

Authorised Version No. 015

Veterans Act 2005

No. 98 of 2005

Authorised Version incorporating amendments as at
11 May 2017

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary matters	1
1 Purpose and outline	1
2 Commencement	2
3 Definitions	3
Part 2—The Victorian Veterans Council	6
4 Establishment of the Victorian Veterans Council	6
5 Objectives	6
6 Functions	7
7 Powers	8
8 Members of the Victorian Veterans Council	8
9 Term of office of members	9
10 Conditions	10
11 When a Victorian Veterans Council member ceases to hold office	10
12 Removal from office	11
13 Procedure at meetings	11
14 Disclosure of interests of members	12
15 Validity of decisions	13
16 Acting appointments	14
17 Annual report	15
18 Minister may require information or advice from the Victorian Veterans Council	15
19 Staff	15
Part 3—Victorian Veterans Fund	16
20 Victorian Veterans Fund	16
21 Guidelines for payments from the Victorian Veterans Fund and from the ANZAC Day Proceeds Fund	17
22 Offence to misapply grant from the Victorian Veterans Council	18

<i>Section</i>	<i>Page</i>
Part 4—Patriotic funds	19
Division 1—Preliminary	19
23 What is a patriotic fund?	19
24 Assets of patriotic fund	22
25 Extra-territorial application of this Part	22
26 Advice of the Victorian Veterans Council to the Minister	23
Division 2—General powers of the Director	23
27 Powers of the Director	23
28 Director may refuse approval if trustee ineligible	24
29 Certain persons not to act as trustees	24
30 Powers of delegation	25
31 Director is successor to the Patriotic Funds Council of Victoria	25
32 Further powers	25
Division 3—The operation and administration of patriotic funds	26
33 Approval required to establish patriotic funds and to receive or collect for patriotic fund purposes	26
33A Amendment to trust deed of patriotic fund	31
33B Amalgamation of patriotic funds	32
34 Power to trustees to transfer patriotic fund to other trustees	33
35 Power to trustees to transfer patriotic fund to trustees of charitable trust, a charitable corporation or a Council	34
36 Transfer of patriotic funds outside the State	36
36A Validation of transfers made without prior approval	38
37 Power to Governor in Council to appoint trustee of patriotic fund	39
38 Transfer of surplus moneys in patriotic fund by Governor in Council	41
39 Vesting of patriotic funds in the Victorian Veterans Council in certain cases	42
40 Acts done by trustees prior to transfer of patriotic fund validated	43
41 Expenditure of patriotic funds	44
42 Statement to be supplied by trustees of patriotic funds	47
43 Other statement as to patriotic fund to be provided	48
44 Penalties for neglecting to provide particulars	49
45 Account	49
46 Evidence of what is a patriotic fund	50
47 Director may request accounts to be audited	51
48 Financial institutions to provide certain information to Director	52
49 Court orders concerning patriotic funds that are not functioning properly	53
50 Director may appoint administrator immediately in certain circumstances	55

<i>Section</i>	<i>Page</i>
51 Governor in Council may order patriotic fund to be wound up	55
52 Powers of administrators	57
53 Remuneration of administrator	57
54 Administrator to report to Director	58
55 Obligations of the administrator on completion of winding up	59
56 Liabilities arising from administration	59
57 Revocation of appointment	59
Division 4—Enforcement provisions	60
58 Minister or Director may require information	60
59 Incorporation of Australian Consumer Law and Fair Trading Act 2012 enforcement provisions	61
60 Production of identity card	63
61 Searches to monitor compliance with this Act	63
62 Offence-related searches and seizures	64
63 Occupier to be given copy of consent	65
64 Search warrant	66
65 Announcement before entry	67
66 Copy of warrant to be given to occupier	67
67 Receipt must be given for any thing seized	68
68 Copies of certain seized things to be given	68
69 Use of equipment to examine or process things	69
70 Use or seizure of electronic equipment at premises	69
71 Compensation for damage caused during inspections	71
72 Return of seized things	71
73 Court may extend period	72
74 Power of inspector to require information or documents	72
75 Protection against self-incrimination	73
76 Offence to hinder or obstruct inspector	73
77 Offence to impersonate inspector	73
78 Entry to be reported to the Director	74
79 Register of exercise of powers of entry	74
80 Complaints	74
81 Disclosure of information	74
Division 5—Miscellaneous matters	75
82 Review of Director's decisions	75
83 Director's report	76
84 Persons who are liable for offences	76
85 Repeal	76
Part 5—General	78
86 Regulations	78

<i>Section</i>	<i>Page</i>
Endnotes	80
1 General information	80
2 Table of Amendments	82
3 Amendments Not in Operation	83
4 Explanatory details	84

Authorised Version No. 015

Veterans Act 2005

No. 98 of 2005

Authorised Version incorporating amendments as at
11 May 2017

The Parliament of Victoria enacts as follows:

Part 1—Preliminary matters

1 Purpose and outline

- (1) The purpose of this Act is to—
- (a) establish the Victorian Veterans Council and the Victorian Veterans Fund;
 - (b) re-enact the **Patriotic Funds Act 1958** with amendments to—
 - (i) abolish the Patriotic Funds Council of Victoria;
 - (ii) confer the regulatory powers of the Patriotic Funds Council of Victoria in relation to patriotic funds on the Director of Consumer Affairs Victoria;
 - (iii) improve the administration of patriotic funds;
 - (iv) simplify the provisions relating to the regulation of patriotic funds;
 - (c) repeal the **Patriotic Funds Act 1958**, the **Defence Reserves Re-Employment Act 1995** and the **Discharged Servicemen's Preference Act 1943**;
 - (d) make minor amendments to the **ANZAC Day Act 1958**, the **Fair Trading Act 1999**, the **Fundraising Appeals Act 1998**, the

**Gambling Regulation Act 2003 and the
Shrine of Remembrance Act 1978.**

- (2) In outline this Act—
- (a) creates the Victorian Veterans Council to promote issues of concern to veterans and to advise the Government of Victoria in relation to such issues;
 - (b) provides that the ex-service community are to make up the majority of the membership of the Victorian Veterans Council;
 - (c) creates a Victorian Veterans Fund to provide a source of funds to support educational and commemorative activities related to Australia's war and service history;
 - (d) shifts responsibility for the regulation of patriotic funds from the Patriotic Funds Council of Victoria to the Director of Consumer Affairs Victoria;
 - (e) shifts the regulation of patriotic funds to this Act.

2 Commencement

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Sections 20 and 89 come into operation on 1 January 2006.
- (3) Subject to subsection (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision of this Act does not come into operation before 1 February 2007, it comes into operation on that day.

3 Definitions

(1) In this Act—

ANZAC Day Proceeds Fund means the Fund established under section 4A of the **ANZAC Day Act 1958**;

assets, in relation to a patriotic fund, includes money, securities and real and personal property;

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth;

Director means the Director within the meaning of the **Australian Consumer Law and Fair Trading Act 2012**;

S. 3(1) def. of *Director* amended by No. 21/2012 s. 239(Sch. 6 item 45.1).

ex-service community means all veterans, all surviving partners of veterans and all dependants of veterans;

inspector means an inspector appointed under the **Australian Consumer Law and Fair Trading Act 2012**;

S. 3(1) def. of *inspector* amended by No. 21/2012 s. 239(Sch. 6 item 45.2).

patriotic fund has the meaning given by section 23;

person includes a body or association (corporate or unincorporate) and a partnership;

prescribed means prescribed by the regulations;

regulations means regulations made under this Act;

service or duty means—

- (a) any naval, military or air service in any proclaimed war; or
- (b) any special defence undertaking within the meaning of section 6 of the Defence (Special Undertakings) Act 1952 of the Commonwealth; or
- (c) any peacetime activities, including peace keeping activities; or
- (d) any training activities, including activities conducted in conditions simulating war or war-like activities—

engaged in by an officer or a member of the naval, military or air forces of Her Majesty or of the Commonwealth of Australia or of any of the naval, military or air forces of Her Majesty's allies that are authorised expressly or impliedly or are incidental to the scope of service or duty of the officer or member;

transfer includes convey;

trustee in the case of any patriotic fund, includes every person for the time being exercising control either solely or jointly with any other person over the patriotic fund;

veteran means a person who performed service or duty and who now resides in Victoria but does not include current members of the Australian Defence Force rendering continuous full time service;

Victorian Veterans Council means the Council established by section 4;

Victorian Veterans Fund means the Fund established by section 20.

- (2) In this Act, "any proclaimed war" is considered and taken to refer to any war or hostilities or special assignment—
- (a) in which any of the naval, military or air forces of Her Majesty or of the Commonwealth of Australia have been, are, or may be, engaged; and
 - (b) which is specified for the purposes of this Act by Order of the Governor in Council published in the Government Gazette.
- (3) Any proclaimed war specified by a proclamation under the **Patriotic Funds Act 1958** which is in force immediately before the commencement of section 85 is deemed to be a proclaimed war for the purposes of this Act.
- (4) In this Act, the expressions *Her Majesty's naval, military or air forces* and *the naval, military and air forces of Her Majesty* and similar expressions mean the naval, military or air forces of any nation, dominion or colony of which Her Majesty or a predecessor or successor of Her Majesty is or was sovereign.

Part 2—The Victorian Veterans Council

4 Establishment of the Victorian Veterans Council

- (1) There is established a body corporate called the Victorian Veterans Council.
- (2) The Victorian Veterans Council—
 - (a) has perpetual succession;
 - (b) is capable of acquiring, holding and disposing of property;
 - (c) may sue and be sued in its corporate name;
 - (d) has a common seal;
 - (e) subject to this Act, may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the Victorian Veterans Council can only be used in a way approved by the Victorian Veterans Council.
- (4) All courts and people acting judicially must take judicial notice of the common seal of the Victorian Veterans Council.

Note

The Victorian Veterans Council is a public entity within the meaning of section 5 of the **Public Administration Act 2004** and will be subject to Part 5 of that Act.

