

**Authorised Version No. 026**  
**Public Health and Wellbeing Act 2008**

**No. 46 of 2008**

Authorised Version incorporating amendments as at  
1 August 2015

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**Authorised Version No. 026**  
**Public Health and Wellbeing Act 2008**

**No. 46 of 2008**

Authorised Version incorporating amendments as at  
1 August 2015

**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purpose**

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

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision referred to in subsection (1) does not come into operation before 1 January 2010, it comes into operation on that day.

**3 Definitions**

- (1) In this Act—

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

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

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

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

***approved form*** means a form approved by the Secretary;

***authorised officer*** means a person appointed—

- (a) by a Council to be an environmental health officer under section 29; or
- (b) by the Secretary to be an authorised officer under section 30; or
- (c) subject to section 31, by a Council under section 224(1) of the **Local Government Act 1989** to be an authorised officer for the purposes of this Act;

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

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

- (a) facial or body treatment;
- (b) application of cosmetics;
- (c) manicure or pedicure;
- (d) application or mending of artificial nails;
- (e) epilation, including by electrolysis or hot or cold wax—

but does not include hairdressing, tattooing or skin penetration;

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

***brothel*** has the same meaning as in section 3(1) of the **Sex Work Act 1994**;

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

***brothel proprietor*** means the proprietor of the brothel or the person in charge of the brothel;

***business*** includes trade, manufacture, process or occupation;

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

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

***child*** means a person under 18 years of age;

**Note**

See also subsection (2).

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

***colonic irrigation*** means—

- (a) a process involving the use of a fluid to cleanse the colon of a person; or
- (b) a process involving the insertion of a tube into the colon of a person for the purpose of cleansing the colon;

***Consultative Council*** means—

- (a) a Consultative Council established or appointed under section 33; and
- (b) CCOPMM;

***cooling tower*** means a device for lowering—

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

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

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

*cooling tower system* means—

- (a) a cooling tower, or a number of interconnected cooling towers that use the same recirculating water; and
- (b) any machinery that is used to operate the tower or towers; and
- (c) any associated tanks, pipes, valves, pumps or controls;

*Council* has the same meaning as in section 3(1) of the **Local Government Act 1989**;

*Council Chairperson* means the Chairperson of a Consultative Council;

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

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

*Department* means the Department of Health;

S. 3(1) def. of  
*Department*  
amended by  
No. 29/2010  
s. 3(a).

*dependant* of a deceased person means—

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

- (b) a child of the person;
- (c) any other person who—
  - (i) was, at the date of the person's death, wholly or partially dependant on the person for financial support; or
  - (ii) would, at the date of the person's death, have been wholly or partially dependant on the person for financial support, but for the incapacity due to the injury which led to the death;

***domestic partner*** of a person means—

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

**Note**

A registered relationship is defined in subsection (3).

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

***donor*** means—

- (a) in the case of blood, a person who gives blood—
  - (i) at the premises of the Society or at a health service; or
  - (ii) under the supervision of the Society or a health service, at any other premises; or
- (b) in the case of tissue, a person, whether living or dead, from whom the tissue is taken;

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

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

***emergency powers*** means the powers specified in section 200;

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

***escort agency*** has the same meaning as in section 3(1) of the **Sex Work Act 1994**;

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

***escort agency proprietor*** means the proprietor of the escort agency or the person in charge of the escort agency;

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

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

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

***health service*** means—

- (a) a day procedure centre;
- (b) a denominational hospital;
- (c) a multi purpose service;



(d) a private hospital;

(e) a public hospital—

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

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

*HIV* means the human immuno-deficiency virus which is a causative agent of the acquired immune deficiency syndrome and other related conditions;

*immunisation status certificate* means a document specified in section 147;

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

*improvement notice* means an improvement notice issued under section 194;

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

*information* includes—

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

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

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

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

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

*laboratory service* has the meaning given by section 130(9);

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

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

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

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

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

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

*municipal district* has the same meaning as in section 3(1) of the **Local Government Act 1989**;

*notifiable condition* means—

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

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

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

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

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

***notification details*** means—

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

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

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

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

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

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

- (a) the person who owns, manages or controls the cooling tower system; or
- (b) the person in charge of the cooling tower system;

***owner***, in relation to land—

- (a) which has been alienated in fee by the Crown and is under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), means the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land;
- (b) which has been alienated in fee by the Crown and is land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means the person who is the owner, or the persons who are the owners, of the fee or equity of redemption;
- (c) which is Crown land reserved under the **Crown Land (Reserves) Act 1978** and managed or controlled by a committee of management, means the Minister administering that Act;
- (d) which is any other Crown land, means the Minister or public authority that manages or controls the land;

***parent*** includes—

- (a) a step-parent;
- (b) an adoptive parent;
- (c) a foster parent;
- (d) a guardian;
- (e) a person who has custody or daily care and control;
- (f) a person who has all the duties, powers and responsibilities and authority (whether conferred by a court or otherwise) which by law parents have in relation to children;

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

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

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

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

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

*pesticide* means—

- (a) any agricultural chemical product within the meaning of the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**; and
- (b) any substance prescribed as a pesticide for the purposes of this definition;

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

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

*premises* includes—

- (a) land (whether or not vacant);
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature);
- (c) a pontoon;
- (d) a vehicle;
- (e) a caravan or camper-trailer;

*prescribed* means prescribed by the regulations;

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

- (a) any area of land which a person or persons are frequently, intermittently or seasonally permitted to use for camping on payment of consideration and any facilities provided on the land for the use of that person or those persons;

- (b) any premises used as a place of abode, whether temporary or permanent, fixed or mobile, where a person or persons can be accommodated on payment of consideration;
- (c) any accommodation provided to an employee in accordance with a term of an award governing the employment of the employee, or a term of the employee's contract of service, for use by the employee during that employment or service;

***prescribed Consultative Council*** means—

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

***prescribed disease*** means a disease prescribed for the purposes of Division 8 of Part 8;

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

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

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

***prohibition notice*** means a prohibition notice issued under section 194;

*proprietor*, in respect of—

- (a) prescribed accommodation, means the person providing the prescribed accommodation;
- (b) a day procedure centre or a private hospital, means—
  - (i) if the day procedure centre or private hospital is run on a not-for-profit basis, the authority or body of persons conducting the day procedure centre or private hospital;
  - (ii) in any other case, the owner (whether a natural person or a body corporate) of the day procedure centre or private hospital;
- (c) a denominational hospital, multi purpose service or public hospital, means the body corporate that conducts the denominational hospital, multi purpose service or public hospital;

*public health order* means an order made under section 117;

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

*public hospital* means—

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

*public inquiry* means a public inquiry conducted under section 50;



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

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

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

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

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

\* \* \* \* \*

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

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

*registered premises* means premises registered  
under section 69;

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

*regulations* means regulations made under this  
Act;

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

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

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

- (a) the preparation, content, review and audit of a risk management plan;
- (b) the construction, installation, operation, maintenance, repair, service and testing of a cooling tower system;
- (c) control measures used in respect of a cooling tower system;

***sample*** includes part of a sample;

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

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

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

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

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

- (a) the number of persons likely to be affected;
- (b) the location, immediacy and seriousness of the threat to the health of persons;

- (c) the nature, scale and effects of the harm, illness or injury that may develop;
- (d) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings;

*sex worker* means a person who personally provides sexual services to or for another person (whether or not of a different sex) in return for payment or reward;

*sexual services* has the same meaning as in section 3(1) of the **Sex Work Act 1994**;

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

*skin penetration* means any procedure performed on a living human being, not being a surgical or medical procedure, involving piercing, cutting, scarring, branding, scraping, puncturing or tearing of their skin or mucous membrane using an instrument but does not include tattooing;

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

*specified infectious disease* means—

- (a) HIV;
- (b) any form of hepatitis which may be transmitted by blood or body fluid;
- (c) an infectious disease prescribed to be a specified infectious disease;

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

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

***stillbirth*** means the birth of a stillborn child;

***substance*** includes any article or compound;

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

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

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

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

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

***test***, in Part 8, means diagnostic procedure;

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

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

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

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

- (3) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) registered relationship has the same meaning as in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

## **Part 2—Objective, principles and application**

### **4 Objective**

- (1) The Parliament recognises that—
  - (a) the State has a significant role in promoting and protecting the public health and wellbeing of persons in Victoria;
  - (b) public health and wellbeing includes the absence of disease, illness, injury, disability or premature death and the collective state of public health and wellbeing;
  - (c) public health interventions are one of the ways in which the public health and wellbeing can be improved and inequalities reduced;
  - (d) where appropriate, the State has a role in assisting in responses to public health concerns of national and international significance.
- (2) In the context of subsection (1), the objective of this Act is to achieve the highest attainable standard of public health and wellbeing by—
  - (a) protecting public health and preventing disease, illness, injury, disability or premature death;
  - (b) promoting conditions in which persons can be healthy;
  - (c) reducing inequalities in the state of public health and wellbeing.
- (3) It is the intention of Parliament that in the administration of this Act and in seeking to achieve the objective of this Act, regard should be given to the guiding principles set out in sections 5 to 11.

## **5 Principle of evidence based decision-making**

Decisions as to—

- (a) the most effective use of resources to promote and protect public health and wellbeing; and
- (b) the most effective and efficient public health and wellbeing interventions—

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

## **6 Precautionary principle**

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

## **7 Principle of primacy of prevention**

- (1) The prevention of disease, illness, injury, disability or premature death is preferable to remedial measures.
- (2) For that purpose, capacity building and other health-promotion activities are central to reducing differences in health status and promoting the health and wellbeing of the people of Victoria.

## **8 Principle of accountability**

- (1) Persons who are engaged in the administration of this Act should as far as is practicable ensure that decisions are transparent, systematic and appropriate.
- (2) Members of the public should therefore be given—
  - (a) access to reliable information in appropriate forms to facilitate a good understanding of public health issues; and

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

### **9 Principle of proportionality**

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

- (a) should be proportionate to the public health risk sought to be prevented, minimised or controlled; and
- (b) should not be made or taken in an arbitrary manner.

### **10 Principle of collaboration**

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

### **11 Principles applying to Part 8**

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

### **12 Application of Part 6 to areas outside a municipal district**

- (1) Part 6 applies to an area outside a municipal district in accordance with this section.
- (2) The Governor in Council on the recommendation of the Minister may by Order in Council specify—
  - (a) an area outside a municipal district for the purposes of this section;
  - (b) which Division or Divisions of Part 6 are to apply in that area;



- (c) unless paragraph (d) applies, the Council which is to have the specified functions, duties and powers under this Act and the regulations for the purposes of the application of the specified Division or Divisions of Part 6 in respect of that area;
  - (d) that the Secretary is to have the specified functions, duties and powers under this Act and the regulations for the purposes of the application of the specified Division or Divisions of Part 6 in respect of that area.
- (3) For the purposes of subsections (2)(c) and (2)(d), functions, duties and powers may be specified—
- (a) specifically; or
  - (b) by reference to a provision of this Act in which the functions, duties and powers are specified.
- (4) If the Minister proposes to recommend to the Governor in Council that an Order in Council under this section specifies a Council for the purposes of subsection (2)(c), the Minister must consult with the Minister administering the **Local Government Act 1989** before making the recommendation.
- (5) If an Order in Council under this section specifies a Council for the purposes of subsection (2)(c), then, for the purposes of the application of the specified Division or Divisions of Part 6 in the specified area to which the Order relates, that area is taken to be part of the municipal district of the Council specified in the Order.

- (6) If an Order in Council is made in relation to the Secretary under subsection (2)(d), then, for the purposes of the application of the specified Division or Divisions of Part 6 in the specified area to which the Order relates, a reference in a provision of that Division or those Divisions to a Council is taken to be a reference to the Secretary.
- (7) Any provisions of this Act that are necessary to give effect to the application of the specified Division or Divisions of Part 6 in the specified area to which the Order relates, extend and apply by virtue of this section with any modifications as are necessary.

### **13 Act binds the Crown**

- (1) This Act binds the Crown—
  - (a) in right of the State of Victoria; and
  - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

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

- (1) It is the intention of the Parliament that the operation of Divisions 2 and 8 of Part 8 should, so far as possible, include operation in relation to the following—
  - (a) land situated outside Victoria, whether in or outside Australia;
  - (b) things situated outside Victoria, whether in or outside Australia;
  - (c) acts, omissions and transactions done, entered into or occurring outside Victoria, whether in or outside Australia;

- (d) things, acts, omissions and transactions  
(wherever situated, done, entered into or  
occurring) that would, apart from this Act, be  
governed or otherwise affected by the law of  
the Commonwealth, another State, a  
Territory or a foreign country.
- (2) Nothing in this section limits the operation of any  
other provision in this Act.

## **Part 3—Administration**

### **Division 1—The Minister and the Secretary**

#### **15 Delegation by Minister**

- (1) The Minister by instrument may delegate to any person or class of persons employed under Part 3 of the **Public Administration Act 2004** any power, duty or function of the Minister under this or any other Act or under the regulations under this or any other Act, other than this power of delegation.
- (2) A delegation under subsection (1) may be made—
  - (a) in relation to a person or class of persons specified in the instrument of delegation; or
  - (b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

#### **16 Secretary body corporate**

- (1) The person who is for the time being the Department Head of the Department and the successors in office of that person are a body corporate under the name "Secretary to the Department of Health".
- (2) The body corporate under subsection (1) by the name given to it under that subsection—
  - (a) has perpetual succession and a corporate seal; and
  - (b) is capable in law—
    - (i) of suing and being sued; and
    - (ii) of acquiring, holding and disposing of real and personal property; and

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

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

## **17 Role and functions of the Secretary**

- (1) For the purposes of this Act, the role of the Secretary is to—
  - (a) initiate, support and manage public health planning processes at the state level;
  - (b) develop and implement policies and programs to achieve the objective of this Act;
  - (c) perform the functions and exercise the powers conferred on the Secretary under this Act or any other Act, or the regulations made under this or any other Act;
  - (d) administer this Act in accordance with the objectives and guiding principles specified in this Act.
- (2) Without limiting the generality of subsection (1), the Secretary has the following functions—
  - (a) to promote awareness and understanding of public health and wellbeing issues within the community;
  - (b) to develop public health and wellbeing policies;
  - (c) to assist persons who have an impact on public health to enhance opportunities for protecting public health;
  - (d) to support, equip and empower communities to address local public health issues and needs;

- (e) to establish and maintain a comprehensive information system which includes information in respect of—
  - (i) the health status of persons and classes of persons in Victoria, including information about the extent and effects of disease, illness, injury, disability or premature death;
  - (ii) the determinants of individual health and public health and wellbeing;
  - (iii) the effectiveness of health interventions to improve public health in Victoria;
- (f) to make recommendations and reports to the Minister with respect to matters relating to public health and wellbeing and to advise the Minister on the operation of this Act and the regulations.

