must report the diagnosis; and
 - (ii) the form of the report; and
 - (iii) the time in which the report must be provided to the Secretary; and
 - (iv) the information to be included in the report;
 - (e) the maximum amount that may be charged by the Secretary to provide information collected by the Secretary under this Act;
 - (f) any thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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- (2) The regulations may—
- (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstances; and
 - (c) confer a discretionary authority or impose a duty on a specified person or class of person; and
 - (d) apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time.
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**PART 7—AMENDMENT AND REPEAL OF CANCER
ACT 1958**

29 Powers and duties of executive committee

After section 13(2) of the **Cancer Act 1958**
insert—

"(3) Despite subsection (1), the executive committee may take any steps required under section 5H(2) and (3) of the Corporations Act to give effect to the registration of the council as a company limited by guarantee under section 5H of that Act, including appointing the persons who are to be directors of the company on registration, without the approval of the members of the council."

30 Repeal of Cancer Act 1958

The **Cancer Act 1958** is repealed.

31 Repeal of this Part

This Part is **repealed** on 1 October 2016.

Note

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

See:
Act No. 6213.
Reprint No. 8
as at
1 January
2009
and
amending
Act Nos
13/2010,
29/2010 and
78/2010.
LawToday:
www.
legislation.
vic.gov.au

PART 8—TRANSITIONAL PROVISIONS

32 Transitional provision—information held on registers taken to have been collected under this Act

- (1) Any information held on a register specified in subsection (2) immediately before the commencement of section 30 is taken to be information collected under this Act and may be included on a register referred to in section 13.
 - (2) For the purposes of subsection (1), the following registers are specified—
 - (a) the cancer register maintained by the Anti-Cancer Council of Victoria, known as the "Victorian Cancer Registry";
 - (b) the Cervical Register maintained by the Victorian Cytology (Gynaecological) Service;
 - (c) the BreastScreen Victoria Registry maintained by Breast Screen Victoria Inc.
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ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 20 August 2014

Legislative Council: 18 September 2014

The long title for the Bill for this Act was "A Bill for an Act to articulate the role and functions of the Secretary to the Department of Health with respect to cancer, to establish a framework for the collection, management, use and disclosure of information relating to cancer, to require the preparation of a plan providing a strategic policy framework for cancer in Victoria, to provide for the registration of the Anti-Cancer Council of Victoria as a company limited by guarantee under the Corporations Act and to repeal the **Cancer Act 1958** and for other purposes."