5 Objectives

The objectives of the Victorian Veterans Council are to—

- (a) promote the wellbeing of all members of the Victorian ex-service community;
- (b) promote the commemoration of those who have died in the performance of service or duty;

- (c) develop a better understanding amongst Victorians of the participation and sacrifice of Victoria's veterans in war and peacekeeping operations, and the contributions of Victoria's ex-service community;
- (d) actively promote the significance of, and the key values associated with, the spirit of ANZAC;
- (e) promote cooperation and collaboration across organisations dealing with veterans' welfare and other ex-service community issues, including with the trustees of the Shrine of Remembrance.

6 Functions

The functions of the Victorian Veterans Council are to—

- (a) ensure that the objectives of the Victorian Veterans Council are met to the maximum extent that is practicable;
- (b) monitor and advise the Minister on issues affecting Victoria's ex-service community;
- (c) investigate and report on any aspect of veterans affairs referred to it by the Minister;
- (d) consult with the ex-service community when developing advice for the Minister;
- (e) support the welfare activities of ex-service organisations through the ANZAC Day Proceeds Fund;
- (f) fund activities furthering its objectives through the Victorian Veterans Fund;
- (g) advise the Minister administering Part 4 or the Director on matters in relation to the regulation of patriotic funds under Part 4.

7 Powers

The Victorian Veterans Council may do all things that are necessary or convenient to enable it to carry out its functions.

8 Members of the Victorian Veterans Council

- (1) The Victorian Veterans Council is to have 11 members.
- (2) The members of the Victorian Veterans Council are to be appointed by the Governor in Council on the recommendation of the Minister.
- (3) The Governor in Council, on the recommendation of the Minister, must appoint one member of the Victorian Veterans Council to be the Chairperson and another member to be the Deputy Chairperson.
- (4) The Chairperson and the Deputy Chairperson are to be veterans.
- (5) At least 6 members of the Victorian Veterans Council (not including the Chairperson and Deputy Chairperson) are to be members of the ex-service community or an ex-service organisation as specified in subsection (6), (7) or (8).
- (6) One member of the Victorian Veterans Council is to be a member of the Returned and Services League of Australia (Victoria Branch) Inc. ABN 85 107 546 293 recommended to the Minister by that organisation.
- (7) One member of the Victorian Veterans Council is to be a member of the Legacy Club of Melbourne Inc. ABN 78 043 769 632 recommended to the Minister by that organisation.

- (8) Four members of the Victorian Veterans Council are to be members of the ex-service community recommended to the Minister by other ex-service organisations.
- (9) For the purposes of subsection (8), the Minister may request or invite (whether generally or specifically) other ex-service organisations to nominate the names of persons for the consideration of the Minister.
- (10) The members appointed under subsections (4), (5), (6), (7) and (8), must, in the opinion of the Minister, have skills, experience or knowledge in some or all of the areas of veterans' welfare, aged care, patriotic funds, commemoration and the needs of veterans' surviving partners and dependants.
- (11) Three members of the Victorian Veterans Council, other than members appointed under subsections (4), (5), (6), (7) and (8), are to be people who, in the opinion of the Minister, have other appropriate skills to enable the Victorian Veterans Council to achieve its objectives and perform its functions.

9 Term of office of members

The Governor in Council may—

- (a) appoint a person to be a Victorian Veterans Council member for a period of up to 3 years;
- (b) re-appoint a person to be a Victorian Veterans Council member for a second or third term;
- (c) not re-appoint a person to be a Victorian Veterans Council member to a fourth term (regardless of the length of the first 3 terms and regardless of whether those terms were served consecutively or not).

10 Conditions

A Victorian Veterans Council member—

S. 10(a)
substituted by
No. 80/2006
s. 26(Sch.
item 106).

- (a) is, in respect of his or her office as a member, subject to the **Public Administration Act 2004** (other than Part 3 of that Act);
- (b) holds office on the terms and conditions specified in his or her instrument of appointment;
- (c) is entitled to the remuneration and allowances fixed by the Governor in Council from time to time.

11 When a Victorian Veterans Council member ceases to hold office

- (1) A person ceases to be a Victorian Veterans Council member—
 - (a) at the expiry of his or her term of office; or
 - (b) if he or she resigns in accordance with subsection (2); or
 - (c) if he or she is removed from office under section 12; or
 - (d) if he or she becomes bankrupt; or
 - (e) if he or she is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (f) if, without the approval of the Victorian Veterans Council or the Chairperson of the Victorian Veterans Council, he or she fails to attend 3 consecutive meetings of the Victorian Veterans Council of which he or she has received notice; or

- (g) in the case of a member who was recommended for appointment as a member of an ex-service organisation, if he or she ceases to be a member of that organisation.
- (2) A person may resign his or her office as a Victorian Veterans Council member by writing delivered to the Minister.

12 Removal from office

- (1) The Governor in Council may at any time remove a Victorian Veterans Council member from office.
- (2) The Governor in Council must remove a person from office as a Victorian Veterans Council member if the person—
 - (a) is convicted of an offence relating to his or her duties as a Victorian Veterans Council member; or
 - (b) fails without reasonable cause to disclose any interest under section 14.

13 Procedure at meetings

- (1) The Chairperson, or in his or her absence, the Deputy Chairperson, or in the absence of both the Chairperson and Deputy Chairperson, a member of the Victorian Veterans Council elected by the members present at the meeting, must preside at a meeting of the Victorian Veterans Council.
- (2) A matter cannot be decided at a meeting of the Victorian Veterans Council unless at least 6 members of the Victorian Veterans Council are present.
- (3) The decision on a question of the majority of the members present and voting on the question is the decision of the Victorian Veterans Council.

- (4) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
- (5) The person presiding at a meeting must ensure that the decisions made at the meeting are recorded in writing.
- (6) The Victorian Veterans Council must meet at least 8 times each year.
- (7) The Victorian Veterans Council may establish one or more committees of members.
- (8) The Victorian Veterans Council may by instrument of delegation delegate any of its functions or powers, other than this power of delegation, to a member of a committee.
- (9) Subject to this Act, the Victorian Veterans Council may otherwise regulate its own procedure.

14 Disclosure of interests of members

- (1) A Victorian Veterans Council member who has a direct or an indirect pecuniary interest in any matter being considered, or about to be considered, by the Victorian Veterans Council must disclose the nature of that interest at a meeting of the Victorian Veterans Council as soon as possible after becoming aware of the relevant facts.
- (2) A Victorian Veterans Council member who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with his or her duties as a Victorian Veterans Council member, must disclose that fact at a meeting of the Victorian Veterans Council as soon as possible after becoming aware of the potential conflict.

- (3) If a disclosure made under subsection (1) or (2) relates to a pecuniary interest, subsection (5) applies.
- (4) If a disclosure made under subsection (1) or (2) is not pecuniary in nature, subsection (6) applies.
- (5) If a disclosure made under this section is pecuniary in nature, the person who has made the disclosure must not take any further part in the discussion of, or vote on, the contract, grant or other matter to which the disclosure relates.
- (6) If the disclosure made by a person under this section relates to an interest that is not pecuniary in nature, the other members of the Victorian Veterans Council must determine whether or not to allow the person to take further part in the discussion of, or vote on, the contract, grant or other matter to which the disclosure relates.
- (7) The person presiding at a meeting at which a disclosure under this section is made must ensure that the following details of the disclosure are recorded in the minutes of the meeting—
 - (a) the nature of the disclosure; and
 - (b) details of any determination made under subsection (6); and
 - (c) the full details of who voted on any matter in respect of which the disclosure was made.
- (8) If a Victorian Veterans Council member votes on a matter in contravention of this section, his or her vote must be disallowed.

15 Validity of decisions

- (1) An act or decision of the Victorian Veterans Council is not invalid merely because—
 - (a) of a vacancy in the membership of the Victorian Veterans Council; or

- (b) of a defect or irregularity in, or in connection with, the appointment of a member of the Victorian Veterans Council.
- (2) Anything done by or in relation to a person purporting to act as a member of the Victorian Veterans Council is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

16 Acting appointments

- (1) When—
- (a) the office of Chairperson is vacant; or
 - (b) the Chairperson is absent from Victoria or is unable, for any reason, to perform the duties of the office—
- the Deputy Chairperson must act as Chairperson.
- (2) While the Deputy Chairperson is acting as Chairperson, he or she has and may exercise all the powers, and must perform all the duties, of the Chairperson.
- (3) The Minister may appoint a member to act as Deputy Chairperson—
- (a) during a vacancy in the office of Deputy Chairperson; or
 - (b) during any period, or during all periods, when the Deputy Chairperson is acting as Chairperson or is unable, for any reason, to perform the duties of the Deputy Chairperson.

- (4) The Minister may appoint a person who is qualified to be a member to act as a member (other than the Chairperson or Deputy Chairperson) during any period, or during all periods, when a member is acting as Deputy Chairperson or is unable, for any reason, to perform the duties of office.

17 Annual report

The Victorian Veterans Council must include—

- (a) information about the uses of the ANZAC Day Proceeds Fund and the Victorian Veterans Fund; and
- (b) any information specifically requested in writing by the Minister—

during the financial year in the relevant annual report of operations under Part 7 of the **Financial Management Act 1994**.

18 Minister may require information or advice from the Victorian Veterans Council

- (1) The Minister may at any time require the Victorian Veterans Council to provide the Minister with—
 - (a) any information concerning the Victorian Veterans Council that the Minister requires (including financial reports); and
 - (b) any advice that the Minister requires.
- (2) The Victorian Veterans Council must comply with any requirement within the time specified by the Minister.

19 Staff

Any employees that are necessary to enable the Victorian Veterans Council to perform its functions under this Act may be employed under Part 3 of the **Public Administration Act 2004**.