### **18 Secretary subject to direction of Minister**

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

### **19 Delegation by Secretary**

- (1) The Secretary by instrument may delegate to—
  - (a) any employee or class of employees employed under Part 3 of the **Public Administration Act 2004**; or
  - (b) any public authority or the chief executive officer (however described) of any public authority; or

- (c) any Council or officer of a Council—  
any power, duty or function of the Secretary under this or any other Act or under the regulations under this or any other Act, other than this power of delegation or the power conferred by section 50.
- (2) Despite subsection (1), any power, duty or function delegated to a person under paragraph (b) of that subsection may be sub-delegated by that person to an officer or employee of that person.
- (3) A delegation under subsection (1) may be made—
- (a) in relation to a person or class of persons specified in the instrument of delegation; or
  - (b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.
- (4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by subsection (2) in the same way as they apply to a delegation.
- (5) The Secretary by instrument may delegate the power conferred on the Secretary by section 50 to a person who is—
- (a) an executive within the meaning of section 4(1) of the **Public Administration Act 2004**; or
  - (b) a prescribed senior officer.

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

### **19A Delegation by Secretary body corporate**

The Secretary body corporate may, by instrument, delegate to any employee or class of employees employed under Part 3 of the **Public Administration Act 2004**, any power, duty or function of the Secretary body corporate under

this Act (other than this power of delegation) or any other Act, or under the regulations made under this Act or any other Act.

**19B Committee of management**

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

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

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

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

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

- (a) acquire (whether by creation, lease, licence, receiving the assignment or grant of, or otherwise), hold, accept as security, or otherwise deal with any intellectual property right (for example, a trade mark, patent, design, copyright (including an associated moral right), plant breeder's right, circuit layout right, trade secret, or right arising from confidential information);
- (b) assign, grant, lease, licence, sell or dispose of, any intellectual property right;
- (c) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit, any intellectual property right;
- (d) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit any Crown copyright.



## **Division 2—The Chief Health Officer**

### **20 Chief Health Officer**

- (1) Subject to the **Public Administration Act 2004**, there is to be appointed by the Secretary as the Chief Health Officer a person who is a registered medical practitioner.
- (2) Subject to the general direction and control of the Secretary, the Chief Health Officer has the powers, duties, functions and immunities that are conferred or imposed on the Chief Health Officer by or under this or any other Act.
- (3) For the purposes of this Act, the Chief Health Officer has and may exercise all the powers conferred on an authorised officer by this Act.
- (4) The Secretary must issue an identity card to the Chief Health Officer.
- (5) The identity card issued to the Chief Health Officer under this section must—
  - (a) contain a photograph of the Chief Health Officer; and
  - (b) contain the signature of the Chief Health Officer; and
  - (c) be signed by the Secretary.
- (6) Part 9 applies to the Chief Health Officer when exercising the powers of an authorised officer under this Act.

### **21 Functions and powers of the Chief Health Officer**

The functions and powers of the Chief Health Officer are—

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

- (b) to provide advice to the Minister or the Secretary on matters relating to public health and wellbeing;
- (c) to publish on a biennial basis and make available in an accessible manner to members of the public a comprehensive report on public health and wellbeing in Victoria;
- (d) to perform any other functions or exercise any powers specified under this Act or any other Act or under any regulations made under this or any other Act.

## **22 Power of delegation**

- (1) The Chief Health Officer by instrument may delegate to a registered medical practitioner—
  - (a) who is an executive within the meaning of section 4(1) of the **Public Administration Act 2004**; or
  - (b) who is a prescribed senior officer—any power, duty or function of the Chief Health Officer other than this power of delegation.
- (2) A delegation under subsection (1) may be made—
  - (a) in relation to a person or class of persons specified in the instrument of delegation; or
  - (b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

## **23 Provision of staff and contractors**

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary to assist the Chief Health Officer in the performance of his or her powers, duties and functions under this Act or any other

Act or under any regulations made under this or any other Act.

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

### **Division 3—Councils**

#### **24 Function of Councils**

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

- (a) creating an environment which supports the health of members of the local community and strengthens the capacity of the community and individuals to achieve better health;
- (b) initiating, supporting and managing public health planning processes at the local government level;
- (c) developing and implementing public health policies and programs within the municipal district;
- (d) developing and enforcing up-to-date public health standards and intervening if the health of people within the municipal district is affected;
- (e) facilitating and supporting local agencies whose work has an impact on public health and wellbeing to improve public health and wellbeing in the local community;

- (f) co-ordinating and providing immunisation services to children living or being educated within the municipal district;
- (g) ensuring that the municipal district is maintained in a clean and sanitary condition.

## **25 Secretary may require report from Council**

- (1) The Secretary by notice in writing may require a Council to report to the Secretary on a matter relating to—
  - (a) public health and wellbeing specified in the notice;
  - (b) the performance of specified functions or duties, or the exercise of specified powers, by a Council under an Act administered by the Minister.
- (2) A Council must provide the report in the form and within the period specified by the Secretary in the notice.

## **26 Municipal public health and wellbeing plans**

- (1) Unless section 27 applies, a Council must, in consultation with the Secretary, prepare a municipal public health and wellbeing plan within the period of 12 months after each general election of the Council.
- (2) A municipal public health and wellbeing plan must—
  - (a) include an examination of data about health status and health determinants in the municipal district;
  - (b) identify goals and strategies based on available evidence for creating a local community in which people can achieve maximum health and wellbeing;

- (c) provide for the involvement of people in the local community in the development, implementation and evaluation of the public health and wellbeing plan;
  - (d) specify how the Council will work in partnership with the Department and other agencies undertaking public health initiatives, projects and programs to accomplish the goals and strategies identified in the public health and wellbeing plan;
  - (e) be consistent with—
    - (i) the Council Plan prepared under section 125 of the **Local Government Act 1989**; and
    - (ii) the municipal strategic statement prepared under section 12A of the **Planning and Environment Act 1987**.
- (3) In preparing a municipal public health and wellbeing plan, a Council must have regard to the State Public Health and Wellbeing Plan prepared under section 49.
- (4) A Council must review its municipal public health and wellbeing plan annually and, if appropriate, amend the municipal public health and wellbeing plan.
- (5) Despite subsection (2)(c), a Council is not required to provide for the involvement of people in the local community when reviewing or amending a municipal public health and wellbeing plan under subsection (4).
- (6) A Council must give a copy of the current municipal public health and wellbeing plan to the Secretary.

- (7) A copy of the current municipal public health and wellbeing plan must be available for inspection by members of the public at the places at which the current Council Plan must be available under section 125(11) of the **Local Government Act 1989**.

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

- (1) A Council is not required to comply with section 26 if—
- (a) the Council complies with this section; and
  - (b) the Secretary grants the Council an exemption from complying with section 26.
- (2) If a Council intends to comply with this section, the Council must—
- (a) address the matters specified in section 26(2) in the Council Plan to be prepared under section 125 of the **Local Government Act 1989** or in a Strategic Plan prepared and approved by the Council;
  - (b) if the matters specified in section 26(2) are included in the Council Plan, review the Council Plan in accordance with section 125(7) of the **Local Government Act 1989**;
  - (c) if the matters specified in section 26(2) are included in a Strategic Plan, review the Strategic Plan annually.
- (3) A Council may apply to the Secretary for an exemption from complying with section 26 by submitting a draft of the Council Plan or Strategic Plan which addresses the matters specified in section 26(2).

- (4) If the Secretary is satisfied that the draft Council Plan or Strategic Plan adequately addresses the matters specified in section 26(2), the Secretary must grant the Council an exemption from complying with section 26.
- (5) If the Secretary is not satisfied that the draft Council Plan or Strategic Plan adequately addresses the matters specified in section 26(2), the Secretary must—
  - (a) refuse to grant an exemption from complying with section 26(2); and
  - (b) advise the Council in writing—
    - (i) of the reasons for refusing to do so; and
    - (ii) as to the changes that should be made to the draft Council Plan or Strategic Plan.
- (6) If a Council has been granted an exemption from complying with section 26, the Council must give a copy of the current Council Plan or Strategic Plan to the Secretary if a change is made to the Council Plan or Strategic Plan which relates to the matters specified in section 26(2).

## **28 Special powers of Secretary in a state of emergency**

If there is a state of emergency, the Secretary may do all or any of the following—

- (a) order a Council to perform any functions or duties, or exercise any powers, that the Secretary directs;
- (b) perform all or any of the functions or duties, or exercise all or any of the powers, of a Council;
- (c) order any officer of a Council to perform a particular function or duty or to exercise a particular power;

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

### **Division 4—Officers**

#### **29 Appointment of environmental health officers**

- (1) A Council must appoint one or more environmental health officers.
- (2) A Council may only appoint as an environmental health officer a person who has the qualifications, or qualifications and experience—
  - (a) that are declared by the Secretary as necessary for appointment as an environmental health officer; or
  - (b) that the Secretary or a person approved by the Secretary for the purposes of this section is satisfied are substantially equivalent to the qualifications or experience, or qualifications and experience, declared for the purpose of paragraph (a).
- (3) The Secretary may declare the qualifications, or qualifications and experience, which are necessary for appointment as an environmental health officer by a notice published in the Government Gazette.
- (4) Despite anything in this or any other Act, 2 or more Councils may appoint the same person to be their environmental health officer.
- (5) A person appointed as an environmental health officer is by virtue of that appointment an authorised officer for the purposes of this Act.



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

### **30 Secretary may appoint authorised officers**

- (1) The Secretary by instrument may appoint a person employed under Part 3 of the **Public Administration Act 2004** to be an authorised officer for the purposes of this Act.
- (2) The Secretary must not appoint a person to be an authorised officer under this section unless the Secretary is satisfied that the person is suitably qualified or trained to be an authorised officer for the purposes of this Act.
- (3) An appointment of a person to be an authorised officer may—
- (a) specify the functions, duties or powers under this Act or the regulations to which it relates; and
  - (b) be made subject to any conditions that the Secretary considers to be appropriate.
- (4) The Secretary must issue an identity card to each authorised officer appointed by the Secretary.
- (5) An identity card issued to an authorised officer under this section must—
- (a) contain a photograph of the authorised officer; and
  - (b) contain the signature of the authorised officer; and
  - (c) be signed by the Secretary.
- (6) The Secretary may give a direction to an authorised officer appointed by the Secretary in relation to the performance of the authorised

officer's functions or duties or the exercise of the authorised officer's powers under this Act or the regulations.

- (7) A direction given under subsection (6) may—
- (a) be of a general nature; or
  - (b) specify that the direction relates to a specific matter or specified class of matter.

### **31 Councils may appoint authorised officers**

- (1) Subject to this section, a Council may, under section 224(1) of the **Local Government Act 1989**, appoint a person to be an authorised officer for the purposes of this Act.
- (2) A Council must not appoint a person to be an authorised officer for the purposes of this Act unless the Council is satisfied that the person is suitably qualified or trained to be an authorised officer for the purposes of this Act.
- (3) An appointment of a person to be an authorised officer may—
  - (a) specify the functions, duties or powers under this Act or the regulations to which it relates; and
  - (b) be made subject to any conditions that the Council considers to be appropriate.
- (4) A Council may give a direction to an authorised officer appointed by the Council in relation to the performance of the authorised officer's functions or duties or the exercise of the authorised officer's powers under this Act or the regulations.
- (5) A direction given under subsection (4) may—
  - (a) be of a general nature; or
  - (b) specify that the direction relates to a specific matter or specified class of matter.

### **32 Analysts**

- (1) The Secretary by instrument may appoint a natural person to be an analyst.
- (2) The Secretary may only appoint a person to be an analyst if the Secretary considers that the person has the necessary expertise or experience to carry out analyses for the purposes of this Act and the regulations.
- (3) A person appointed to be an analyst need not be an authorised officer.
- (4) The function of an analyst is to carry out an analysis—
  - (a) to determine whether this Act and the regulations are being complied with; or
  - (b) to assist a person performing a function or exercising a power under this Act or the regulations.
- (5) If an analyst carries out an analysis, the analyst must prepare and sign a certificate of analysis which includes—
  - (a) the results of the analysis; and
  - (b) information about the apparatus and methodology used to conduct the analysis.

## **Part 4—Consultative Councils**

### **Division 1—General provisions**

#### **33 Consultative Councils**

- (1) For the purposes of this Act and any other Act conferring powers or imposing functions on the Minister or the Secretary, the Minister by Order may—
  - (a) establish a Consultative Council as the Minister considers appropriate in respect of the matters and functions that the Minister determines and specifies in the Order;
  - (b) appoint a Board, Commission or other body established by or under an Act or a Committee of the Board, Commission or other body to be a Consultative Council.
- (2) A Consultative Council established by Order under subsection (1)(a) is to consist of the number of members specified in the Order.
- (3) The Minister by Order may appoint the members of a Consultative Council established under subsection (1)(a).
- (4) Of the members appointed by Order under subsection (3)—
  - (a) one must be appointed as the Chairperson;
  - (b) one may be appointed as the Deputy Chairperson;
  - (c) the majority must be persons with special knowledge in the matters specified for that Consultative Council in the Order establishing the Consultative Council.

- (5) A member appointed under subsection (3)—
  - (a) holds office for the period, not exceeding 3 years, specified in the Order but is eligible for re-appointment;
  - (b) may resign from the office of member by writing signed and delivered to the Minister;
  - (c) may be removed from office by the Minister;
  - (d) is not in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 5 of that Act).
- (6) An Order under this section must be published in the Government Gazette.

#### **34 Assistance to Consultative Council**

- (1) Subject to the approval of the Minister, a Consultative Council may co-opt any person with special knowledge or skills to assist the Consultative Council in a particular matter.
- (2) A person who has been co-opted to assist a Consultative Council is to be considered to be a member of that Consultative Council until the period of co-option ends.

#### **35 Proceedings of a Consultative Council**

- (1) The Council Chairperson must preside at meetings of the Consultative Council at which the Council Chairperson is present.
- (2) If the Council Chairperson is not present at a meeting, the Deputy Chairperson is to be the chairperson of the meeting.
- (3) If the Council Chairperson is not present at a meeting and the Deputy Chairperson is not present at the meeting or there is no Deputy Chairperson, the members present must elect one of their number to be chairperson of the meeting.

- (4) The Deputy Chairperson may perform the functions of the Council Chairperson under section 38 or 39 if authorised to do so in writing by the Council Chairperson.
- (5) Subject to any regulations made for the purposes of this section, a Consultative Council may regulate its own proceedings.

### **36 Sub-committees**

- (1) Subject to the approval of the Minister, a Consultative Council may appoint a sub-committee for the purposes of carrying out any of its functions.
- (2) A sub-committee of a Consultative Council is to consist of—
  - (a) the members of the Consultative Council determined by the Consultative Council; and
  - (b) other persons as the Consultative Council determines.
- (3) A sub-committee appointed under this section must report to the Consultative Council.

### **37 Operation of Consultative Councils**

- (1) The Council Chairperson may provide information obtained in the course of the Consultative Council performing its functions to any other Consultative Council if the Council Chairperson considers that the information is relevant to the functions of the other Consultative Council.
- (2) The Minister or the Secretary may give a direction in writing to—
  - (a) a Consultative Council to consider and report on a matter relevant to the functions of the Consultative Council specified in the direction;

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

## **Division 2—Provisions applying to prescribed Consultative Councils**

### **38 Functions of certain prescribed Consultative Councils**

- (1) This section applies to a prescribed Consultative Council established by Order under section 33(1)(a).
- (2) The functions of a prescribed Consultative Council to which this section applies are to—
  - (a) monitor, analyse and report on matters specified for that prescribed Consultative Council in the Order which established that prescribed Consultative Council;
  - (b) consider, investigate and report on any matter specified by the Minister or the Secretary in a direction to the prescribed Consultative Council under section 37(2);
  - (c) liaise with any other Consultative Council on any matter relevant to the functions of the prescribed Consultative Council;
  - (d) improve public health and wellbeing by publishing and disseminating relevant information and practical strategies identified by the prescribed Consultative Council in the course of performing its functions;
  - (e) publish an annual report on the activities of the prescribed Consultative Council;

- (f) perform any function specified in the Order which established that prescribed Consultative Council;
- (g) perform any other prescribed function;
- (h) collect information for the purpose of performing the functions specified in this subsection.

**39 Request to provide information to prescribed Consultative Council**

- (1) The Chairperson of a prescribed Consultative Council by written notice may request—
  - (a) a health service provider or a health service provider which is a member of a class of health service provider; or
  - (b) a pathology service or a pathology service which is a member of a class of pathology service—

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

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

**Note**

See section 227.



**40 Provision of prescribed information to prescribed Consultative Council**

- (1) This section applies to—
- (a) a prescribed health service provider or a health service provider which is a member of a prescribed class of health service provider; and
  - (b) a prescribed pathology service or a pathology service which is a member of a prescribed class of pathology service.
- (2) A health service provider or pathology service to which this section applies must provide the prescribed information to the relevant prescribed Consultative Council—
- (a) in the prescribed manner and form; and
  - (b) within the prescribed period or at the prescribed intervals.

**Note**

See section 227.

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

Penalty: 10 penalty units.

**41 Disclosure of information held by a prescribed Consultative Council**

- (1) If a prescribed Consultative Council considers that it is in the public interest to do so, the prescribed Consultative Council may provide information obtained in the course of performing its functions under this or any other Act to—
- (a) a National Board established under Part 5 of the Health Practitioner Regulation National Law;

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

- (b) the Health Services Commissioner (or Acting Health Services Commissioner) under the **Health Services (Conciliation and Review) Act 1987**, but only for the purposes of an inquiry being carried out by the Health Services Commissioner (or Acting Health Services Commissioner) under section 9(1)(m) of that Act;
- (c) the State Coroner;
- (d) a Ministerial Committee;
- (e) the Minister;
- (f) the Secretary;
- (g) a protective intervener under section 181 of the **Children, Youth and Families Act 2005** if the prescribed Consultative Council believes that a child is in need of protection;
- (h) a health service;
- (i) any person in another State, a Territory, the Commonwealth or New Zealand that the prescribed Consultative Council determines has functions corresponding to a person referred to in paragraphs (a) to (h);
- (j) any person in another State, a Territory, the Commonwealth or New Zealand that the prescribed Consultative Council determines has functions corresponding to a Consultative Council;
- (k) any other person or class of persons prescribed for the purposes of this section.

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

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

**42 Confidentiality obligations applying in respect of a prescribed Consultative Council**

- (1) This section applies to the following persons—
- (a) a prescribed Consultative Council;
  - (b) a person who is or has been—
    - (i) a member of a prescribed Consultative Council; or
    - (ii) a member of a sub-committee of a prescribed Consultative Council; or
    - (iii) employed or engaged by a prescribed Consultative Council; or
    - (iv) made available to a prescribed Consultative Council.
- (2) A person to whom this section applies must not—
- (a) directly or indirectly make a record of, or divulge or communicate to any person any information gained by or conveyed to the person by reason of the person's office, employment or engagement; or
  - (b) make use of the information for any purpose—

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

Penalty: 10 penalty units.

- (3) Subsection (2) has effect despite anything to the contrary in section 12 of the **Audit Act 1994**.
- (4) A person to whom this section applies must not be required—
  - (a) to produce before any court or tribunal or any board, agency or other person any document that has come into the person's possession or under the person's control in the performance of the functions of the prescribed Consultative Council; or
  - (b) to divulge or communicate to any court or tribunal or any board, agency or other person any matter or thing that has come under the person's notice in the performance of the functions of the prescribed Consultative Council.
- (5) The **Freedom of Information Act 1982** does not apply to a document or any information referred to in subsection (4).
- (6) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a document or any information referred to in subsection (4).
- (7) Nothing in this section prevents a prescribed Consultative Council from including information in any document that does not contain any particulars which would be likely to lead to the identification of a person from whom or in relation to whom the information was obtained.

#### **43 Confidentiality of documents**

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

- (a) created for the sole purpose of providing information to a prescribed Consultative Council; and
  - (b) provided to the prescribed Consultative Council by or on behalf of that person.
- (2) Except in the case of information or reports published by a prescribed Consultative Council, the following is not admissible in any action or proceedings before any court or tribunal or any board, agency or other person—
- (a) evidence of any other information or reports obtained by or in the possession of a prescribed Consultative Council;
  - (b) evidence of or about a document to which subsection (1) applies.
- (3) The **Freedom of Information Act 1982** does not apply to a document or any information referred to in subsection (1) or (2).
- (4) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a document or any information referred to in subsection (1) or (2).

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

#### **44 Consultative Council on Obstetric and Paediatric Mortality and Morbidity**

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

#### **45 Constitution of CCOPMM**

- (1) CCOPMM is to consist of not more than 12 members appointed by the Minister by Order.
- (2) Of the members appointed by Order under subsection (1)—
  - (a) one must be appointed as the Chairperson;
  - (b) one may be appointed as the Deputy Chairperson;
  - (c) the majority must be persons with special knowledge which the Minister considers is relevant to the functions of CCOPMM.
- (3) A member appointed under this section—
  - (a) holds office for the period not exceeding 3 years, as is specified in the Order but is eligible for re-appointment;
  - (b) may resign from the office of member by writing signed and delivered to the Minister;
  - (c) may be removed from office by the Minister;
  - (d) is not in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 5 of that Act).
- (4) An Order under this section must be published in the Government Gazette.

#### **46 Functions of CCOPMM**

- (1) The functions of CCOPMM are to—
  - (a) conduct study, research and analysis into the incidence and causes in Victoria of maternal deaths, stillbirths and the deaths of children;
  - (b) conduct study, research and analysis into the incidence and causes of obstetric and paediatric morbidity;

- (c) conduct a perinatal data collection unit for the purpose of—
- (i) collecting, studying, researching and interpreting information on and in relation to births in Victoria;
  - (ii) identifying and monitoring trends in respect of perinatal health including birth defects and disabilities;
  - (iii) providing information to the Secretary on the requirements for and the planning of neonatal care units;
  - (iv) providing information for research into the epidemiology of perinatal health including birth defects and disabilities;
  - (v) establishing and maintaining a register of birth defects and disabilities;

**Note**

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

- (d) provide to health service providers—
- (i) information on obstetrics and paediatrics;
  - (ii) strategies to improve obstetric and paediatric care;
- (e) consider, investigate and report on any other matters in respect of obstetric and paediatric mortality and morbidity referred to CCOPMM by the Minister or the Secretary;
- (f) liaise with any other Consultative Council (whether or not prescribed) on any matter relevant to the functions of CCOPMM;

- (g) publish an annual report on the research and activities of CCOPMM;
  - (h) perform any other prescribed function;
  - (i) collect information for the purpose of performing its functions under this subsection.
- (2) The Secretary must make available to CCOPMM any resources from the Department that are necessary to enable CCOPMM to carry out its functions.
- (3) In this section, *maternal death* means the death of a woman who was pregnant at the time of her death or who was pregnant within the period of 12 months immediately before her death.

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

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

**Note**

See section 227.

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



#### **48 Report of birth**

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

- (a) if the birth occurs in a health service, the proprietor of the health service; or
- (b) if the birth does not occur in a health service—
  - (i) the midwife who is in attendance upon the mother at the time of the birth; or
  - (ii) if subparagraph (i) does not apply, the registered medical practitioner who is in attendance upon the mother at the time of the birth; or
- (c) if paragraphs (a) and (b) do not apply—
  - (i) if the mother or the child is admitted to a health service because of the birth of the child, the proprietor of the health service; or
  - (ii) in any other case, the registered medical practitioner who undertakes the care and treatment of the mother or the child because of the birth of the child.

Penalty: 10 penalty units.

## **Part 5—General powers**

### **Division 1—State Public Health and Wellbeing Plan**

#### **49 Minister to ensure preparation of State Public Health and Wellbeing Plan**

- (1) The Minister must ensure that a State Public Health and Wellbeing Plan is prepared—
  - (a) no later than 1 September 2011; and
  - (b) thereafter no later than 1 September in every fourth year.
- (2) A State Public Health and Wellbeing Plan must—
  - (a) identify the public health and wellbeing needs of the people of the State;
  - (b) include an examination of data relating to health status and health determinants within the State;
  - (c) establish objectives and policy priorities for—
    - (i) the promotion and protection of public health and wellbeing in the State;
    - (ii) the development and delivery of public health interventions in the State;
  - (d) identify how to achieve the objectives and policy priorities referred to in paragraph (c) based on available evidence;
  - (e) specify how the State is to work with other bodies undertaking public health initiatives, projects and programs to achieve the objectives and policy priorities referred to in paragraph (c).

## **Division 2—Public inquiries**

### **50 Public inquiry**

- (1) The Secretary may conduct a public inquiry in respect of any matter which the Secretary considers is a serious public health matter.
- (2) The Minister may direct in writing the Secretary to conduct a public inquiry in respect of any matter which the Minister considers is a serious public health matter and is specified in the direction.
- (3) The Secretary may appoint in writing a person or panel of persons to conduct a public inquiry and report to the Secretary.
- (4) A person appointed under subsection (3) or who is a member of a panel of persons appointed under subsection (3) must be a person who in the opinion of the Secretary has the special knowledge or skills required to conduct the public inquiry.
- (5) The Secretary must publish a notice in the Government Gazette specifying—
  - (a) the terms of reference of the public inquiry;
  - (b) information relating to the conduct of the public inquiry;
  - (c) timelines relating to the public inquiry.
- (6) If there is a change to any of the matters referred to in subsection (5) in relation to a public inquiry and as specified in a notice published by the Secretary in the Government Gazette under that subsection, the Secretary must, within one month after the day the change is made, publish a subsequent notice in the Government Gazette specifying the change.

## 51 Conduct of public inquiry

- (1) In conducting a public inquiry—
- (a) subject to any regulations, the procedure is in the discretion of the Convenor;
  - (b) the Convenor may proceed with as little formality and technicality and with as much expedition as the requirements of this Act and a proper investigation of the matter permit;
  - (c) the Convenor may determine whether or not to hold any hearings and whether or not any hearings are to be open to the public;
  - (d) the Convenor is not bound by the rules of evidence and may be informed of any matter in any manner the Convenor considers appropriate;
  - (e) the Convenor—
    - (i) must allow a person affected by a public inquiry to be represented by an Australian lawyer;
    - (ii) may allow or refuse to allow any person to be represented by another person;
  - (f) the Convenor is bound by the rules of natural justice.
- (2) Sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, apply to a public inquiry and the report of the public inquiry as if the Convenor were a board appointed by the Governor in Council.
- (3) A person who is required to appear as a witness at a public inquiry is entitled to reasonable witness expenses as determined by the Convenor.