Part 3—Victorian Veterans Fund

20 Victorian Veterans Fund

- (1) There shall be kept in the Trust Fund under the **Financial Management Act 1994** an account to be called the "Victorian Veterans Fund".
- (2) There must be paid into the Victorian Veterans Fund—
 - (a) all donations and bequests made to the Victorian Veterans Fund;
 - (b) any other money that is authorised to be paid into the Victorian Veterans Fund under any Act;
 - (c) money appropriated by Parliament for the purposes of the Victorian Veterans Fund;
 - (d) any money that is transferred into the Victorian Veterans Fund under Part 4;
 - (e) income from the investment of any part of the Victorian Veterans Fund.
- (3) There may be paid out of the Victorian Veterans Fund for any of the following purposes any amount determined by the Victorian Veterans Council—
 - (a) to educate Victorians about Victoria's involvement in Australia's war and service history (including conflicts, peacemaking and peacekeeping);
 - (b) to honour or commemorate the service or sacrifice of veterans;

- (c) to assist the education of veterans' dependants;
 - (d) any other purpose agreed in writing by the Minister.
- (4) The Victorian Veterans Council may invest any part of the Victorian Veterans Fund not immediately required for the purposes of the Victorian Veterans Fund in any manner approved by the Treasurer.

21 Guidelines for payments from the Victorian Veterans Fund and from the ANZAC Day Proceeds Fund

- (1) The Victorian Veterans Council must—
- (a) develop guidelines concerning payments from—
 - (i) the Victorian Veterans Fund; and
 - (ii) the ANZAC Day Proceeds Fund; and
 - (b) submit those guidelines to the Minister for approval.
- (2) Without limiting what the guidelines may contain, the guidelines must set out the application and assessment processes and criteria for grants from the Victorian Veterans Fund and from the ANZAC Day Proceeds Fund.
- (3) The Victorian Veterans Council may amend the guidelines from time to time by submitting the proposed amendments to the Minister for approval.
- (4) The Victorian Veterans Council must publish any guidelines, and any amendments to the guidelines, that have been approved by the Minister.

22 Offence to misapply grant from the Victorian Veterans Council

- (1) A person who receives any money or other property from the Victorian Veterans Council for a specified purpose must not knowingly use that money or property for a purpose other than that for which it was received.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum) or level 6 fine (600 penalty units maximum) or both.

Part 4—Patriotic funds

Division 1—Preliminary

23 What is a patriotic fund?

- (1) For the purposes of this Act, a patriotic fund means any fund (including all money and securities for money and all property, real or personal, in or forming part of, that fund) raised wholly or in part—
- (a) by private or public subscriptions, collections or contributions; or
 - (b) by carnivals, fetes, entertainments or any other means (whether of the like nature or not) for raising money—

for any purpose in connection with any service or duty as an officer or a member of the naval, military or air forces of Her Majesty or of the Commonwealth of Australia or of any of the naval, military or air forces of Her Majesty's allies.

- (2) A purpose under subsection (1) includes, but is not limited to, any purpose—
- (a) for the relief of distress occasioned by any service or duty whether in Victoria or elsewhere in the British dominions or in the territory of any of Her Majesty's allies, whether that territory is in enemy occupation or not;
 - (b) for the equipment in whole or in part of any portion of Her Majesty's naval, military or air forces or of the naval, military or air forces of the Commonwealth of Australia including the equipment of any ambulance, hospital or hospital ship;

S. 23(2)(d)
substituted by
No. 13/2017
s. 23(a).

- (c) for the supply of comforts or conveniences to officers and members of those forces;
- (d) for the relief, assistance or support of officers and members (including officers whose appointments have been terminated and members who have been discharged) of—
 - (i) those forces; or
 - (ii) any naval, military or air forces of Her Majesty's allies; or
 - (iii) any force or service of men or women (including nursing services) auxiliary to any of the forces referred to in subparagraphs (i) and (ii) who are sick, wounded, disabled, unemployed or in necessitous circumstances;

S. 23(2)(e)
amended by
No. 13/2017
s. 23(b).

- (e) for the relief, assistance or support of the dependants of officers or members specified in paragraph (d);
- (f) for the—
 - (i) purchase or lease of land and the erection on the land of a hall or clubrooms;
 - (ii) purchase or lease of land where a hall or clubrooms are situated;
 - (iii) alteration, renovation, furnishing and equipment of a hall or clubrooms;
 - (iv) maintenance and repair of a hall or clubrooms and its furniture and equipment and the surrounding grounds—

so that the hall or clubrooms may be used by, and for the benefit of, members of an organisation of persons who have been or are

officers or members of the forces or supporting forces specified in paragraph (d) for whom the organisation has been set up.

- (3) A patriotic fund includes—
- (a) any fund declared by the Governor in Council to be a patriotic fund; and
 - (b) any fund of a class of fund declared by the Governor in Council to be a patriotic fund.
- (4) A patriotic fund does not include—
- (a) the fund or any part of the fund of the Australian Red Cross Society;
 - (b) any fund raised for the purpose of commemorating any event of any proclaimed war or of any person, class of person or body of persons who served, took part or suffered in any proclaimed war but which is not applied or intended to be applied for any of the purposes specified in subsection (2).
- (5) Any fund raised wholly or in part in any manner referred to in subsection (2) is a patriotic fund for the purposes of this Act notwithstanding that there may have been in the donors of the fund a general charitable intention extending beyond those purposes.
- (6) A patriotic fund established before the commencement of section 4 of the **Patriotic Funds (Amendment) Act 1998** may be applied for any purpose in connection with any service or duty.

Note

Section 4 of the **Patriotic Funds (Amendment) Act 1998** came into operation on 1 December 1998.

- (7) A reference to a trust deed in relation to a patriotic fund in this Act includes a reference to any document that sets out any of the terms governing the operation of the patriotic fund.
- (8) For the purposes of this Act, a reference to any subscription in relation to a fund does not include a subscription paid by a person to a trustee or organisation in respect of their membership of the organisation.

24 Assets of patriotic fund

- (1) Without limiting the definition of *assets* in section 3(1), the assets of a patriotic fund include—
 - (a) any hall, clubroom or other building purchased by a trustee of the patriotic fund wholly or partly from money in the patriotic fund; or
 - (b) any lease of a hall, clubroom or other building, payments under which have been made from money in a patriotic fund.
- (2) An asset referred to in subsection (1) is to be dealt with in the same way as money or property in or forming part of a patriotic fund.
- (3) Subsection (1) applies to any hall, clubroom or other building purchased or leased by a trustee before the commencement of section 5 of the **Patriotic Funds (Amendment) Act 1998**.

Note

Section 5 of the **Patriotic Funds (Amendment) Act 1998** came into operation on 1 December 1998.

25 Extra-territorial application of this Part

- (1) This Part applies within and outside Victoria.
- (2) This Part applies outside Victoria to the full extent of the extra-territorial legislative power of the Parliament.

26 Advice of the Victorian Veterans Council to the Minister

- (1) Where a provision of this Part expressly requires the Minister to make a recommendation to the Governor in Council in respect of any of the matters under this Part, the Minister must consult with, and have regard to, the advice of the Victorian Veterans Council.
- (2) The Victorian Veterans Council must provide the Minister with the advice sought under subsection (1) within 30 days of being consulted by the Minister or, if the Minister requests an earlier date, by that date.
- (3) If the Victorian Veterans Council does not provide the Minister with the advice referred to in subsection (2) within 30 days or by the date requested by the Minister, the Minister may act without receiving that advice.
- (4) The Minister may seek the advice of the Victorian Veterans Council in relation to the transfer outside the State of assets forming part of a patriotic fund that may be approved by the Minister under section 36(5)(b).

S. 26
(Heading)
substituted by
No. 12/2015
s. 3(1).

S. 26(3)
amended by
No. 12/2015
s. 3(2).

S. 26(4)
inserted by
No. 12/2015
s. 3(3).

Division 2—General powers of the Director

27 Powers of the Director

- (1) The Director may—
 - (a) approve the establishment of a patriotic fund;
 - (b) assist in the administration of a patriotic fund.
- (2) The Director may seek the advice of the Victorian Veterans Council in relation to any matter concerning the administration of this Part.

28 Director may refuse approval if trustee ineligible

- (1) The Director may refuse to approve the establishment of a patriotic fund if the Director is of the opinion that a proposed trustee of the fund is ineligible to be a trustee of the fund.
- (2) This section does not limit the power conferred by section 27(1)(a) on the Director.

29 Certain persons not to act as trustees

- (1) A natural person is ineligible to be the trustee of a patriotic fund if—
 - (a) the person is not fit to act, or is incapable of acting, as a trustee (including for reasons of mental or physical infirmity); or
 - (b) the person is bankrupt; or
 - (c) the person has been convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (d) there is in force a finding by the Magistrates' Court that the person is not eligible to be a trustee of a patriotic fund because paragraph (a) applies to the person.
- (2) A body corporate is ineligible to be the trustee of a patriotic fund if—
 - (a) it is an externally administered corporation; or
 - (b) it has been convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) subsection (1)(a), (1)(b) or (1)(c) apply to a person who is a Director of, or otherwise responsible for the management of, the body corporate; or

- (d) there is in force a finding by the Magistrates' Court that the body corporate is not eligible to be a trustee of a patriotic fund because paragraph (c) applies to the body corporate.
- (3) At any time the Director may refer to the Magistrates' Court the question as to whether a person is eligible to be a trustee of a patriotic fund.
- (4) The Magistrates' Court must not make a finding that a person is ineligible to be a trustee of a patriotic fund unless the person has been given an opportunity to be represented in the proceedings in relation to the question.

30 Powers of delegation

The Director may, by instrument, delegate to any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Part, any of the Director's functions or powers under this Act, other than this power of delegation.

31 Director is successor to the Patriotic Funds Council of Victoria

- (1) The Director is the successor in law to the Patriotic Funds Council of Victoria.
- (2) Despite subsection (1), if, immediately before the commencement of section 85 of the **Veterans Act 2005** the Patriotic Funds Council of Victoria was a trustee of any patriotic fund or other trust, the Victorian Veterans Council becomes that trustee by operation of this subsection.