S. 51(1)(e)(i)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 79).

S. 51(2)  
amended by  
Nos 69/2009  
s. 54(Sch. Pt 2  
item 40),  
67/2014  
s. 147(Sch. 2  
item 30).

- (4) A person must not give information which he or she knows is false or misleading to the Convenor.  
Penalty: 60 penalty units.
- (5) A person must not intentionally hinder or obstruct the conduct of a public inquiry.  
Penalty: In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
300 penalty units.
- (6) In this section, *Convenor* means the Secretary or the person or panel of persons appointed by the Secretary to conduct the public inquiry.

## **52 Report of public inquiry**

- (1) If the Convenor under section 51 is not the Secretary, the Convenor must provide the report of the public inquiry to the Secretary.
- (2) The Secretary must publish the report of a public inquiry within the period of 3 months after the public inquiry is concluded.

## **Division 3—Health Impact Assessments**

### **53 Health Impact Assessment**

- (1) The Minister may, by a direction in writing, require the Secretary or the Chief Health Officer to conduct a Health Impact Assessment of the public health and wellbeing impact of a matter specified in the direction.
- (2) A direction under subsection (1) may specify the period within which the Health Impact Assessment is to be completed.

## **Division 4—Collection and disclosure of information**

### **54 Application of Division**

This Division—

- (a) applies in addition to any specific provisions relating to the provision, collection, use or disclosure of information in this Act or the regulations; and
- (b) prevails to the extent of any inconsistency with a provision of a kind referred to in paragraph (a).

### **55 Disclosure of information to specified persons**

A person is authorised to disclose information to the Secretary, the Chief Health Officer or an authorised officer of the Department if the person reasonably believes that the disclosure is necessary to assist the Secretary, the Chief Health Officer or the authorised officer to exercise a power, or perform a duty or function, under this Act or the regulations.

#### **Note**

See section 227.

### **56 Secretary may disclose information in certain circumstances to a relevant body**

- (1) If this section applies, the Secretary may disclose any information held by the Secretary under, or for the purposes of, this Act or the regulations to a relevant body.
- (2) This section applies if the disclosure of the information to the relevant body—
  - (a) is required or allowed under an agreement between the Secretary and the relevant body, notice of which agreement is published in the Government Gazette; and

(b) is for the purpose of promoting or protecting public health.

(3) In this section, *relevant body* means—

- (a) the Commonwealth;
- (b) another State;
- (c) a Territory;
- (d) a Government Department of the Commonwealth, another State or a Territory;
- (e) an entity established for a public purpose under an Act of the Commonwealth, another State or a Territory;
- (f) a body (including an international body) which is prescribed for the purposes of this section;
- (g) the holder of a statutory office under an Act of the Commonwealth, another State or a Territory.

#### **57 Disclosure of information to other administrators**

- (1) The Secretary or the Chief Health Officer may disclose any information held by the Secretary or the Chief Health Officer under, or for the purposes of, this Act or the regulations to a Council if the Secretary or the Chief Health Officer considers that the disclosure would assist the Council to perform its duties or functions or exercise its powers under this Act or the regulations.
- (2) A Council may disclose any information that it holds under, or for the purposes of, this Act or the regulations to the Secretary, the Chief Health Officer or another Council if the Council considers that the disclosure would assist the Secretary, the Chief Health Officer or the Council to perform their duties or functions or exercise their powers under this Act or the regulations.

- (3) The Secretary or the Chief Health Officer may disclose any information held by the Secretary or the Chief Health Officer under, or for the purposes of, Part 6 or 7 or the regulations made for the purposes of those Parts to a Government Department, statutory body or other person responsible for administering another Act or regulations made under that Act if the Secretary or the Chief Health Officer considers that the disclosure would assist that Government Department, statutory body or other person to perform their duties or functions or exercise their powers under that Act or the regulations made under that Act.
- (4) A Council may disclose any information that it holds under, or for the purposes of, Part 6 or the regulations made for the purposes of that Part to a Government Department, statutory body or other person responsible for administering another Act or regulations made under that Act if the Council considers that the disclosure would assist that Government Department, statutory body or other person to perform their duties or functions or exercise their powers under that Act or the regulations made under that Act.



## **Part 6—Regulatory provisions administered by Councils**

### **Division 1—Nuisances**

#### **58 Application of Division**

- (1) This Division applies to nuisances which are, or are liable to be, dangerous to health or offensive.
- (2) Without limiting the generality of subsection (1), this Division applies in particular to nuisances arising from or constituted by any—
  - (a) premises; or
  - (b) water; or
  - (c) animal, including a bird or insect, capable of carrying a disease transmissible to human beings; or
  - (d) refuse; or
  - (e) noise or emission; or
  - (f) state, condition or activity; or
  - (g) other matter or thing—which is, or is liable to be, dangerous to health or offensive.
- (3) For the purpose of determining whether a nuisance arising from or constituted by any matter or thing referred to in subsection (2) is, or is liable to be, dangerous to health or offensive—
  - (a) regard must not be had to the number of persons affected or that may be affected; and
  - (b) regard may be had to the degree of offensiveness.
- (4) In this section, *offensive* means noxious or injurious to personal comfort.

### **59 Effect of Division**

- (1) This Division does not render lawful any act, matter or thing which but for this Act would be a nuisance.
- (2) This Division is in addition to, and does not prejudice, abridge or otherwise affect any right, remedy or proceeding under any other provision of this Act, or under any other Act, or at common law.

### **60 Duty of Council**

A Council has a duty to remedy as far as is reasonably possible all nuisances existing in its municipal district.

### **61 Offence of causing a nuisance**

- (1) A person must not—
  - (a) cause a nuisance; or
  - (b) knowingly allow or suffer a nuisance to exist on, or emanate from, any land owned or occupied by that person.

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

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

- (2) A person is not guilty of an offence under subsection (1)(b) if the person had a lawful excuse for knowingly allowing or suffering a nuisance to exist on, or emanate from, any land owned or occupied by that person.

### **62 Notification of nuisance**

- (1) If a person believes that a nuisance exists, that person may notify the Council in whose municipal district the alleged nuisance exists.

- (2) The Council must investigate any notice of a nuisance.
- (3) If, upon investigation, a nuisance is found to exist, the Council must—
  - (a) take any action specified in subsection (4) that the Council considers appropriate; or
  - (b) if the Council is of the opinion that the matter is better settled privately, advise the person notifying the Council of the nuisance of any available methods for settling the matter privately.
- (4) For the purposes of subsection (3)(a), the Council may—
  - (a) if section 66 applies, exercise the powers conferred by that section;
  - (b) issue an improvement notice or a prohibition notice;
  - (c) bring proceedings under section 219(2) for an offence against this Act.

**Note**

See section 197 in relation to the power of a Council to bring proceedings after it has issued an improvement notice or a prohibition notice in respect of a nuisance.

**63 Failure of Council to investigate complaint**

- (1) If the Council does not, within a reasonable time of being notified of an alleged nuisance, investigate the subject matter of the notification, the person who notified the Council may make a complaint to the Magistrates' Court of the existence of the alleged nuisance.

- (2) If the Magistrates' Court receives a complaint under subsection (1), the Magistrates' Court may—
  - (a) summon the person alleged to be contravening section 61 to appear before the Magistrates' Court; and
  - (b) proceed as if the complaint had been made by a Council under section 197(2).
- (3) If the Magistrates' Court is satisfied that the person making a complaint under this section had reasonable grounds for doing so, the Magistrates' Court may order the Council to pay any costs and expenses incurred by that person.
- (4) The Magistrates' Court must not order a Council to pay any costs or expenses under subsection (3) unless the Magistrates' Court first gives the Council or its representative an opportunity to be heard.
- (5) If the Magistrates' Court is satisfied that a complaint under this section is vexatious or frivolous, the Magistrates' Court may order the person making the complaint to pay the costs and expenses incurred by the person who has answered the complaint.

#### **64 Who can institute proceedings?**

Proceedings for an offence against section 61 can only be instituted by the Council of a municipal district in which the nuisance in respect of which the proceedings are to be brought exists wholly or partly.

#### **65 Power of Council to investigate nuisance outside its municipal districts**

A Council may investigate a nuisance which exists outside its municipal district if that nuisance affects the Council's municipal district.

**66 Nuisance on unoccupied land or occupied land—  
occupier and owner unknown or cannot be found**

- (1) This section applies if a nuisance exists on, or emanates from—
  - (a) unoccupied land, the owner of which is unknown or cannot be found; or
  - (b) occupied land, the occupier and owner of which are unknown or cannot be found.
- (2) If this section applies, the Council, in whose municipal district the land is wholly or partly located, may—
  - (a) enter and take steps to abate the nuisance; and
  - (b) do all things necessary for that abatement.
- (3) If a Council is abating a nuisance under subsection (2), another Council is not competent under this Division to abate that nuisance.
- (4) Any reasonable costs incurred under subsection (2) are a debt payable to the Council by the owner of the land and—
  - (a) are until recovered a charge on the relevant land; and
  - (b) may at any time be recovered by the Council in a court of competent jurisdiction—
    - (i) from the owner of the relevant land for the time being; or
    - (ii) after demand from the occupier of the relevant land for the time being, from the rent, to the extent of the amount of rent due, at the time of demand, from the occupier to the owner.

- (5) For the purposes of subsection (4), *reasonable costs* means—
- (a) the costs and expenses of taking the actions necessary to abate the nuisance; and
  - (b) all other costs and expenses lawfully incurred by the Council in respect of any land or any premises on the land whether or not any judgment or order has been obtained; and
  - (c) interest at the percentage rate per annum fixed in accordance with section 2 of the **Penalty Interest Rates Act 1983**.

## **Division 2—Registration of prescribed accommodation**

### **67 Registration of prescribed accommodation**

The proprietor of prescribed accommodation must, in accordance with Division 4, register that accommodation with the Council in whose municipal district the prescribed accommodation is located.

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

## **Division 3—Registration of certain businesses**

### **68 Application of Division**

This Division applies in respect of a person conducting a—

- (a) business of beauty therapy;
- (b) business involving colonic irrigation;
- (c) business of hairdressing;

- (d) business involving skin penetration;
- (e) business involving tattooing;
- (f) business that poses a risk to public health and is a business of a class of business prescribed for the purposes of this section.

## **69 Registration of premises**

- (1) Unless subsection (2) applies, a person conducting a business referred to in section 68 must, in accordance with Division 4, register any premises upon which that person conducts that business with the Council in whose municipal district the premises are located.

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

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

- (2) Subsection (1) does not apply if the person is conducting a business specified in section 68 in the course of a business which is prescribed as an exempt business or which is a business of a class of business prescribed to be exempt for the purposes of this section.

## **Division 4—General provisions relating to registration**

### **70 Application of Division**

This Division applies in respect of the registration of—

- (a) prescribed accommodation required to be registered under Division 2;
- (b) premises required to be registered under Division 3.

## **71 Application for registration**

An application for the issue, renewal or transfer of a registration must be made to the Council—

- (a) in the form approved by the Council;
- (b) containing any information in respect of the prescribed accommodation or the premises required by the Council;
- (c) containing the prescribed particulars;
- (ca) containing the following information if the application relates to registration of a rooming house—
  - (i) if the applicant is a body corporate, its ABN or ACN;
  - (ii) if the applicant is an individual, the applicant's ABN or his or her date of birth;
- (d) together with the relevant fee for the issue, renewal or transfer of the registration.

S. 71(ca)  
inserted by  
No. 56/2012  
s. 19.

## **72 Registration fees**

- (1) The fees payable in respect of the issue, transfer or renewal of a registration are—
  - (a) if this Division applies in a municipal district, the fees as determined by a resolution of the Council of that municipal district; or
  - (b) if the application for the issue, transfer or renewal of a registration is being dealt with by the Secretary under an Order in Council made under section 12, the prescribed fees;



- (c) if the application for the issue, transfer or renewal of a registration is being dealt with by a Council under a delegation from the Secretary under an Order in Council made under section 12, the fees as determined by a resolution of the Council;
  - (d) if the application for the issue, transfer or renewal of a registration is being dealt with a person (other than a Council) under a delegation from the Secretary under an Order in Council made under section 12, the prescribed fees.
- (2) The fees determined by a Council under subsection (1)(a) or (1)(c)—
- (a) may vary according, among other things, to the following—
    - (i) the size or nature of the prescribed accommodation or the premises;
    - (ii) when an application for the issue, transfer or renewal of a registration is received; and
  - (b) if a maximum amount is fixed in respect of a specified fee or class of fees by Order in Council, must not exceed the relevant amount.

### **73 Powers of the Council**

- (1) Before considering an application under section 71, the Council may—
- (a) give the applicant a notice requiring the applicant to provide the information specified in the notice;
  - (b) inspect the prescribed accommodation or the premises;

(c) require that alterations or improvements be made to the prescribed accommodation or the premises so the prescribed accommodation or the premises comply with this Act or the regulations or any applicable regulations made under Division 8 of Part 3 of the **Residential Tenancies Act 1997**.

S. 73(1)(c)  
amended by  
No. 56/2012  
s. 20.

(2) The Council may issue, transfer or renew a registration subject to the condition that a requirement under subsection (1)(c) is complied with within the period specified by the Council.

**73A Information to be provided for Rooming House Register**

S. 73A  
inserted by  
No. 56/2012  
s. 21.

- (1) For the purposes of Division 9 of Part 3 of the **Residential Tenancies Act 1997**, a Council—
- (a) must enter in the Rooming House Register any information required under Division 9 of Part 3 of that Act in relation to a rooming house—
    - (i) that is registered under this Division; or
    - (ii) for which registration is cancelled or refused to be renewed; and
  - (b) may enter in the Rooming House Register any information specified in section 142F(3) of that Act for each rooming house located in the Council's municipal district for which registration has been refused to be issued under this Division.
- (2) In this section, ***Rooming House Register*** means the Rooming House Register within the meaning of section 3(1) of the **Residential Tenancies Act 1997**.