32 Further powers

- (1) The Director may—
 - (a) regulate and control subscriptions, collections, contributions or donations to any patriotic fund;

- (b) by any means as to the Director seem fit, ensure the proper administration, distribution or disposal of subscriptions, collections, contributions and donations to any patriotic fund;
 - (c) control all trustees of and all persons soliciting or receiving subscriptions, collections, contributions or donations to any patriotic fund;
 - (d) approve the transfer of a patriotic fund or any portion of a patriotic fund by the trustees of the patriotic fund to the trustees of any other patriotic fund.
- (2) The Director—
- (a) may make guidelines with respect to the administration of this Act and the administration of patriotic funds; and
 - (b) must publish the guidelines.

Division 3—The operation and administration of patriotic funds

33 Approval required to establish patriotic funds and to receive or collect for patriotic fund purposes

- (1) Except with the approval of the Director, a person must not—
 - (a) establish any patriotic fund; or
 - (b) solicit or receive subscriptions, collections, contributions or donations or raise or endeavour to raise money by a carnival, fete or entertainment or any other means (whether of the like nature or not) for raising money—
 - (i) in aid of any patriotic fund; or

- (ii) for any purpose in connection with any service or duty whether that purpose is expressly referred to in this Act or not and whether or not the whole or part only of the subscriptions, collections, contributions, donations, money or proceeds are devoted or are intended to be devoted to any of those purposes.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

- (2) A person may make an application in writing to the Director for approval to establish a patriotic fund.
- (3) An application under subsection (2) must specify—
 - (a) the proposed name of the patriotic fund;
 - (b) the proposed objects of the patriotic fund;
 - (c) the name, address and description of each proposed trustee of the patriotic fund;
 - (d) the name, address and description of proposed administrative officers (if any) of the patriotic fund;
 - (e) the name of every authorised deposit-taking institution at which it is proposed that any account of the patriotic fund will be kept;
 - (f) any other prescribed particulars.
- (4) The Director may approve an application under subsection (2) to establish a patriotic fund by notice in writing to the person that made the application.

- (5) Any approval in writing under subsection (4) may, before the patriotic fund is established, be cancelled by the Director by notice in writing to the person to whom the approval was given.
- (6) The Director may by notice in writing to—
- (a) the secretary of the patriotic fund; or
 - (b) an administrative officer of the patriotic fund; or
 - (c) the person who was sent the written approval—
- cancel any written approval given for the purposes of subsection (1)(b).
- (7) For the purposes of this section, an approval given by the Patriotic Funds Council of Victoria is to be taken to have been given by the Director.
- (8) If a fund which is a patriotic fund has been established without the approval of the Director, the Director may give written approval to the continuation of the patriotic fund after the trustees apply in writing to the Director.
- (9) An application under subsection (8) must specify—
- (a) the name of the fund;
 - (b) the date of the establishment of the fund;
 - (c) the objects of the fund;
 - (d) the name, address and description of each trustee of the fund;
 - (e) the name, address and description of administrative officers (if any) of the fund;

- (f) the name of every authorised deposit-taking institution at which any account of the fund is kept;
 - (g) any other prescribed particulars.
- (10) A trustee of a fund referred to in subsection (8) must, after being required by notice in writing by the Director, apply in writing to the Director for approval to continue the administration of the fund within 1 month of receiving the notice.
- Penalty: In the case of a natural person,
120 penalty units;
- In the case of a body corporate,
240 penalty units.
- (11) Subject to subsection (12), if the trustees of a fund have been given approval to continue the administration of the patriotic fund—
- (a) all acts, matters and things done; and
 - (b) all payments made by the trustees of the fund or in or for the purposes of executing the trust of the fund—
- that occurred immediately before that approval was given are valid and effectual for all purposes as if approval had been given to establish the fund as a patriotic fund.
- (12) Subsection (11) does not exempt any trustee from civil or criminal liability for any breach of trust or other unlawful act, whether by omission or commission, for which the trustee was legally responsible before the approval was given.

(13) An approval for the establishment or continuation of the administration of a patriotic fund may be given subject to conditions.

(14) A trustee of a patriotic fund, in administering the patriotic fund, must comply with any conditions given under subsection (13).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

(15) A person must not establish or solicit or receive subscriptions, collections, contributions or donations for or to any fund—

(a) that is not a patriotic fund within the meaning of section 23; and

(b) that is known by any name or style or publicly advertised in any manner which states, implies or suggests that it is a patriotic fund or a fund for any of the purposes referred to in section 23(2).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

(16) Without affecting the generality of subsection (15), a person must not establish, or solicit or receive subscriptions, collections, contributions or donations for or to any fund—

(a) that is not a patriotic fund within the meaning of section 23; and

- (b) that is known by any name or style or publicly advertised in any manner—
 - (i) that states, implies or suggests that the purpose of the fund is to commemorate any event of any proclaimed war or any person or persons or body or class of persons who served or took part or suffered in any proclaimed war; and
 - (ii) that does not clearly indicate that the fund will be applied for some purpose or purposes other than those specified in section 23(2).

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

33A Amendment to trust deed of patriotic fund

- (1) Subject to subsection (2), on the written application of the trustees of a patriotic fund, the Director may approve—
 - (a) the amendment of the trust deed of the patriotic fund; or
 - (b) the adoption of a new trust deed of the patriotic fund.
- (2) The Director must not approve the amendment of a trust deed or the adoption of a new trust deed unless the amendment or the new trust deed (as the case may be) is consistent with the purposes of a patriotic fund set out in section 23.
- (3) On the approval by the Director under subsection (1), a trust deed has effect as amended or adopted.

S. 33A
inserted by
No. 12/2015
s. 4.

S. 33A(2)
amended by
No. 13/2017
s. 24.

S. 33B
inserted by
No. 12/2015
s. 4.

33B Amalgamation of patriotic funds

- (1) The trustees of two or more patriotic funds may apply to the Director for approval to be amalgamated as a single patriotic fund.
- (2) An application under subsection (1) must be in writing and include—
 - (a) for each of the patriotic funds proposing to be amalgamated—
 - (i) the details required to be specified under section 33(9); and
 - (ii) a schedule of assets held by the patriotic fund; and
 - (b) for the patriotic fund to be formed on the proposed amalgamation—the details required to be specified under section 33(3); and
 - (c) any other prescribed particulars.
- (3) The Director may approve an application under subsection (1) to amalgamate two or more patriotic funds as a single patriotic fund by notice in writing to the trustees of each of the patriotic funds that applied for the amalgamation.
- (4) On the amalgamation of two or more patriotic funds (the *amalgamating funds*) under this section—
 - (a) a new patriotic fund is established with the details referred to in subsection (2)(b) applying to that patriotic fund; and
 - (b) the amalgamating funds are subsumed into that new patriotic fund; and
 - (c) the property of each amalgamating fund vests in the trustees of the new patriotic fund—

- (i) to be held subject to the objects of the new patriotic fund; and
 - (ii) by force of this provision, without the necessity for any conveyance, transfer or assignment.
- (5) Any property vested in the trustees of a patriotic fund by reason of subsection (4)(c) vests subject to any restriction, limitation, mortgage, charge, security interest, encumbrance, lien, lease, covenant, contract or liability to which the property was subject immediately before it was vested by reason of subsection (4)(c).
- (6) A reference in a will to a patriotic fund that has amalgamated under this section must, unless the will otherwise provides, be construed as a reference to the patriotic fund formed by the amalgamation.

34 Power to trustees to transfer patriotic fund to other trustees

- (1) Subject to subsection (3), if the trustees of a patriotic fund propose to transfer all or any of the assets of the patriotic fund to the trustees of another patriotic fund, the trustees must obtain the approval of the Director before making the transfer.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

- (2) Subsection (3) applies if—
- (a) an amount being the value of the assets is prescribed; and

- (b) the trustees of a patriotic fund propose to transfer all or any of the assets of the patriotic fund to the trustees of another patriotic fund and the value of the assets to be transferred is less than the amount prescribed.
- (3) If this subsection applies, subsection (1) does not apply but the trustees must notify the Director of the transfer within 28 days of the transfer taking place.
- Penalty: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
240 penalty units.
- (4) Any asset that is transferred under this section vests in the trustees of the other patriotic fund to be held and applied by the trustees accordingly.
- (5) The receipt or acknowledgment of a person authorised by the relevant trustees to sign receipts or acknowledgments on behalf of the trustees is a sufficient discharge to the persons transferring any assets under this section.
- (6) Upon receiving a receipt or acknowledgment under subsection (5), the persons transferring the assets are not bound to see to the application, distribution, appropriation or use of those assets.

35 Power to trustees to transfer patriotic fund to trustees of charitable trust, a charitable corporation or a Council

- (1) This section applies if in the opinion of the trustees of a patriotic fund it would more successfully accomplish the purposes for which the patriotic fund was established if all or any of the assets of the patriotic fund were transferred to—

- (a) the trustees of any other fund or property held on trust for any charitable purpose; or
 - (b) any corporation having any charitable objects; or
 - (c) a Council exercising or proposing to exercise any power for the relief, assistance or support of any class of persons in special need of help or for any other public purpose.
- (2) If this section applies, the trustees may, with the approval of the Governor in Council, on the recommendation of the Minister, transfer the assets to—
- (a) the trustees of the other fund or property to be held by them upon the same trusts as the other fund or property; or
 - (b) the corporation to be applied to its charitable objects; or
 - (c) the Council to be applied for the relief, assistance or support of any class of persons in special need of help or for any other public purpose; or
 - (d) the trustees of the other fund or property or to the corporation or to the Council to be held by the trustees, corporation or Council upon the trusts as are specified by the Governor in Council.
- (3) The assets so transferred vest in the trustees of the other fund or property or in the corporation or the Council to be held and applied by the trustees or the corporation or the Council accordingly.
- (4) The receipt or acknowledgment of a person authorised by the trustees, corporation or Council to sign receipts or acknowledgments on their or its behalf is a sufficient discharge to the persons transferring any assets under this section.

- (5) Upon receiving the receipt or acknowledgment under subsection (4), the persons transferring the assets are not bound to see to the application, distribution, appropriation or use of those assets.
- (6) Despite subsection (2), the trustees of a patriotic fund may, without the approval of the Governor in Council, transfer assets forming part of the patriotic fund to the trustees, corporation or Council referred to in subsection (2) if—
- (a) the value of the assets does not exceed—
 - (i) the amount prescribed in any prescribed period of time for the purposes of this subsection; or
 - (ii) if no amount is prescribed, \$50 000 in any 6 month period; and
 - (b) the approval of the Director is obtained.

- (7) In this section—

Council means a Council within the meaning of the **Local Government Act 1989**;

public purpose means any purpose for the promotion of the community welfare generally and includes any sporting or recreational purpose.

36 Transfer of patriotic funds outside the State

- (1) The trustees of any patriotic fund may with the approval of the Governor in Council, on the recommendation of the Minister, transfer all or any of the assets of the patriotic fund to—
- (a) the trustees of a patriotic fund, or of a fund equivalent to a patriotic fund constituted under the law of the Commonwealth or of any other State or Territory of the Commonwealth; or

- (b) the trustees of any other fund or property held on trust for any charitable purpose established in any other State or Territory of the Commonwealth; or
 - (c) any corporation having charitable objects incorporated under the law of the Commonwealth or of any other State or Territory of the Commonwealth.
- (2) The assets so transferred vest in the trustees of the other patriotic fund, fund or property held on trust for any charitable purpose or in the corporation.
 - (3) The receipt or acknowledgment of a person authorised by the trustees or corporation to sign receipts or acknowledgments on their or its behalf is sufficient discharge to the persons transferring any assets under this section.
 - (4) Upon receiving a receipt or acknowledgment under subsection (3), the persons transferring the assets are not bound to see to the application, distribution, appropriation or use of those assets.
 - (5) Despite subsection (1), the trustees of a patriotic fund may, without the approval of the Governor in Council, transfer assets forming part of the patriotic fund to the trustees or corporation referred to in that subsection if—
 - (a) the approval of the Director is obtained and the value of the assets does not exceed—
 - (i) the amount prescribed in any prescribed period of time for the purposes of this paragraph; or
 - (ii) if no amount is prescribed, \$1000 in any 6 month period; or

S. 36(5)
inserted by
No. 12/2015
s. 5.

- (b) the approval of the Minister is obtained and the value of the assets does not exceed—
 - (i) the amount prescribed in any prescribed period of time for the purposes of this paragraph; or
 - (ii) if no amount is prescribed, \$5000 in any 6 month period.

S. 36A
inserted by
No. 12/2015
s. 6.

36A Validation of transfers made without prior approval

- (1) This section applies if the transfer of all or any of the assets of a patriotic fund requiring the approval of the Governor in Council, the Minister or the Director under section 34, 35 or 36 occurred before that approval was obtained.
- (2) The Governor in Council, on the recommendation of the Minister, may validate the transfer if satisfied that, had approval for the transfer been sought before the transfer, the approval would have been given by the Governor in Council under section 35 or 36.
- (3) The Minister may validate the transfer if satisfied that, had approval for the transfer been sought before the transfer, the approval would have been given by the Minister under section 36.
- (4) The Director may validate the transfer if satisfied that, had approval for the transfer been sought before the transfer, the approval would have been given by the Director under section 34, 35 or 36.
- (5) Subject to subsection (6), if the transfer of assets of a patriotic fund is validated under this section, all acts, matters and things done by the trustees with respect to, for the administration of, and for the purpose of the transfer that occurred before the validation was given are, and are taken always to have been, valid and effectual for all purposes as if approval had been given before the transfer.

- (6) Subsection (5) does not exempt any trustee from civil or criminal liability for any breach of trust or other unlawful act, whether by omission or commission, for which the trustee was legally responsible before the validation was given.

37 Power to Governor in Council to appoint trustee of patriotic fund

- (1) If—

- (a) there are no trustees of any patriotic fund; or
- (b) in the opinion of the Governor in Council, the trustees of any patriotic fund cannot be ascertained or found—

the Governor in Council may, by Order in Council published in the Government Gazette, appoint a person to be trustee of that patriotic fund.

- (2) A person appointed under subsection (1) has full power to deal with the patriotic fund as trustee of that patriotic fund.
- (3) A copy of the Government Gazette in which an Order in Council under subsection (1) is published—
- (a) may be produced to any person—
 - (i) holding any assets specified in the Order in Council; or
 - (ii) in whose books any money specified in the Order in Council are credited; or
 - (iii) where securities or property specified in the Order in Council are inscribed; and

- (b) is a sufficient authority and direction to that person to deal with the person appointed under subsection (1) in all respects as if that person were the person for or on whose behalf those assets are held, credited or inscribed.
- (4) A copy of the Government Gazette in which an Order in Council under subsection (1) is published—
 - (a) may be produced to the Registrar of Titles; and
 - (b) is a sufficient authority and direction for the making by the Registrar without fee of an order vesting in the person appointed under subsection (1) any land under the **Transfer of Land Act 1958** specified in the Order in Council.
- (5) Any order made by the Registrar of Titles under subsection (4) will have the same force and effect as a vesting order made by the Registrar under section 58 of the **Transfer of Land Act 1958**.
- (6) Nothing in subsection (3), (4) or (5) affects the generality of subsection (2).
- (7) The receipt or acknowledgment of the person appointed under subsection (1) will be a sufficient discharge to any person dealing with that person under this section in respect of any assets dealt with under this section.
- (8) Upon receiving a receipt or acknowledgment under subsection (7) that person is not bound to see to the application, distribution, appropriation or use of those assets.

- (9) Nothing in this section precludes the appointment of the Victorian Veterans Council as a trustee of a patriotic fund.

38 Transfer of surplus moneys in patriotic fund by Governor in Council

- (1) The Governor in Council upon the recommendation of the Minister may, by Order in Council published in the Government Gazette, direct that any assets in any patriotic fund which he or she considers will not be required for the purposes for which the patriotic fund was established be—
- (a) applied or used by the trustees of the patriotic fund for any purposes in connection with any service or duty but not authorised by the trust; or
 - (b) transferred to and vested in the trustees of some other patriotic fund; or
 - (c) transferred to and vested in the Victorian Veterans Fund, but only if the trustees of the patriotic fund agree to the transfer; or
 - (d) transferred to the trustees of the Shrine of Remembrance, but only if the trustees of the patriotic fund agree to the transfer.
- (2) An Order in Council under subsection (1) has the force of law and any payments and transfers that are necessary to carry out the directions of the Governor in Council under that subsection are to be made.
- (3) The receipt or acknowledgment of the transferees is sufficient discharge to the persons paying or transferring any assets in that fund under this section.

- (4) Upon receiving a receipt or acknowledgment under subsection (3) the persons paying or transferring any assets are not bound to see to the application, distribution, appropriation or use of those assets.

39 Vesting of patriotic funds in the Victorian Veterans Council in certain cases

- (1) The Governor in Council may, by Order in Council published in the Government Gazette, vest in the Victorian Veterans Council any patriotic fund on being satisfied—
- (a) that at least 60% of the trustees of the patriotic fund have consented to the patriotic fund being vested in the Victorian Veterans Council; or
 - (b) that there has been maladministration or a failure of administration of the patriotic fund; or
 - (c) that the trustees of the patriotic fund have contravened or failed to comply with the provisions of this Act or any direction, instruction or condition made, given or imposed by the Governor in Council or the Director under this Act.
- (2) Any patriotic fund vested in the Victorian Veterans Council under subsection (1) is held on the trusts on which it was held by the trustees of the patriotic fund except that—
- (a) the Governor in Council may, by Order in Council published in the Government Gazette, vary such trusts and authorise the Victorian Veterans Council to apply the patriotic fund or any part of the patriotic fund to any other purposes in connection

with any service or duty as he or she directs;
and

- (b) in any case where the patriotic fund has been vested under subsection (1)(a), the Victorian Veterans Council must consider any recommendations of the trustees.
- (3) Every Order in Council made under this section has the force of law and any payments, conveyances and transfers necessary to carry out the Order in Council are to be made.
- (4) The receipt or acknowledgment of the Victorian Veterans Council is sufficient discharge to the persons paying or transferring any assets in a patriotic fund under this section.
- (5) Upon receiving a receipt or acknowledgment under subsection (4), those persons paying or transferring any assets are not bound to see to the application, distribution, appropriation or use of those assets.

40 Acts done by trustees prior to transfer of patriotic fund validated

- (1) Subject to subsection (2), if any patriotic fund or any part of a patriotic fund is transferred to and vested in the trustees of any other patriotic fund—
 - (a) all acts, matters and things done by the trustees; and
 - (b) all payments made by the trustees—with respect to, for the administration of, and for the purpose of executing, the patriotic fund that occurred immediately before the transfer, are valid and effectual.

- (2) Subsection (1) does not exempt a trustee from civil or criminal liability for any breach of trust or other unlawful act, whether by omission or commission, for which he or she was legally responsible immediately before the fund was transferred.

41 Expenditure of patriotic funds

- (1) Assets are not payable or transferable out of a patriotic fund except—
- (a) for any purpose for which the patriotic fund has been established or for any purpose defined by the Governor in Council under this section; or
 - (b) for any purpose incidental to the proper administration of the patriotic fund; or
 - (c) under this Act.
- (2) If in the opinion of the trustees of a patriotic fund, the purposes for which the patriotic fund has been established are not sufficiently defined, the Governor in Council may, on the application of the trustees, define the purposes for which that patriotic fund is taken to have been established.
- (3) Assets in the patriotic fund may be applied and used for all or any of the purposes defined under subsection (2).
- (4) If in the opinion of the trustees of a patriotic fund—
- (a) the amounts of money that may be applied from the patriotic fund for any purpose for which the patriotic fund was established or for the relief, assistance or support of any person for whose benefit the patriotic fund may be applied; or

(b) the rate at which money may be applied from the patriotic fund for any purpose for which the patriotic fund was established or for the relief, assistance or support of any person for whose benefit the patriotic fund may be applied—

are too small to enable the patriotic fund to be put to the best use, the Governor in Council may, on the application of the trustees, re-define the purposes of the patriotic fund as regards any matter to which paragraph (a) or (b) relates.