#### **74 Provisions applying in respect of registration**

A registration must be issued, transferred or renewed by the Council—

- (a) in accordance with this Act and the regulations;
- (b) in the form of a certificate of registration approved by the Council;
- (c) only in respect of the prescribed accommodation or the premises specified in the registration;
- (d) for such period as is determined by the Council being a period not greater than 3 years and which period must be specified in the registration;
- (e) unless sooner cancelled or suspended, to remain in force until the day specified in the registration for the expiration of that registration.

#### **75 Registration subject to conditions**

- (1) The following are the conditions to which a registration is subject—
  - (a) any condition imposed on the registration by the Council under section 73(2);
  - (b) any condition imposed on the registration holder by this Act or the regulations;
  - (c) any prescribed conditions which apply to a registration or a registration of that class.
- (2) A registration holder must comply with the conditions to which the registration is subject.

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

## **76 Powers of a Council in respect of registration**

- (1) A Council may—
- (a) refuse to issue;
  - (b) issue subject to a condition imposed on the registration by the Council under section 73(2);
  - (c) vary;
  - (d) cancel;
  - (e) suspend;
  - (f) refuse to transfer;
  - (g) transfer subject to a condition imposed on the registration by the Council under section 73(2);
  - (h) refuse to renew;
  - (i) renew subject to a condition imposed on the registration by the Council under section 73(2)—

a registration on any of the grounds specified in subsection (2).

- (2) The grounds are—
- (a) the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any requirement of this Act or the regulations that is applicable;
  - (ab) if the application relates to registration of a rooming house, the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any applicable regulations made under Division 8 of Part 3 of the **Residential Tenancies Act 1997**;

**S. 76(2)(ab)**  
inserted by  
**No. 56/2012**  
s. 22.

- (b) the registration holder has failed to comply with any condition to which the registration is subject;
  - (c) the applicant has ceased to provide prescribed accommodation or conduct the business in respect of which registration is required;
  - (d) there is a risk to the health of persons if the registration is not cancelled or suspended or is issued, transferred or renewed;
  - (e) any other ground which is prescribed for the purposes of this section.
- (3) If a Council makes a decision under this section, it must notify the applicant or registration holder in writing of the decision and ground or grounds on which the decision is based.

#### **77 Council's delegation of power to refuse applications**

Despite section 98 of the **Local Government Act 1989**, the exercise by a delegate of a Council's power to refuse an application under this Division is valid only if the Council later ratifies that refusal.

#### **78 Issue of replacement certificate**

The Council may issue a replacement certificate of registration or renewal of registration to a holder who satisfies the Council that the original certificate of registration or renewal of registration has been lost, stolen or destroyed.

## **Part 7—Regulatory provisions administered by the Secretary**

### **Division 1—Cooling tower systems**

#### **79 When is a cooling tower system in operation?**

- (1) Once a cooling tower system starts operation (whether initially, or after being recommissioned), then, for the purposes of this Division, the cooling tower system remains in operation until—
  - (a) it is decommissioned or removed; and
  - (b) the Secretary has been notified in accordance with section 88 that it has been decommissioned or removed.
- (2) For the purposes of this Division, a cooling tower system is in operation even if the only purpose for which it is in operation is to enable the conducting of tests associated with the installation or commissioning or re-commissioning of the cooling tower system.

#### **80 Cooling tower system must be registered**

The owner of any land on which there is a cooling tower system must ensure that the cooling tower system is registered with the Secretary at all times that the cooling tower system is in operation.

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

### **81 Applications for registration or renewal of registration**

- (1) An application to register, or to renew the registration of, a cooling tower system may be made to the Secretary by—
  - (a) the owner of the land on which the cooling tower system is located;
  - (b) the owner of the cooling tower system;
  - (c) an agent, employee or other person acting on behalf of the person referred to in paragraph (a) or (b).
- (2) The application must—
  - (a) be submitted in the approved form; and
  - (b) include—
    - (i) any information required by the Secretary that relates to the registration; and
    - (ii) the relevant prescribed fee.

### **82 Powers of the Secretary**

Before considering an application under section 81, the Secretary may give the applicant a notice requiring the applicant to provide the information specified in the notice.

### **83 Processing of applications**

The Secretary must give the owner of the land on which the cooling tower system is located a certificate of registration, or renewal of registration, for the cooling tower system that states the date—

- (a) on which the registration or renewal occurred; and
- (b) when the registration will expire.

#### **84 Multiple cooling tower systems**

- (1) The owner of land on which there are 2 or more cooling tower systems or an agent, employee or other person acting on behalf of that owner may submit one application for registration or renewal of registration in respect of the cooling tower systems which gives details of each cooling tower system.
- (2) An agent, employee or other person acting on behalf of the owner of 2 or more cooling tower systems on any land may submit one application for registration or renewal of registration in respect of the cooling tower systems which gives details of each cooling tower system.
- (3) An agent or other person acting on behalf of all of the owners of the cooling tower systems on any land may submit one application for registration or renewal of registration in respect of the cooling tower systems which gives details of each cooling tower system.

#### **85 Period of registration**

- (1) The initial registration of a cooling tower system expires on the date specified in the certificate of registration, being a date not more than 3 years after the date on which the registration was first made.
- (2) The renewal of registration of a cooling tower system expires on the date specified in the certificate of renewal of registration, being a date not more than 3 years after the date on which the registration was last renewed.
- (3) Despite subsection (2), if an application for the renewal of a registration is received by the Secretary within 60 days after the registration expired, the renewal of registration expires on the date specified in the certificate of renewal of



registration, being a date not more than 3 years after the date on which the registration expired.

- (4) In the circumstances specified in subsection (3)—
- (a) the granting of the certificate of renewal of registration does not affect the unregistered status of the cooling tower system between the expiry of the previous registration and the granting of the certificate; and
  - (b) the full prescribed fee for the renewal of registration must still be paid calculated from the day after the day on which the registration expired.

#### **86 Registration to continue pending renewal**

- (1) This section applies if the Secretary receives an application under section 81 for the renewal of the registration of a cooling tower system before the registration is due to expire.
- (2) Despite anything to the contrary in this Division, the registration is deemed to continue until a certificate of the renewal of the registration is issued.
- (3) If a certificate of the renewal of registration is issued, the registration is deemed to have been renewed on the day after the day on which it would have expired had it not been renewed.

#### **87 Secretary to be notified of certain changes**

- (1) This section applies if there is a change in—
  - (a) the ownership of any land on which there is a cooling tower system; or
  - (b) the address or other contact details of the owner.

- (2) Within 30 days after the date of the change in the ownership or in the address or other contact details, the owner of the land must notify the Secretary in writing of the change.

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

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

### **88 Secretary to be notified of other changes**

- (1) A person who holds a certificate of registration in respect of a cooling tower system must notify the Secretary within 30 days after—

- (a) the addition or removal of a cooling tower to, or from, the cooling tower system;
- (b) the removal, or decommissioning, of the cooling tower system;
- (c) the relocation of the cooling tower system on the lot of land on which it stands.

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

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

- (2) A notification under subsection (1) must—

- (a) be made in the form and manner approved by the Secretary; and
- (b) contain the prescribed details.

### **89 Cooling tower system register**

- (1) The Secretary must keep a register containing details of the location of each registered cooling tower system.

- (2) The Secretary must ensure that the register is available for inspection by any person wishing to inspect the register during the Department's normal office hours.

**90 Issue of replacement certificate**

The Secretary may issue a replacement certificate of registration or renewal of registration to a holder who satisfies the Secretary that the original certificate of registration or renewal of registration has been lost, stolen or destroyed.

**91 Owner must ensure risk management plan prepared**

- (1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that a risk management plan exists in respect of the cooling tower system at all times that the cooling tower system is in operation.

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

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

- (2) The risk management plan must—
- (a) address the risks prescribed in respect of cooling tower systems and set out the steps to be taken to manage the risks;
  - (b) set out the steps to be taken to ensure compliance with any risk management requirements relating to the cooling tower system;
  - (c) include any other matters prescribed for the purposes of this section;
  - (d) be in the approved form.

## **92 Owner must ensure risk management plan reviewed**

- (1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that the risk management plan is reviewed, and, if necessary, updated, at least once in each 12 month period.

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

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

- (2) The owner of the land must also take all reasonable steps to ensure that the risk management plan is reviewed, and if necessary updated, if—
- (a) legionella is detected in the cooling tower system on 2 or more occasions in any period of 12 months; or
  - (b) the owner of the land is given written advice by the Secretary that a case of legionnaires' disease is associated with the cooling tower system; or
  - (c) the owner of the land receives a report from the Secretary or from any person engaged by the owner of the land or the owner of the cooling tower system that control measures used in respect of the cooling tower system are inadequate or require improvement; or
  - (d) there is a significant change in—
    - (i) any of the environmental conditions under which the cooling tower system operates; or
    - (ii) the operation of the cooling tower system; or

(e) the owner of the land receives an audit certificate that states that the risk management plan does not address the prescribed risks.

(3) The owner of the land must comply with subsection (2) as soon as is practicable after the occurrence of the relevant triggering event.

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

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

**93 Owner must ensure risk management plan audit conducted**

(1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that an audit is conducted annually in relation to the risk management plan prepared in respect of a cooling tower system.

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

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

(2) An owner of land is not excused from complying with this section merely because the carrying out of the audit can only be done at the owner's expense.

(3) The risk management plan audit must be conducted by an approved auditor for the purpose of determining whether the risk management plan—

(a) complied with section 91(2) throughout the period in respect of which the audit is undertaken; and

- (b) has been implemented during that period;  
and
  - (c) has been reviewed within the 12 months  
immediately before the audit.
- (4) In conducting the audit, the approved auditor must inspect all the documents relating to the cooling tower system that are prescribed for the purposes of this section.
- (5) The approved auditor is not required to—
- (a) determine whether the risk management plan has, in fact, adequately controlled the risks associated with the use of a cooling tower system; or
  - (b) inspect the cooling tower system.
- (6) After conducting the audit, the approved auditor must give the person who commissioned the audit a certificate stating the auditor's opinion on whether the risk management plan—
- (a) complied with section 91(2) throughout the period in respect of which the audit is undertaken; and
  - (b) has been implemented during that period;  
and
  - (c) has been reviewed within the 12 months  
immediately before the audit.
- (7) The certificate must—
- (a) be in the approved form; and
  - (b) contain any information required by the Secretary.
- (8) The approved auditor must give the Secretary a copy of the information in the audit certificate within 7 days after completing the certificate.

Penalty: 10 penalty units.

#### **94 Certification of approved auditors**

- (1) The Secretary may certify in writing that a natural person is—
  - (a) competent to conduct a risk management plan audit; and
  - (b) an approved auditor for the purposes of this Act.
- (2) In certifying a person as an approved auditor, the Secretary may—
  - (a) impose any conditions on the certification that the Secretary considers to be appropriate; and
  - (b) specify for how long the certificate remains current.
- (3) If any fee is prescribed in relation to a certification, the Secretary must not certify a person until the person has paid the fee.
- (4) An approved auditor must comply with any condition imposed on the certification by the Secretary under subsection (2)(a).

Penalty: 60 penalty units.

- (5) The Secretary may, after giving a person an opportunity to be heard, revoke that person's certification as an approved auditor if the Secretary is satisfied that—
  - (a) the certification was granted on the basis of fraud, misrepresentation or the concealment of facts; or
  - (b) the person is not a suitable person to be an approved auditor; or
  - (c) the person has failed to comply with any requirement imposed by this Act or the regulations on approved auditors; or

- (d) the person has unsatisfactorily carried out 2 or more risk management plan audits; or
- (e) any other ground which is prescribed for the purposes of this section applies.

**95 Only approved auditors may conduct audits**

A person must not conduct a risk management plan audit unless he or she is an approved auditor.

Penalty: 60 penalty units.

**96 Offence to impersonate approved auditor**

A person who is not an approved auditor must not—

- (a) use or take the title "approved auditor" in relation to the conduct of a risk management plan audit; or
- (b) directly or indirectly represent that he or she is approved or authorised to conduct a risk management plan audit.

Penalty: 60 penalty units.

**97 Conflict of interest to be avoided**

- (1) A person must not conduct a risk management plan audit of the risk management plan of a cooling tower system if the person is an interested person or is an employee or officer of an interested person.

Penalty: 60 penalty units.

- (2) A person must not conduct a risk management plan audit of a risk management plan as an employee of another person if any other employee of that other person has written, or assisted in preparing, that risk management plan.

Penalty: 60 penalty units.



- (3) In this section, *interested person*, in relation to a cooling tower system, means—
- (a) the owner of the land on which the cooling tower system stands;
  - (b) the owner of the cooling tower system;
  - (c) a person who was involved in the construction or installation of the cooling tower system;
  - (d) a person who was involved in the maintenance or testing of the cooling tower system during the period covered by an audit;
  - (e) a person who has written, or has assisted in the writing of, a risk management plan for the cooling tower system;
  - (f) a person who has reviewed, or has assisted in the reviewing of, the risk management plan for the cooling tower system.

**98 Secretary may declare optional variations**

- (1) The Secretary may by notice in writing declare optional variations to risk management requirements in respect of a particular cooling tower system or a class of cooling tower systems if the Secretary is satisfied that the variation would not result in a higher health risk.
- (2) If a notice under subsection (1) applies to a class of cooling tower systems, the Secretary must publish a copy of the notice in the Government Gazette.
- (3) If the owner of a cooling tower system in respect of which a declaration under subsection (1) applies—

- (a) elects in writing to the Secretary to implement the variations to the risk management requirements which would otherwise apply in respect of the cooling tower system; and
- (b) complies with the risk management requirements as varied—

the owner is to be taken to have complied with the risk management requirements under this Act or the regulations that would otherwise have applied.

## **Division 2—Pest control**

### **99 Use of certain pesticides prohibited**

Subject to section 100, a natural person must not, in the course of the business of a pest control operator, use any pesticide or class of pesticides unless the person holds a pest control licence as an authorised user of that pesticide or class of pesticides.