- (5) The assets in the patriotic fund may be applied and used for all or any of the re-defined purposes.
- (6) If in the case of any patriotic fund the Governor in Council is satisfied—
- (a) that the patriotic fund—
 - (i) was established by, or at the instance of, persons being trustees for or officers or members of any body of persons corporate or unincorporate having amongst its objects one or more objects embraced by the purposes referred to in sections 23(2)(d) and 23(2)(e); and
 - (ii) has been consistently held and administered by trustees and administrative officers being trustees for, or officers or members of, the body; and
 - (b) that the patriotic fund was established for any purpose embraced by the purposes referred to in sections 23(2)(d) and 23(2)(e); and

(c) that it would enable the patriotic fund to be put to better use or administered more effectively if the purposes of the patriotic fund were re-defined as provided by this subsection—

the Governor in Council may, on the application of the trustees, re-define the purposes of the patriotic fund, but not in a way that makes those purposes wider than the purposes referred to in sections 23(2)(d) and 23(2)(e).

- (7) For the purposes of subsection (6), the Governor in Council must have regard to the purposes for which the patriotic fund was established (if known) and the objects of the body referred to in subsection (6)(a).
- (8) If the Governor in Council is of the opinion that the assets in any patriotic fund are more than sufficient to meet the requirements and purposes for which the patriotic fund was established, on the application of the trustees, the Governor in Council may define other purposes for the patriotic fund consistent with purposes for which a patriotic fund may be established.
- (9) The assets in the patriotic fund may also be applied and used for all or any of the other purposes defined under subsection (8).
- (10) A trustee of a patriotic fund must not knowingly pay, transfer, direct, authorise or permit the payment or transfer of any assets out of a patriotic fund in contravention of subsection (1).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

42 Statement to be supplied by trustees of patriotic funds

- (1) The trustees of a patriotic fund must as soon as practicable notify the Director in writing if—
 - (a) a trustee dies;
 - (b) a trustee retires;
 - (c) a new trustee is appointed;
 - (d) a secretary or treasurer is appointed;
 - (e) any other administrative officer is appointed.
- (2) Subject to subsection (3), the trustees of a patriotic fund must provide to the Director—
 - (a) a duly audited, detailed statement of receipts and disbursements in relation to the patriotic fund for the year or part of a year ending on—
 - (i) 30 June; or
 - (ii) a different day specified by the Director; or
 - (iii) the day of the closing or winding up of the patriotic fund; and
 - (b) a duly audited balance sheet of the patriotic fund as at that same day.
- (3) Unless subsection (4) applies, if the documents required to be provided under subsection (2) are in respect of a prescribed class or classes of patriotic fund, the trustees are not required to arrange for those documents to be duly audited.
- (4) Despite subsection (3), the documents required to be provided under subsection (2) must be duly audited if the documents relate to the year or part of a year ending on the day of the closing or winding up of the patriotic fund.

- (5) The trustees of a patriotic fund must provide the documents required under subsection (2) to the Director on or before the 90th day after—
- (a) 30 June or, where the Director has at the request of the trustees of a patriotic fund specified a different day in respect of that patriotic fund, that day, in every year; and
 - (b) the closing or winding up of the patriotic fund.
- (6) For the purposes of this section *duly audited* means audited in accordance with recognised auditing practice by a person (not being a trustee or administrative officer of the patriotic fund) who is—
- (a) a registered company auditor within the meaning of the Corporations Act; or
 - (b) a person or a member of a class of persons approved by the Director for the purposes of the audit of the statement and balance-sheet of the patriotic fund.

43 Other statement as to patriotic fund to be provided

In addition to the statements and notices required under section 42, the trustees of a patriotic fund must, within 30 days after being required by the Director, provide to the Director a statement in writing setting out particulars as the Director requires with respect to—

- (a) the amount for the time being in the patriotic fund;
- (b) the amount expended from the patriotic fund for the purposes of the patriotic fund or for which it may be expended under this Act;

- (c) the names, addresses and descriptions of persons that have been paid money from the patriotic fund and how much of that money they have been paid;
- (d) the obligations incurred or undertaken by the trustees of the patriotic fund involving future expenditure of the patriotic fund with estimates as to the amounts to be expended;
- (e) any other matters as are prescribed;
- (f) any other matters as the Director requires.

44 Penalties for neglecting to provide particulars

If a person is required under this Act to provide any statement or notice to the Director, the person must not—

- (a) fail, neglect or refuse to provide that statement or notice; or
- (b) wilfully provide any statement or notice which is to his or her knowledge false in any material particular.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

45 Account

- (1) All money received by, or on behalf of, the trustees of any patriotic fund must, within the prescribed time, be paid into an authorised deposit-taking institution as determined by the trustees to the credit of an account to be called "The (distinctive name of fund) Patriotic Fund Account" or of an account to be kept in the names of the trustees as trustees of the patriotic fund.

- (2) An account under subsection (1) must be operated by 2 persons appointed by the trustees of the patriotic fund.
- (3) As soon as practicable after appointing the persons referred to in subsection (2), the trustees must notify the Director in writing of the names of each of the persons appointed.
- (4) The persons appointed under subsection (2) to operate an account must give the trustees the financial statements and other information connected with the operation of the account at the intervals that the trustees require.
- (5) A person in receipt of money belonging to a patriotic fund who fails to pay that money into the proper account within the prescribed time is liable for every day during which that failure continues, in the case of a natural person, to a penalty of not more than 60 penalty units and in the case of a corporation, to a penalty of not more than 120 penalty units.

46 Evidence of what is a patriotic fund

A certificate in writing signed or purporting to be signed by the Director stating that the Director has given approval to—

- (a) the establishment of a patriotic fund; or
- (b) the continuation of the administration of a patriotic fund; or
- (c) a person soliciting or receiving subscriptions, collections, contributions or donations or raising or endeavouring to raise money in aid of a patriotic fund or for any purpose in connection with any service or duty; or

- (d) the transfer of a patriotic fund or portion of a patriotic fund to the trustees of another patriotic fund—

is admissible as evidence of the facts stated.

47 Director may request accounts to be audited

- (1) The Director may request from any trustee of a patriotic fund that an auditor's report on the accounts and records kept in relation to the patriotic fund be submitted to the Director as at a date specified by the Director.
- (2) A trustee of a patriotic fund must comply with a request under subsection (1).
Penalty: 50 penalty units.
- (3) The report must be prepared by—
- (a) a registered company auditor within the meaning of the Corporations Act; or
 - (b) a person approved by the Director in writing for the purposes of this section.
- (4) The report must contain the auditor's opinion on—
- (a) whether the money received as a result of the patriotic fund has been properly accounted for and applied; and
 - (b) whether the records and accounts in respect of the patriotic fund have been properly kept in accordance with this Act; and
 - (c) whether the accounts show a true and fair view of the income and expenditure relating to the patriotic fund.
- (5) The Director—
- (a) must allow the trustee to whom the demand is made a reasonable amount of time to comply with the request; and

(b) is not liable for any costs in relation to the audit.

(6) If—

- (a) the report of an auditor under this section states that a trustee may have committed an offence; and
- (b) that trustee is prosecuted for the offence and a Court finds the person guilty of, or convicts the person of, the offence—

the Court may, on the application of the person who paid for the auditor's report, order the offender to pay to the applicant the costs of the report.

(7) Sections 86(2), 86(3), 86(4), 86(5), 86(6), 86(7) and 87 of the **Sentencing Act 1991** apply to subsection (6) as if a reference in those sections to an order made under section 86(1) of that Act were a reference to an order made under subsection (6).

(8) A receipt for the payment of the costs of an auditor's report that purports to be signed by, or on behalf of, the person responsible for the audit is evidence of the cost of the report.

48 Financial institutions to provide certain information to Director

- (1) Despite anything in this or any other Act or in any law, custom or contract to the contrary, any authorised deposit-taking institution must, when required in writing by the Director, provide to the Director any information that the Director requires with respect to—
 - (a) what accounts are entered in the books of the authorised deposit-taking institution in respect of patriotic funds (whether entered as patriotic fund accounts or as war fund

accounts or under any other name or designation);

- (b) what sums of money are credited to any account;
 - (c) what securities for money and what other property are or is held by the authorised deposit-taking institution for or on behalf of any patriotic fund or as security for advances to any patriotic fund.
- (2) No authorised deposit-taking institution will incur any liability, whether in respect of any breach of trust or otherwise by reason only of the providing of any information under this section.

49 Court orders concerning patriotic funds that are not functioning properly

- (1) This section applies if—
- (a) in the opinion of the Director, there has been one or more instances of maladministration in relation to a patriotic fund, including instances where a trustee has breached duties as a trustee; or
 - (b) the trustees of a patriotic fund have, or a trustee of a patriotic fund has, failed to comply with this Act or any order, direction, condition or instruction applying under this Act; or
 - (c) the trustees of a patriotic fund cannot be found or their identities cannot be ascertained; or
 - (d) there are an insufficient number of trustees of a patriotic fund to be able to make decisions in respect of the patriotic fund in accordance with the terms of the fund's trust deed; or

- (e) one or more of the trustees of a patriotic fund is not eligible to be a trustee of a patriotic fund and has not retired or been removed as a trustee; or
 - (f) one or more of the trustees of a patriotic fund has been out of Victoria for more than 12 months without properly delegating functions as a trustee to a person in Victoria.
- (2) The Director may apply to the Magistrates' Court for an order to do one or more of the following—
- (a) to prohibit, either unconditionally or with conditions, dealings with any assets of the patriotic fund for a specified period;
 - (b) to authorise dealings with any assets of the patriotic fund;
 - (c) if subsection (1)(c), (1)(d), (1)(e) or (1)(f) applies, to authorise a person (including the Victorian Veterans Council) to act as a trustee of the patriotic fund;
 - (d) to authorise the Victorian Veterans Council to act as sole trustee of the patriotic fund;
 - (e) if subsection (1)(e) applies, to bar a person who is ineligible to be a trustee of the patriotic fund from taking any action as a trustee in relation to the patriotic fund;
 - (f) to appoint an administrator of the patriotic fund on the terms specified by the Court.
- (3) The Court may make any consequential order it thinks is necessary to give effect to any order that it makes under subsection (2).
- (4) The Court must not make an order under subsection (2) or (3) unless the trustees of the patriotic fund have been given an opportunity to be represented in the proceedings.