Penalty: 120 penalty units.

### **100 Exemption**

Section 99 does not apply if the use of the pesticide is for the purposes of—

- (a) horticulture; or
- (b) agriculture; or
- (c) water treatment; or
- (d) weed control; or
- (e) controlling a pest animal within the meaning of the **Catchment and Land Protection Act 1994** to protect an area or place which is not—

- (i) a building used for commercial purposes; or
- (ii) domestic premises or privately owned land adjacent to domestic premises.

### **101 Issue or renewal of pest control licences**

- (1) A person may apply to the Secretary in the approved form for the issue or renewal of a pest control licence to use a pesticide or class of pesticide in the course of a business of a pest control operator.
- (2) The Secretary must not grant an application for the issue or renewal of a pest control licence unless the person applying for the issue or renewal—
  - (a) is a natural person of at least 18 years of age; and
  - (b) satisfies the Secretary that the person has the prescribed qualifications; and
  - (c) has paid the relevant prescribed licence fee.
- (3) Despite subsection (2), the Secretary may grant an application for the issue or renewal of a pest control licence to a natural person who—
  - (a) is at least 16 years of age; and
  - (b) satisfies the Secretary that the person is—
    - (i) enrolled in a prescribed course of training; or
    - (ii) undertaking training in the prescribed units of competency; and
  - (c) has paid the relevant prescribed licence fee.

- (4) Unless satisfied that there are special circumstances for doing so, the Secretary must not grant an application under subsection (3) to a person more than 3 times.
- (5) Subject to sections 102(3) and 102(4), an application for the renewal of a pest control licence may be made—
  - (a) before the expiry of the pest control licence; or
  - (b) within the period of 60 days after the pest control licence has expired.

#### **102 Duration of pest control licence**

- (1) A pest control licence expires—
  - (a) in the case of a pest control licence issued under section 101(3), on the date specified in the pest control licence being a date not more than 12 months after the date on which the pest control licence is issued; and
  - (b) in any other case, on the date specified in the pest control licence being a date not more than 3 years after the date on which the pest control licence is issued.
- (2) The renewal of a pest control licence expires—
  - (a) in the case of a pest control licence issued under section 101(3), on the date specified in the pest control licence being a date not more than 12 months after the date on which the pest control licence was last renewed; and
  - (b) in any other case, on the date specified in the pest control licence being a date not more than 3 years after the date on which the pest control licence was last renewed.

- (3) Despite subsection (2)(a), if an application for the renewal of a pest control licence issued under section 101(3) is received by the Secretary within the period of 60 days after the pest control licence expired, the renewal of the pest control licence expires on the date specified in the pest control licence being a date not more than 12 months after the date on which the pest control licence expired.
- (4) Despite subsection (2)(b), if an application for the renewal of a pest control licence issued under section 101(2) is received by the Secretary within the period of 60 days after the pest control licence expired, the renewal of the pest control licence expires on the date specified in the pest control licence being a date not more than 3 years after the date on which the pest control licence expired.
- (5) In the circumstances specified in subsections (3) and (4)—
  - (a) the granting of the renewal of the pest control licence does not affect the unlicensed status of the person between the expiry of the pest control licence and the granting of the renewal; and
  - (b) the full prescribed fee for the renewal of the pest control licence must still be paid calculated from the day after which the pest control licence expired.

### **103 Conditions of pest control licence**

- (1) Without limiting subsection (2), a pest control licence is subject to the following conditions—
  - (a) the licence holder must comply with any obligation or limitation imposed on the licence holder by this Act or the regulations;
  - (b) the licence holder is only authorised to use the pesticide or classes of pesticides specified in the pest control licence;

- (c) the licence holder must comply with any relevant obligations imposed by the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** and the **Occupational Health and Safety Act 2004**;
  - (d) if the pest control licence is granted under section 101(3), the licence holder may only use the pesticides or classes of pesticides entered on the pest control licence under the supervision of a person who holds a pest control licence as an authorised user of those pesticides or classes of pesticides under section 101(2).
- (2) A pest control licence may also be issued or renewed subject to the following conditions—
- (a) if the pest control licence so specifies, a condition that the specified pesticide or classes of pesticides may only be used for the specified uses;
  - (b) a condition permitting the use of a prescribed chemical product or a chemical product of a class that is prescribed within the meaning of section 30 of the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** for a purpose referred to in section 100;
  - (c) any other condition imposed by the Secretary.
- (3) The Secretary can only issue or renew a licence subject to a condition referred to in subsection (2)(b) if the Secretary—
- (a) is satisfied that the licence holder is competent to use the prescribed chemical product or chemical product of a class that is prescribed; and

- (b) has consulted the Secretary to the Department of Primary Industries.

#### **104 Application to vary pest control licence**

A licence holder may apply to the Secretary in the approved form to vary or delete any condition, or other matter, relating to a pest control licence.

#### **105 Powers of Secretary**

- (1) The Secretary, after giving the relevant person an opportunity to be heard, may—

- (a) refuse to issue;
- (b) issue subject to any conditions;
- (c) vary;
- (d) cancel;
- (e) suspend;
- (f) refuse to renew;
- (g) renew subject to conditions—

a pest control licence on any of the grounds specified in subsection (2).

- (2) The grounds are—

- (a) the applicant or licence holder is not a suitable person to hold a pest control licence;
- (b) the applicant or licence holder does not meet or comply with any requirement of this Act or the regulations that is applicable;
- (c) the licence holder has failed to comply with any conditions to which the pest control licence is subject;

- (d) there is a risk to the health of persons if the issue or renewal of a pest control licence is not refused, or the pest control licence is not cancelled or suspended, or the issue or renewal of the pest control licence is not subject to conditions;
  - (e) any other ground which is prescribed for the purposes of this section.
- (3) The Secretary may on the application of a licence holder under section 104, vary or delete any condition, or other matter, relating to a pest control licence if the Secretary is satisfied that the variation or deletion would not make the pest control licence inconsistent with any requirement under this Act or the regulations.
- (4) The Secretary must advise the applicant or holder of the pest control licence in writing of—
- (a) any decision under this section; and
  - (b) the ground for that decision.
- (5) If the Secretary decides to vary or delete a condition to which a pest control licence is subject, being a condition of the kind referred to in section 103(1)(b) or 103(2)(a), the Secretary—
- (a) may require the holder of the licence to give his or her pest control licence to the Secretary; and
  - (b) must issue a revised pest control licence to the holder.
- (6) A holder of the licence must comply with a requirement of the Secretary under subsection (5)(a).

Penalty: 10 penalty units.



### **106 Form of pest control licence**

- (1) If the Secretary grants an application for the issue or renewal of a pest control licence, the Secretary must provide the applicant with a licence—
  - (a) specifying—
    - (i) the name of the licence holder;
    - (ii) the date on which the licence was issued or renewed;
    - (iii) the date on which the licence will expire;
    - (iv) the pesticide or class of pesticide which the licence holder is authorised to use;
    - (v) if applicable, the uses that the licence holder is authorised to use the pesticide or class of pesticide for;
  - (b) containing a photograph of the licence holder.
- (2) When providing an applicant with a licence under subsection (1), the Secretary must also advise the applicant in writing of the conditions to which the licence is subject.

### **107 Issue of replacement pest control licence**

The Secretary may issue a replacement pest control licence to a holder who satisfies the Secretary that the holder's original or renewed pest control licence has been lost, stolen or destroyed.

### **108 Records**

A pest control operator must keep records containing the prescribed details for the prescribed period.

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

### **109 Offences by holder of pest control licence or pest control operator**

(1) The holder of a pest control licence must comply with the conditions of the pest control licence.

Penalty: 120 penalty units.

(2) A pest control operator must take all reasonable steps to ensure that persons employed in the course of the business of pest control operator by the pest control operator comply with the provisions of this Division and the regulations made for the purposes of this Division.

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

### **110 Offence by person who is not the holder of a pest control licence**

A natural person who is not the holder of a pest control licence must not, whether explicitly, implicitly, orally or in writing—

(a) claim to be the holder of a pest control licence; or

- (b) hold themselves out as being qualified to use any pesticide in circumstances which require a person using the pesticide to be the holder of a pest control licence; or
- (c) represent that they have used any pesticide in circumstances which would require a person using the pesticide to be the holder of a pest control licence.

Penalty: 60 penalty units.

## **Part 8—Management and control of infectious diseases, micro-organisms and medical conditions**

### **Division 1—Principles applying to the management and control of infectious diseases**

#### **111 Principles**

The following principles apply to the management and control of infectious diseases—

- (a) the spread of an infectious disease should be prevented or minimised with the minimum restriction on the rights of any person;
- (b) a person at risk of contracting an infectious disease should take all reasonable precautions to avoid contracting the infectious disease;
- (c) a person who has, or suspects that they may have, an infectious disease should—
  - (i) ascertain whether he or she has an infectious disease and what precautions he or she should take to prevent any other person from contracting the infectious disease; and
  - (ii) take all reasonable steps to eliminate or reduce the risk of any other person contracting the infectious disease;
- (d) a person who is at risk of contracting, has or suspects he or she may have, an infectious disease is entitled—
  - (i) to receive information about the infectious disease and any appropriate available treatment;

- (ii) to have access to any appropriate available treatment.

## **Division 2—Examination and testing orders and public health orders**

### **112 Least restrictive measure to be chosen**

If in giving effect to this Division alternative measures are available which are equally effective in minimising the risk that a person poses to public health, the measure which is the least restrictive of the rights of the person should be chosen.

### **113 Chief Health Officer may make examination and testing order relating to infectious disease**

- (1) The Chief Health Officer may make an examination and testing order if the Chief Health Officer believes that—
  - (a) a person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is likely to contract the disease; and
  - (b) if infected with that infectious disease, the person is likely to transmit that disease; and
  - (c) if infected with that infectious disease, a serious risk to public health is constituted by—
    - (i) the infectious disease; or
    - (ii) the combination of the infectious disease and the likely behaviour of that person; and
  - (d) the making of an order under this section is necessary to ascertain whether the person has the infectious disease; and

- (e) a reasonable attempt has been made to provide that person with information relating to the effect of the infectious disease on the person's health and the risk posed to public health or it is not practicable to provide this information before making the order.
- (2) An examination and testing order must—
- (a) be in writing;
  - (b) identify the person to whom the order applies;
  - (c) specify the purpose of the order;
  - (d) specify the infectious disease which the Chief Health Officer believes the person has or has been exposed to;
  - (e) explain why the Chief Health Officer believes that the person is infected with the infectious disease or has been exposed to the infectious disease in circumstances where a person is likely to contract the infectious disease;
  - (f) explain that if the person does not comply with the order, the person commits an offence and is liable to a penalty not exceeding 60 penalty units.
- (3) An examination and testing order may require the person to whom the order applies to comply with any of the following as specified in the order and subject to any conditions that the Chief Health Officer considers are appropriate—
- (a) undergo one or more specified examinations by a specified registered medical practitioner within a specified period of time;
  - (b) undergo one or more specified tests by a specified registered medical practitioner within a specified period of time to ascertain

whether the person has the infectious disease;

- (c) if the person fails to undergo a specified examination or test, the person is to be detained, or detained in isolation, at a specified place for the specified period not exceeding 72 hours for the purpose of undergoing the specified examination or test.

#### **114 Provisions applying to examination and testing orders**

- (1) An examination and testing order has effect from the time that it is served on the person to whom it applies.
- (2) The Chief Health Officer must as soon as is reasonably practicable provide a copy of an examination and testing order to any registered medical practitioner specified in the examination and testing order.
- (3) If a person is detained under an examination and testing order, the period of the detention commences when the person is in the physical custody of the person who is taking that person to the specified place of detention.
- (4) If the Chief Health Officer ceases to believe that any of the matters specified in section 113(1) apply, the Chief Health Officer must—
  - (a) revoke the examination and testing order by a written notice of revocation;
  - (b) serve a copy of the notice of revocation on the person to whom the examination and testing order applied;
  - (c) provide a copy of the notice of revocation to any registered medical practitioner specified in the examination and testing order.

- (5) The Chief Health Officer can only make a further examination and testing order under section 113(1) providing for a person to be detained if the Chief Health Officer is satisfied that since the person was last detained there has been a change in the person's health which constitutes a different serious risk to public health.

**115 Registered medical practitioner must provide results**

A registered medical practitioner who conducts an examination or test on a person in accordance with an examination and testing order must as soon as is reasonably practicable provide written results of the examination or test to—

- (a) the Chief Health Officer; and
- (b) the person on whom the examination or test was conducted.

**Note**

See section 227.

**116 Person must comply with an examination and testing order**

A person to whom an examination and testing order applies must comply with the examination and testing order.

Penalty: 60 penalty units.

**117 Chief Health Officer may make public health order**

- (1) The Chief Health Officer may, after having regard to the factors specified in subsection (2), make a public health order if the Chief Health Officer believes that—
- (a) a person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is likely to contract the disease; and



- (b) if a person is infected with that infectious disease, a serious risk to public health is constituted by—
    - (i) the infectious disease; or
    - (ii) the combination of the infectious disease and the likely behaviour of that person; and
  - (c) if infected with that infectious disease, the person needs to take particular action or refrain from taking particular action to prevent, as far as is reasonably possible, that infectious disease constituting a serious risk to public health; and
  - (d) a reasonable attempt has been made to provide that person with information relating to the effect of the infectious disease on the person's health and the risk posed to public health or it is not practicable to provide this information before making the order; and
  - (e) it is necessary to make the public health order to eliminate or reduce the risk of the person causing a serious risk to public health.
- (2) The factors are—
- (a) the nature of the infectious disease, including the ease with which it is transmitted;
  - (b) the availability and effectiveness of treatment for the infectious disease;
  - (c) the possible side-effects and discomfort that may be caused to the person who is or may be infected with the infectious disease if he or she is required to undergo specified pharmacological treatment or prophylaxis for the infectious disease;

- (d) whether urgent action will significantly affect the public health outcome;
  - (e) the capacity of the person who is or may be infected with the infectious disease to understand the risk to public health constituted by the person having the infectious disease;
  - (f) any prescribed factors;
  - (g) any other factors that the Chief Health Officer considers are relevant in the particular circumstances.
- (3) A public health order must—
- (a) be in writing;
  - (b) identify the person to whom the order applies;
  - (c) specify the purpose of the order;
  - (d) specify the infectious disease which the Chief Health Officer believes the person has or has been exposed to;
  - (e) explain why the Chief Health Officer believes that the person is infected with the infectious disease or has been exposed to the infectious disease in circumstances where a person is likely to contract the infectious disease;
  - (f) subject to subsection (4), specify the period for which the public health order continues to have effect;
  - (g) explain the person's rights and entitlements under this Act and the process for making an application for review to VCAT;
  - (h) contain a statement that the person should seek legal advice;

- (i) explain that if the person does not comply with the order, the person commits an offence and is liable to a penalty not exceeding 120 penalty units.
- (4) The period for which a public health order continues to have effect must—
- (a) not exceed 6 months from the day on which the order is made;
  - (b) be proportionate with the risk that the person poses to public health.
- (5) A public health order may require the person to whom the public health order applies to comply with any of the following as specified in the order and subject to any specified conditions that the Chief Health Officer considers are appropriate—
- (a) participate in counselling, education or other activities provided by a specified person or specified class of person;
  - (b) undergo an assessment by a specified psychiatrist or specified neurologist;
  - (c) refrain from carrying out certain activities either absolutely or unless specified conditions are complied with;
  - (d) refrain from specified forms of behaviour either absolutely or unless specified conditions are complied with;
  - (e) refrain from visiting a specified place or specified class of place;
  - (f) reside at a specified place of residence at all times or during specified times;
  - (g) notify the Chief Health Officer or a person nominated by the Chief Health Officer in writing or in another specified form if the

- person changes his or her name or place of residence within 3 days of doing so;
- (h) submit to the supervision of a person nominated by the Chief Health Officer, including—
- (i) attending meetings arranged by that person;
  - (ii) receiving visits from that person;
  - (iii) providing that person with information relating to any action, occurrence or plan relevant to the health risk posed by the person to whom the order applies;
- (i) receive specified prophylaxis, including a specified vaccination, within the specified period;
- (j) undergo specified pharmacological treatment for the infectious disease from a registered medical practitioner;
- (k) submit to being detained or isolated or detained and isolated as specified.

### **118 Provisions applying to public health orders**

- (1) A public health order has effect from the time that it is served on the person to whom it applies.
- (2) The Chief Health Officer must as soon as is reasonably practicable provide a copy of a public health order to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.
- (3) If the Chief Health Officer ceases to believe that any of the matters specified in section 117(1) apply, the Chief Health Officer must—
- (a) revoke the public health order by a written notice of revocation;

- (b) serve a copy of the notice of revocation on the person to whom the public health order applied;
  - (c) provide as soon as is reasonably practicable a copy of the notice of revocation to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.
- (4) If after having regard to the factors specified in section 117(2) the Chief Health Officer believes that it is necessary to vary a public health order, the Chief Health Officer must—
- (a) vary the public health order by a written notice of variation;
  - (b) serve a copy of the notice of variation on the person to whom the public health order applies;
  - (c) provide as soon as is reasonably practicable a copy of the notice of variation to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.
- (5) If the Chief Health Officer believes that the matters specified in section 117(1) continue to apply, the Chief Health Officer must—
- (a) extend the public health order by a written notice of extension for a further period not exceeding 6 months;
  - (b) serve a copy of the notice of extension on the person to whom the public health order applies;

- (c) provide as soon as is reasonably practicable a copy of the notice of extension to any registered medical practitioner or other registered health practitioner required to perform any activity under the public health order.
- (6) A public health order may be extended as many times as the Chief Health Officer considers to be necessary.
- (7) A notice of revocation, notice of variation or notice of extension has effect from the time that it is served on the person to whom it applies.

**119 Registered medical practitioner must provide information requested by the Chief Health Officer**

A registered medical practitioner who receives a request in writing from the Chief Health Officer for information in relation to a person for the purpose of deciding whether to make, revoke, vary or extend a public health order must as soon as is reasonably practicable provide the requested information in writing to the Chief Health Officer.

**Note**

See section 227.

**120 Person must comply with a public health order**

A person to whom a public health order applies must comply with the public health order.

Penalty: 120 penalty units.

**121 Application for review by Chief Health Officer**

- (1) A person subject to a public health order may at any time while the order is in force apply to the Chief Health Officer for a review of the order.
- (2) An application for a review of a public health order must be in writing or in any other form approved by the Chief Health Officer.

- (3) Within the period of 7 days after receiving the application for review, the Chief Health Officer must review the public health order and may—
- (a) revoke the order; or
  - (b) vary the order; or
  - (c) confirm the order.

### **122 Application for review by VCAT**

A person subject to a public health order may at any time while the order is in force apply to VCAT for a review of the decision to make the order.

#### **Note**

A person who is entitled to apply to VCAT for review of a decision may, within 28 days after the day on which the decision is made, request the decision-maker to give the person a written statement of reasons for the decision.

### **123 Enforcement of orders**

- (1) Subject to this section, an authorised officer who is a registered medical practitioner may enforce an examination and testing order or a public health order.
- (2) A requirement in an examination and testing order or a public health order that a person undergo any examination, test, pharmacological treatment or prophylaxis cannot be enforced by the use of force.
- (3) For the purposes of this section, an authorised officer may request the assistance of a police officer.
- (4) A police officer may use reasonable force to detain the person subject to an examination and testing order or a public health order and take that person to—

S. 123(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 136.2).

S. 123(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 136.2).

- (a) a place where an examination and test is to be carried out; or
  - (b) the place where the person is required to be under the order.
- (5) For the purposes of this section if it appears to the authorised officer that it is necessary to do so to enforce an examination and testing order or a public health order, the authorised officer may apply to the Magistrates' Court for a warrant to arrest the person who is subject to the order.
- (6) If the Magistrates' Court is satisfied by evidence on oath, whether orally or by affidavit, of the matter specified in subsection (5), the Magistrates' Court may order that a warrant to arrest be issued against the person subject to the examination and testing order or public health order.
- (7) A warrant issued for the purpose of subsection (6) may specify any conditions to which the warrant is subject.
- (8) A person who is arrested or detained under this section must be informed at the time of the arrest or detention of the reason why the person is being arrested or detained.

**Note**

Section 183 provides that it is an offence to hinder or obstruct an authorised officer.

**124 No action lies against registered health practitioner**

No action lies against a registered health practitioner who in good faith and with reasonable care—

- (a) conducts a test, examination or assessment in accordance with this Division; or
- (b) provides counselling, pharmacological treatment or prophylaxis authorised by this Division.



**125 Chief Health Officer to facilitate reasonable request for communication**

The Chief Health Officer must facilitate any reasonable request for communication made by a person detained under an examination and testing order or a public health order.

**Division 3—Notifiable conditions and micro-organisms**

**126 Governor in Council may declare infectious diseases and micro-organism to be notifiable**

- (1) The Governor in Council may by Order in Council declare—
  - (a) an infectious disease to be a notifiable condition;
  - (b) a micro-organism to be a notifiable micro-organism.
- (2) An Order in Council under this section—
  - (a) must specify—
    - (i) the details to be included with a notification of a notifiable condition or notifiable micro-organism;
    - (ii) the period within which a notification of a notifiable condition or notifiable micro-organism is to be made;
    - (iii) the manner in which a notification of a notifiable condition or notifiable micro-organism is to be made;
  - (b) has effect—
    - (i) throughout Victoria or in the areas of Victoria specified in the Order in Council;

- (ii) from the date that it is published in the Government Gazette or any later date specified in the Order in Council for the period not exceeding 12 months specified in the Order in Council;
  - (c) may vary in relation to notifications to be made by registered medical practitioners and notifications to be made by pathology services.
- (3) On or before the 6th sitting day after an Order in Council made under this section is published in the Government Gazette, the Minister must ensure that a copy of the Order in Council is laid before each House of the Parliament.
- (4) A failure to comply with subsection (3) does not affect the operation or effect of the Order in Council but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (5) An Order in Council made under this section may be disallowed in whole or in part by either House of Parliament.
- (6) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order in Council made under this section as if—
  - (a) a reference in that Part to a "statutory rule" were a reference to the Order in Council; and
  - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (3).

**127 Notification by registered medical practitioners of  
notifiable conditions**

- (1) This section applies if a registered medical practitioner has reasonable grounds to believe that a patient—
  - (a) has, or may have, a notifiable condition; or
  - (b) has, or may have, died with a notifiable condition.
- (2) The registered medical practitioner must notify the Secretary of the notification details in accordance with—
  - (a) if the notifiable condition was prescribed to be a notifiable condition by the regulations, the regulations within the prescribed period; or
  - (b) if the notifiable condition was declared to be a notifiable condition by an Order in Council, the Order in Council within the specified period.

Penalty: 60 penalty units.

**128 Notification by a pathology service of a notifiable  
condition**

- (1) This section applies if—
  - (a) a pathology service situated in Victoria performs a test in Victoria on a sample, or a pathology service situated outside Victoria, performs a test on a sample at the request of a pathology service situated in Victoria; and

- (b) the sample was taken for any purpose from a person—
    - (i) in Victoria; or
    - (ii) who the pathology service situated in Victoria has reason to believe, on the basis of the supplied address of the person, has a permanent or temporary postal address in Victoria; and
  - (c) the result of the test indicates that the person has, or may have, a notifiable condition.
- (2) The person in charge of the pathology service situated in Victoria must notify the Secretary of the notification details in accordance with—
- (a) if the notifiable condition was prescribed to be a notifiable condition by the regulations, the regulations; or
  - (b) if the notifiable condition was declared to be a notifiable condition by an Order in Council, the Order in Council.

Penalty: 60 penalty units.

**129 Health service and pathology service must have processes to ensure notification**

- (1) A health service must implement processes to ensure that any registered medical practitioner employed or engaged by, or performing work at, the health service complies with section 127.
- (2) A pathology service must implement processes to ensure that the person in charge of the pathology service complies with section 128.

### **130 Notification of a notifiable micro-organism in food**

- (1) Subject to subsection (3), subsection (2) applies to a person in charge of a laboratory service situated within Victoria where a notifiable micro-organism is—
  - (a) isolated or detected by that laboratory service from or within food or from or within samples taken from food, regardless of where the sample was taken; or
  - (b) isolated or detected on behalf of that person by another laboratory service situated outside Victoria from or within food or from or within samples taken from food, regardless of where the sample was taken.
- (2) The person in charge of the laboratory service must notify the Secretary of the notification details in accordance with—
  - (a) if the notifiable micro-organism was prescribed to be a notifiable micro-organism by the regulations, the regulations; or
  - (b) if the notifiable micro-organism was declared to be a notifiable micro-organism in an Order in Council, the Order in Council.

Penalty: 60 penalty units.

- (3) Subsection (2) does not apply if the notifiable micro-organism is isolated or detected in the course of a test carried out only for—
  - (a) educational purposes; or
  - (b) the purpose of academic research.

- (4) Subsection (5) applies if the proprietor of a food premises or food vending machine in Victoria is informed at any time by the person in charge of a laboratory service whether situated inside or outside Victoria that—
- (a) a sample of food handled by that proprietor has been tested by that laboratory; and
  - (b) the test conducted by the laboratory has isolated or detected a notifiable micro-organism in the food sample.
- (5) The proprietor of the food premises or food vending machine must notify the Secretary of the notification details in accordance with—
- (a) if the notifiable micro-organism was prescribed to be a notifiable micro-organism by the regulations, the regulations; or
  - (b) if the notifiable micro-organism was declared to be a notifiable micro-organism in an Order in Council, the Order in Council.

Penalty: 60 penalty units.

- (6) In this section, *food* includes—
- (a) any substance or thing of a kind used for, or represented as being for the use of, human consumption, whether it is raw, prepared or partly prepared;
  - (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a);
  - (c) any substance used in preparing a substance or thing referred to in paragraph (a), other than a substance used in preparing a living thing, if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid;

- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum;
  - (e) any substance or thing declared to be a food under a declaration in force under section 3B of the Australia New Zealand Food Authority Act 1991 of the Commonwealth.
- (7) A substance, thing, chewing gum or ingredient or additive in chewing gum described in subsection (6) is *food* regardless of whether or not it is in a condition fit for human consumption.
- (8) However, *food* does not include therapeutic goods or live animals.
- (9) In this section—
- food premises, food vending machine* and *handled* have the same meanings respectively as in section 4(1) of the **Food Act 1984**;
- laboratory service* means a service which performs tests or analyses on food or samples of food for the purpose of isolating or detecting micro-organisms in the food or a sample of food.

#### **Division 4—HIV and other prescribed diseases**

##### **131 Information to be given to a person requesting a test for HIV or any other prescribed disease**

- (1) A registered medical practitioner must not carry out or authorise the carrying out of a test for HIV or any other prescribed disease on a person who has requested the test unless the registered medical practitioner is satisfied that the person has been given the prescribed information in accordance with the regulations.

- (2) Subsection (1) does not apply to the authorising or carrying out of a test for HIV or any other prescribed disease by a pathologist if the pathologist authorises or carries out the test on the authority of another registered medical practitioner.

**132 Information to be provided if results of test are positive**

A registered medical practitioner or person of a prescribed class must not advise a person who requested a test for HIV or any other prescribed disease of the results of the test if the results of the test are positive unless the registered medical practitioner or person of a prescribed class is satisfied that the prescribed information has been given in accordance with the regulations.

**Note**

The **Health Records Act 2001** applies to and in respect of the privacy of information acquired about a person requesting a test.