- (5) An order made under subsection (2)(c) takes effect as if the person authorised by the order had been appointed as a trustee to the patriotic fund in accordance with the terms of the patriotic fund's trust deed.

50 Director may appoint administrator immediately in certain circumstances

If at least 60% of the trustees of a patriotic fund have agreed in writing that the patriotic fund should be wound up, the Director may appoint an administrator to carry out the winding up.

51 Governor in Council may order patriotic fund to be wound up

- (1) If any of the circumstances specified in section 49(1) exists in relation to a patriotic fund, the Governor in Council may, by Order in Council published in the Government Gazette, order that—
- (a) the patriotic fund be wound up; and
 - (b) any assets of the patriotic fund remaining after the completion of the winding up be distributed in accordance with the patriotic fund's trust deed.
- (2) Subsection (3) applies if—
- (a) any of the circumstances specified in section 49(1) exists in relation to a patriotic fund; and
 - (b) the Governor in Council orders the patriotic fund be wound up under subsection (1); and
 - (c) any of the following applies—
 - (i) the patriotic fund's trust deed does not specify how surplus assets are to be distributed;

- (ii) a trust deed does not exist with respect to the patriotic fund;
 - (iii) the patriotic fund's trust deed has been lost;
 - (iv) it is not practicable to distribute any assets of the patriotic fund remaining after the completion of the winding up in accordance with the patriotic fund's trust deed.
- (3) If this subsection applies, the assets may be transferred to—
- (a) another specified patriotic fund; or
 - (b) subject to subsections (4) and (5), the trustees of a charitable trust or to a charitable corporation; or
 - (c) subject to subsection (4), the Victorian Veterans Fund; or
 - (d) subject to subsection (4), the trustees of the Shrine of Remembrance.
- (4) An Order in Council to transfer assets to the trustees of a charitable trust, charitable corporation, the Victorian Veterans Fund or the Shrine of Remembrance can only be made on the recommendation of the Minister.
- (5) An Order in Council to transfer assets to the trustees of a charitable trust or charitable corporation can only be made if the transfer will enable at least one of the purposes of a patriotic fund specified in section 23 to be achieved.
- (6) If an Order in Council is made under this section, the Director may appoint an administrator to carry out the Order in Council.

52 Powers of administrators

- (1) If an administrator is appointed in relation to a patriotic fund under this Act—
 - (a) the powers of the trustees of the patriotic fund conferred on the trustees by the patriotic fund's trust deed devolve on the administrator; and
 - (b) while the administration remains in force, those powers may only be exercised by the administrator.
- (2) Without limiting subsection (1), the administrator may—
 - (a) dispose of, or otherwise deal with, any assets of the patriotic fund for the purposes of the administration;
 - (b) incur any expenses that are reasonably necessary for the purposes of the administration;
 - (c) if required or authorised to do so, wind up the patriotic fund;
 - (d) do any thing else that is incidental to the exercise of the powers conferred by this subsection.
- (3) The administrator may defray the costs of the administration, including any costs under section 53, from the patriotic fund.

53 Remuneration of administrator

- (1) The remuneration of an administrator appointed under section 49(2) who—
 - (a) is not employed under Part 3 of the **Public Administration Act 2004**, must be at a rate approved by the Magistrates' Court; or

- (b) is employed under Part 3 of the **Public Administration Act 2004**, must be an amount that the Magistrates' Court certifies is payable to the Crown as repayment of the administrator's remuneration.
- (2) An amount certified under subsection (1)(b) may be recovered by the Director in a court of competent jurisdiction as a debt due to the Crown.
- (3) Any amount recovered under subsection (2) is to be paid into the Consolidated Fund.
- (4) The remuneration of an administrator appointed under section 50 must be at a rate agreed to by the Director and those trustees of the patriotic fund that agreed to the winding up of the patriotic fund.
- (5) The remuneration of an administrator appointed under section 51(6) must be at the rate specified in the Order in Council made under section 51.

54 Administrator to report to Director

- (1) The Director may require the administrator of a patriotic fund—
 - (a) to report to the Director on any matter concerning the administration of the patriotic fund;
 - (b) to make recommendations in relation to the patriotic fund including, if appropriate, that the Director apply for an order under section 49(2), other than under paragraph (f).
- (2) The administrator must comply with a requirement under subsection (1) within the time, and in the manner, specified by the Director.

55 Obligations of the administrator on completion of winding up

On completing the winding up of a patriotic fund, the administrator of the patriotic fund must—

- (a) report that fact to the Director;
- (b) give the Director the final financial statements relating to the winding up;
- (c) give to the Director all of the records relating to the administration of the patriotic fund and all of the records of the patriotic fund still in his or her possession after the winding up.

56 Liabilities arising from administration

- (1) If a patriotic fund incurs any loss because of any breach of fiduciary duties or fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations by an administrator, the administrator is liable for the loss.
- (2) An administrator is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in any report required by the Director under section 54.

57 Revocation of appointment

- (1) An administrator of a patriotic fund holds office until the administrator's appointment is revoked.
- (2) If an administrator was appointed under section 49(2), the Director may revoke the appointment if the Director obtains an order from the Magistrates' Court to revoke the appointment.
- (3) If an administrator was appointed under section 50 or 51(6), the Director may revoke the appointment if the Director gives the administrator written notice of the revocation.

Division 4—Enforcement provisions

58 Minister or Director may require information

- (1) The Minister or the Director may require a person to give to the Minister or Director any information or documents that the Minister or the Director reasonably considers necessary to determine whether that person or any other person—
 - (a) has complied with a provision of this Act;
 - (b) is, or has been at any time, required by law to comply with a provision of this Act;
 - (c) is or might be administering, or has or might have administered, a patriotic fund, or is raising, or has raised, money, contrary to this Act.
- (2) The Minister or the Director must make the requirement in a written notice that—
 - (a) identifies the information or document;
 - (b) specifies by when the requirement must be complied with;
 - (c) specifies in what form the information or document is to be given to the Minister or the Director.
- (3) The notice must—
 - (a) state that the requirement is made under this section; and
 - (b) include a copy of this section and section 75.

- (4) A person must comply with any requirement made by the Minister or the Director under this section, unless the person has a reasonable excuse for not doing so.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
240 penalty units.

59 Incorporation of Australian Consumer Law and Fair Trading Act 2012 enforcement provisions

S. 59
amended by
No. 19/2009
s. 31,
substituted by
No. 21/2012
s. 239(Sch. 6
item 45.3).

- (1) Sections 195 and 196 and Part 8.2 (other than sections 205, 206, 207, 210, 211 and 214) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if a reference in any of those provisions to that Act were a reference to this Act.
- (2) For the purposes of subsection (1)—
- (a) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Act (except sections 60 to 81); or
- (ii) proceedings on an application for an injunction under section 201, 202 or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except sections 60 to 81); or

(iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1));

(b) section 213 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if in subsection (1), the words "in relation to a contravention of a prescribed provision" were omitted and subsections (4) and (5) were omitted.

S. 59(3)
inserted by
No. 12/2015
s. 21(Sch. 1
item 12).

(3) In this section—

this Act includes the regulations.

Note to s. 59
substituted by
No. 21/2012
s. 239(Sch. 6
item 45.4).

Note

Sections 201, 202, 203 and 204 are in Part 8.2 of the **Australian Consumer Law and Fair Trading Act 2012** and are in respect of applications for injunctions where any provision of that Act, and by incorporation, any provision of this Act, is being contravened.

Under section 201, the Minister, Director or any other person may apply to the Supreme Court, County Court or Magistrates' Court for the grant of an injunction to restrain a person's conduct.

Under section 202, the Minister, Director or any other person may apply to the Supreme Court or the County Court for the grant of an injunction requiring a person to do any act or thing.

Under section 203(1), the Supreme Court, County Court or Magistrates' Court may grant an interim injunction pending determination of an application under section 201.

Under section 203(2), the Supreme Court or County Court may grant an interim injunction pending determination of an application under section 202.

Under section 204, a court may rescind or vary an injunction granted under section 201 or 202 or an interim injunction under section 203.

60 Production of identity card

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Division other than a requirement made by post; and
- (b) at any time during the exercise of a power under this Division, if asked to do so.

Penalty: 10 penalty units.

61 Searches to monitor compliance with this Act

- (1) In this section, *relevant premises* means any premises—
 - (a) on or from which it appears a patriotic fund is being administered; or
 - (b) that an inspector believes, on reasonable grounds, contains any record or account that is required to be kept by this Act, or any document that indicates whether or not this Act has been complied with.
- (2) An inspector may enter any relevant premises at any reasonable hour in the daytime and at any time that the premises is open for business and may—
 - (a) inspect the premises and any thing on the premises;
 - (b) search for any evidence of any contravention of this Act;
 - (c) make copies of, or take extracts from, any document kept on the premises;
 - (d) seize any thing on the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;

- (e) use any assistants the inspector considers necessary to exercise the powers conferred by this section.
- (3) An inspector may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purpose of determining compliance with this Act.
- (4) An inspector may not continue to exercise any powers under this section if he or she fails to produce, on request, his or her identity card for inspection by the occupier of the land.
- (5) An inspector may not, under this section, enter a residence unless the occupier of the residence has consented in writing to the entry and the carrying out of a search.

62 Offence-related searches and seizures

- (1) An inspector may only exercise powers under this section if he or she has reasonable grounds for suspecting that there is on any premises a particular thing that may be evidence of the commission of an offence under this Act.
- (2) Subject to subsection (3), the inspector, with any assistants he or she considers necessary, may with the consent in writing of the occupier of the premises, enter the premises and search for the thing without applying for a search warrant.
- (3) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
 - (a) produced his or her identity card for inspection; and

- (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (4) If the thing is found during a search under subsection (2), the inspector may—
 - (a) inspect any thing on the premises;
 - (b) inspect, and make copies of, or take extracts from, the thing;
 - (c) seize the thing if the inspector believes on reasonable grounds that it is necessary to seize it in order to prevent its concealment, loss or destruction.

63 Occupier to be given copy of consent

- (1) An occupier who consents in writing to the entry and search of his or her premises or residence under section 61 or 62 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

64 Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence under this Act.
- (2) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence under this Act, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary—
 - (a) to enter the premises, or the part of the premises, named or described in the warrant; and
 - (b) to search for and seize any thing named or described in the warrant.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the offence suspected;
 - (b) the premises to be searched;
 - (c) a description of the thing for which the search is to be made;
 - (d) any conditions to which the warrant is subject;
 - (e) whether entry is authorised to be made at any time or during stated hours;
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and must be in the form set out in the regulations under that Act.
- (5) Subject to any provision to the contrary in this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

65 Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant, or a person assisting the inspector, must announce that he or she is authorised by the warrant to enter the premises and must give any person at the premises an opportunity to allow entry to the premises.
- (2) The inspector or a person assisting the inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

66 Copy of warrant to be given to occupier

If the occupier, or another person who apparently represents the occupier, is present at a premises when a search warrant is being executed, the inspector must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

67 Receipt must be given for any thing seized

- (1) An inspector may not seize a thing, apparently in the possession or custody of a person, unless he or she makes out and tenders to the person a receipt for the thing seized that—
 - (a) identifies the thing; and
 - (b) states the name of the inspector and the reason why the thing is being seized.
- (2) If an inspector is unable to discover the identity of the owner or custodian of any thing seized, the inspector must leave the receipt with, or post it to, the owner of the premises from which the thing was seized.

68 Copies of certain seized things to be given

- (1) If an inspector seizes—
 - (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device containing information that can be readily copied—

the inspector must give a copy of the thing or information to the owner or custodian of the document, thing or device as soon as is practicable after the seizure.

- (2) Subsection (1) does not apply—
 - (a) to any document, thing or device moved under section 69(2); or
 - (b) if the inspector is unable to discover the identity of the owner or custodian of any document, thing or device seized.

69 Use of equipment to examine or process things

- (1) An inspector may bring on to a premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized.
- (2) If—
 - (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing—

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.
- (3) The inspector, or a person helping the inspector, may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized, if the inspector or person helping believes on reasonable grounds that—
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

70 Use or seizure of electronic equipment at premises

- (1) If—
 - (a) a thing found at a premises is or includes a disk, tape or other device for the storage of information; and
 - (b) equipment at the premises may be used with the disk, tape or other storage device; and

- (c) the inspector believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether this Act has been contravened—

the inspector or a person assisting the inspector may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

- (2) If the inspector or a person assisting the inspector finds that a disk, tape or other storage device at the premises contains information of the kind referred to in subsection (1)(c), he or she may—
 - (a) put the information in documentary form and seize the documents so produced; or
 - (b) copy the information to another disk, tape or other storage device and remove that storage device from the premises; or
 - (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An inspector or a person assisting an inspector must not operate or seize equipment for the purpose mentioned in this section unless the inspector or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

71 Compensation for damage caused during inspections

- (1) The Minister must pay compensation for any damage caused by an inspector, or a person assisting an inspector, in exercising (or purporting to exercise) any power conferred by this Act.
- (2) However, the Minister is not liable to pay compensation for any damage caused during any inspection that reveals that there has been a contravention of this Act.
- (3) In determining the amount of compensation payable in relation to any damage caused to electronic equipment, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

72 Return of seized things

- (1) If an inspector seizes a thing under this Act, the inspector must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 73 extending that period.

73 Court may extend period

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a thing, or within a period extended by the Court under this section, for an extension of that period.
- (2) The Court may order such an extension if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Court may adjourn an application to enable notice of the application to be given to any person.

74 Power of inspector to require information or documents

- (1) An inspector who—
 - (a) exercises a power of entry under this Act; and
 - (b) produces his or her identity card for inspection by a person—may, to the extent that it is reasonably necessary to determine whether this Act has been contravened, require the person to give information to the inspector, to produce documents to the inspector and to give reasonable assistance to the inspector.
- (2) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under subsection (1).

Penalty: 200 penalty units.

- (3) A person must not, in response to a request under this Division—
- (a) give information that the person knows to be false or misleading in a material detail; or
 - (b) produce a document that the person knows to be false or misleading in a material detail without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 300 penalty units.

75 Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

76 Offence to hinder or obstruct inspector

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Division.

Penalty: 200 penalty units.

77 Offence to impersonate inspector

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 200 penalty units.

78 Entry to be reported to the Director

- (1) If an inspector exercises a power of entry under this Division, the inspector must report the exercise of the power to the Director within 7 days after the entry.
- (2) The report must include all relevant details of the entry including particulars of—
 - (a) the time and place of the entry; and
 - (b) the purpose of the entry; and
 - (c) the things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and
 - (d) the time of departure from the premises.

79 Register of exercise of powers of entry

The Director must keep a register containing the particulars of all matters reported to the Director under section 78.

80 Complaints

- (1) Any person may complain to the Director about the exercise of a power by an inspector under this Division.
- (2) The Director must—
 - (a) investigate any complaint made to the Director; and
 - (b) provide a written report to the complainant on the results of the investigation.

81 Disclosure of information

- (1) A person must not disclose any information that is obtained by him or her while exercising a power conferred by this Act.

Penalty: 200 penalty units.

- (2) A person must not use any such information to obtain directly or indirectly any pecuniary advantage for himself or herself or for any other person.

Penalty: 200 penalty units.

- (3) However, a person may disclose or use such information if—
- (a) the disclosure or use is made in the performance of a duty under, or in connection with, this Act; or
 - (b) the person has the consent of the person to whom the information relates; or
 - (c) the disclosure or use is made in legal proceedings at the direction of a court; or
 - (d) the information is in the public domain at the time it is disclosed or used.
- (4) Subsection (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

Division 5—Miscellaneous matters

82 Review of Director's decisions

- (1) A person who is affected by any decision of the Director under this Part may apply to VCAT for a review of the decision.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the person is notified of the decision; or

- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 83
amended by
No. 21/2012
s. 239(Sch. 6
items 45.5,
45.6).

83 Director's report

The Director must include an account of the operation of this Part in the annual report on the operation of the **Australian Consumer Law and Fair Trading Act 2012** under section 112 of the **Australian Consumer Law and Fair Trading Act 2012**.

84 Persons who are liable for offences

- (1) If two or more persons are responsible for the same offence against this Act each of those persons is liable to the penalty provided by this Act for that offence and the liability of each of them is independent of the liability of any other person.
- (2) If a person who is guilty of an offence is a partnership or an unincorporated body the reference to a person must be construed as a reference to each member of the partnership or of the committee of management of the unincorporated body, as the case may be.

85 Repeal

- (1) The **Patriotic Funds Act 1958** is repealed.
- (2) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **Patriotic Funds Act 1958** immediately before the commencement of this section shall under and subject to this Act continue to have the same status, operation and effect as they respectively

would have had if this section had not come into operation.

- (3) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to—
 - (a) the Patriotic Funds Council of Victoria is to be construed as a reference to the Director;
 - (b) the **Patriotic Funds Act 1958** is to be construed as a reference to this Act, unless the contrary intention appears.
- (4) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

Part 5—General

86 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing the form of accounts and financial statements that the trustees of patriotic funds are to maintain and provide for the purposes of this Act, and the details to be included in those accounts and statements;
 - (b) specifying matters in relation to the regulation of patriotic funds on which the Victorian Veterans Council is to advise the Director;
 - (c) any other matters or things that are necessary or expedient for the purpose of carrying out or giving effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may impose a penalty of not more than 20 penalty units for any breach of a regulation;
 - (d) may apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time.

Veterans Act 2005
No. 98 of 2005

* * * * *

**Pt 6 (Heading
and ss 87–92)
repealed by
No. 28/2007
s. 3(Sch.
item 68).**

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 5 October 2005

Legislative Council: 20 October 2005

The long title for the Bill for this Act was "to establish the Victorian Veterans Council and the Victorian Veterans Fund, to re-enact with amendments the law relating to patriotic funds, to repeal the **Patriotic Funds Act 1958**, the **Defence Reserves Re-Employment Act 1995** and the **Discharged Servicemen's Preference Act 1943** and to amend certain Acts and for other purposes."

The **Veterans Act 2005** was assented to on 7 December 2005 and came into operation as follows:

Sections 1 and 2 on 8 December 2005: section 2(1); sections 20 and 89 on 1 January 2006: section 2(2); sections 3–19, 21–88 and 90–92 on 21 August 2006: Government Gazette 17 August 2006 page 1716.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

Veterans Act 2005
No. 98 of 2005
Endnotes

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Veterans Act 2005** by Acts and subordinate instruments.

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 106) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Veterans Act 2005**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 68) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Veterans Act 2005**

Fair Trading and Other Acts Amendment Act 2009, No. 19/2009

Assent Date: 10.6.09
Commencement Date: S. 31 on 11.6.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Veterans Act 2005**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 45) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s amending the **Veterans Act 2005**

Veterans and Other Acts Amendment Act 2015, No. 12/2015

Assent Date: 21.4.15
Commencement Date: Ss 3-6, 21(Sch. 1 item 12) on 22.4.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Veterans Act 2005**

Consumer Acts Amendment Act 2017, No. 13/2017

Assent Date: 10.5.17
Commencement Date: Ss 23, 24 on 11.5.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Veterans Act 2005**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.