**133 Closure of court or tribunal**

- (1) This section applies if—
- (a) evidence is proposed to be given in a matter before a court or tribunal of any matter relating to HIV or any other prescribed disease; and
  - (b) the court or tribunal considers that, because of the social or economic consequences to a person if the information is disclosed, the court or tribunal should make an order under this section.



- (2) If this section applies, the court or tribunal may—
  - (a) order that the whole or any part of the proceedings be heard in closed session; or
  - (b) order that only persons specified by it may be present during the whole or any part of the proceedings; or
  - (c) make an order prohibiting the publication of a report of the whole or any part of the proceedings or of any information derived from the proceedings.
- (3) The powers specified in subsection (2) are in addition to any other powers the court or tribunal may have.
- (4) If an order has been made under this section, the court or tribunal must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the court or tribunal is being held.
- (5) A person must not contravene an order made and posted under this section.

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

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

## **Division 5—Orders for tests if incident has occurred**

### **134 Orders for tests if incident has occurred**

- (1) Subject to subsection (11), the Chief Health Officer may make an order under this section if the Chief Health Officer believes that—
  - (a) an incident has occurred, while a caregiver or custodian is acting in their capacity as a caregiver or custodian, in which, if any of

those involved in the incident were infected with a specified infectious disease, the disease could have been transmitted to any of the other persons involved; and

- (b) any of those persons to whom the disease could have been transmitted—
  - (i) has been counselled by a person of a prescribed class about the risk of transmission of the disease in the particular circumstances and about the medical and social consequences of being infected with the disease; and
  - (ii) has consented to be tested for that disease; and
- (c) any of those persons who, if he or she were infected with the disease, could have transmitted it—
  - (i) has been offered counselling, irrespective of whether the offer was accepted, and has refused to be tested for the disease; or
  - (ii) is unconscious or otherwise does not have the capacity to consent to be tested for the disease; and
- (d) the making of the order is necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment for any of those involved.

(2) An order made under this section—

- (a) must be in writing;
- (b) must give details of the incident which led to its making;
- (c) must name the person to whom it applies;

- (d) must name the disease for which the person must be tested, which must be a disease for which another person has agreed to be tested under subsection (1)(b);
  - (e) must require that the person named in the order give a sample of blood or urine or submit to a sample of blood or urine being taken;
  - (f) must specify the place where the person named in the order is required to give a sample of blood or urine or submit to a sample of blood or urine being taken;
  - (g) has effect from the time that it is served on the person named in the order or, if the order is made in respect of a person who is dead, from the time that the order is made.
- (3) If the Chief Health Officer believes that it is necessary to do so to enforce an order made under this section, the Chief Health Officer may apply to the Magistrates' Court for an order to authorise a police officer to use reasonable force to—
- (a) take the person named in the order to the place specified in the order; or
  - (b) restrain the person named in the order so as to enable a registered medical practitioner to take a sample of blood or urine; or
  - (c) take the person named in the order to the place specified in the order and restrain the person named in the order so as to enable a registered medical practitioner to take a sample of blood or urine.

S. 134(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 136.3(a)).

- (4) If the Magistrates' Court is satisfied by evidence on oath, whether orally or by affidavit, that the circumstances are so exceptional that the making of the order is justified, the Magistrates' Court may make the order applied for by the Chief Health Officer subject to any conditions that the Magistrates' Court considers are appropriate.
- (5) The Chief Health Officer may also make an order under this section in respect of a person who is dead if the Chief Health Officer believes subsections (1)(a), (1)(b) and (1)(d) apply.
- (6) For the purposes of this section, a person is to be treated as not having the capacity to consent to be tested even if—
  - (a) the lack of capacity is due to a temporary cause; or
  - (b) there is another person who has the capacity to consent to testing on that person's behalf.
- (7) An order must not be made under this section if more than 1 month has passed since the happening of the incident which would enable the order to be made.
- (8) The Chief Health Officer may make an order under this section subject to any conditions the Chief Health Officer considers appropriate.
- (9) The Chief Health Officer may vary or revoke an order made under this section.
- (10) In this section, *caregiver or custodian* means—
  - (a) a person who is employed or engaged by, or performs work at, a health service;
  - (b) a registered medical practitioner;

S. 134(10)(c)  
substituted by  
No. 13/2010  
s. 51(Sch.  
item 44.4).

- (c) a person registered under the Health Practitioner Regulation National Law—
  - (i) to practise in the dental profession as a dentist (other than as a student); and
  - (ii) in the dentists division of that profession;

S. 134(10)(ca)  
inserted by  
No. 13/2010  
s. 51(Sch.  
item 44.4).

- (ca) a nurse or a midwife;

S. 134(10)(d)  
substituted by  
No. 13/2010  
s. 51(Sch.  
item 44.4).

- (d) a student who is registered under the Health Practitioner Regulation National Law by the Medical Board of Australia, the Dental Board of Australia or the Nursing and Midwifery Board of Australia;
- (e) an ambulance officer or paramedic;
- (f) a person who is employed or engaged by, or performs work at, a pathology service;
- (g) a person who—
  - (i) removes human tissue from a person, whether alive or dead; or
  - (ii) handles human tissue—in accordance with the **Human Tissue Act 1982**;
- (h) a person who carries out an activity of a kind referred to in section 42(1) of the **Human Tissue Act 1982**;
- (i) a legal custodian of a person who is in legal or protective custody and any person who is employed or engaged by the legal custodian in the course of keeping that person in legal or protective custody;

(j) a police officer;

**S. 134(10)(j)**  
substituted by  
**No. 37/2014**  
s. 10(Sch.  
item 136.3(b)).

(k) a person who is prescribed to be a caregiver  
or custodian for the purposes of this section.

(11) If in giving effect to this Division alternative  
measures are available which are equally effective  
in ensuring the rapid diagnosis and clinical  
management for any person affected, the measure  
which is the least restrictive of the rights of the  
person should be chosen.

### **135 Authorisation for tests**

(1) This section applies if—

- (a) the Chief Health Officer could make an order  
in respect of a person under section 134; and
- (b) a sample of blood or urine from that person  
has been stored at any place for any purpose;  
and
- (c) the Chief Health Officer is satisfied that, if  
the sample of blood or urine was authorised  
to be tested and was tested under this section,  
it could still be used for the purpose for  
which it was originally stored.

(2) If this section applies, the Chief Health Officer  
may authorise the testing of the sample of blood  
or urine for any disease for which the Chief  
Health Officer could order the person to be tested  
under section 134.

(3) Sections 134(2), 134(7), 134(8) and 134(9) apply  
to an authorisation as if it were an order made  
under section 134.

**136 Chief Health Officer may disclose certain information**

- (1) If the Chief Health Officer believes that the circumstances exist for the making of an order under section 134 in respect of a person, the Chief Health Officer may—
  - (a) examine any relevant health information held by the Department relating to that person; or
  - (b) require a health service provider to provide to the Chief Health Officer any relevant health information held by the health service provider relating to that person.
- (2) A health service provider must comply with a requirement under subsection (1)(b).

**Note**

See section 227.

- (3) The Chief Health Officer can only use relevant health information obtained under subsection (1) for the purposes of this Division.
- (4) Without limiting subsection (3), the Chief Health Officer may, subject to the following conditions, disclose relevant health information obtained under subsection (1) to a person to whom section 134(1)(b) applies—
  - (a) the information must only be disclosed to the extent necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment for that person; and
  - (b) the information disclosed must not include information that would identify the person to whom the relevant health information relates; and

- (c) the person to whom the information is disclosed must not disclose, communicate, or make a record of, anything that would identify the person to whom the relevant health information relates; and
  - (d) the information is not admissible in any action or proceedings before any court or tribunal or any board, agency or other person.
- (5) A person who contravenes subsection (4)(c) is guilty of an offence.

Penalty: 60 penalty units.

### **137 Orders and authorisations for tests by senior medical officer**

- (1) Subject to subsection (2), this section only applies to a senior medical officer who is—
- (a) employed or engaged by, or performs work for, a denominational hospital, multi purpose service or public hospital and is authorised by that hospital or service or the chief executive officer of that hospital or service to make orders or authorise testing for the purposes of this section; or
  - (b) employed or engaged by, or performs work for, a private hospital that is—
    - (i) registered under Part 4 of the **Health Services Act 1988**; and
    - (ii) approved by the Secretary for the purposes of this section—

and is authorised by the proprietor or chief executive officer of that private hospital to make orders or authorise testing for the purposes of this section.



S. 137(2)(a)  
amended by  
No. 77/2008  
s. 129(Sch. 2  
item 21.2)

- (2) For the purposes of this section—
- (a) the Director of the Victorian Institute of Forensic Medicine appointed under section 68 of the **Victorian Institute of Forensic Medicine Act 1985** is a senior medical officer; and
  - (b) the Director of the Victorian Institute of Forensic Medicine may authorise a senior medical officer employed or engaged by the Victorian Institute of Forensic Medicine to make orders or authorise testing for the purposes of this section.
- (3) A senior medical officer has all the powers that the Chief Health Officer has to—
- (a) make an order under section 134 in the circumstances specified in section 134(1)(c)(ii) or 134(5); or
  - (b) authorise testing under section 135 in the circumstances specified in section 134(1)(c)(ii) or 134(5)—
- in relation to the health service where the senior medical officer is employed or engaged or performs work.
- (4) This Division applies to—
- (a) an order made by a senior medical officer and a test made under such an order as if the order were an order made by the Chief Health Officer under section 134; and
  - (b) an authorisation made by a senior medical officer and a test made under such an authorisation as if the authorisation were an authorisation made by the Chief Health Officer under section 135.

- (5) Despite subsection (4), sections 134(3) and 134(4) do not apply to an order made by a senior medical officer.

### **138 Post test or authorisation counselling**

- (1) A person who—
- (a) made an order in the circumstances specified in section 134(1)(c)(ii) or 134(5); or
  - (b) authorised the testing of a sample of blood or urine under section 135 in the circumstances specified in section 134(1)(c)(ii) or 134(5)—
- must ensure that the relevant person is counselled by a registered medical practitioner in accordance with this section.
- (2) The person tested or whose sample of blood or urine was tested must be counselled as soon as is practicable if the person has regained capacity to consent to testing after the testing.
- (3) If the person tested under the order or whose sample of blood or urine was tested under an authorisation is dead or does not have or regain capacity to consent to testing, the person who made the order or gave the authorisation must ensure that the following are counselled by a registered medical practitioner—
- (a) in the case of a child, a parent; and
  - (b) in any other case, any person responsible under the **Guardianship and Administration Act 1986** for the person tested.
- (4) The person counselled must be provided with—
- (a) details of the test conducted;
  - (b) the reasons why the test was conducted;
  - (c) the results of the test;

- (d) if the test indicated the presence of an infectious disease—
  - (i) the effects of the infectious disease on an infected person; and
  - (ii) the risk to public health of the infectious disease.

### **139 Tests and test results**

- (1) A pathologist or registered medical practitioner who conducts a test under an order or authorisation—
  - (a) of the Chief Health Officer under this Division must without delay report the test results to the Chief Health Officer;
  - (b) of an authorised senior medical officer under this Division must without delay report the test results to the authorised senior medical officer.
- (2) On receiving the test results, the Chief Health Officer or authorised senior medical officer must without delay give notice of the test results to—
  - (a) the appropriate person mentioned in section 134(1)(b); and
  - (b) the person tested.
- (3) A pathologist or registered medical practitioner who conducts a test on a person mentioned in section 134(1)(b) in relation to an order or authorisation—
  - (a) of the Chief Health Officer under this Division must without delay report the test results to the Chief Health Officer;
  - (b) of an authorised senior medical officer under this Division must without delay report the test results to the authorised senior medical officer.

- (4) If the test results are positive, the Chief Health Officer or authorised senior medical officer must without delay give notice of the test results to—
  - (a) any other person involved in the incident to whom the infectious disease could have been transmitted; and
  - (b) the person tested.
- (5) Test results referred to in this section are not admissible in any action or proceedings before any court or tribunal or any board, agency or other person.

**140 No identification to be given**

- (1) A person mentioned in section 134(1)(a) who receives notice under this Division of the results of a test on another person must not disclose, communicate, or make a record of, anything in those results that would identify that other person.

Penalty: 60 penalty units.

- (2) When advising a person mentioned in section 134(1)(a) of the results of a test under this Division, the Chief Health Officer or authorised senior medical officer must not include information that would identify the person tested.

**141 Directions about orders or authorisations**

- (1) The Chief Health Officer may give directions to a hospital, multi purpose service, proprietor, Director of the Victorian Institute of Forensic Medicine or an authorised senior medical officer referred to in section 137(1) or 137(2) about the following—
  - (a) the requirements for persons suitable to be authorised as a senior medical officer for the purposes of making orders or authorisations under this Division;

- (b) the process for authorising a person to be a senior medical officer for the purposes of making orders or authorisations under this Division;
  - (c) the information to be provided by the hospital, multi purpose service, proprietor or the Director of the Victorian Institute of Forensic Medicine to the authorised senior medical officer;
  - (d) the matters that an authorised senior medical officer must take into account in deciding whether to make an order or authorisation under this Division;
  - (e) the procedures to be followed by an authorised senior medical officer before or after making an order or authorisation under this Division;
  - (f) the requirements to be complied with by an authorised senior medical officer about the keeping of records and reporting to the hospital, multi purpose service, proprietor, Director of the Victorian Institute of Forensic Medicine or Chief Health Officer;
  - (g) the provision of counselling or information required by section 138.
- (2) The hospital, multi purpose service, proprietor, Director of the Victorian Institute of Forensic Medicine or authorised senior medical officer must comply with any direction given by the Chief Health Officer under this section.

**142 No action lies against registered medical practitioner**

No action lies against a registered medical practitioner who in good faith and with reasonable care—

- (a) takes a sample of blood or urine from a person in accordance with this Division; or
- (b) conducts a test in accordance with this Division; or
- (c) provides information about test results or counselling authorised by this Division.

**Division 6—Reporting requirements**

**143 Annual report to include information about orders**

- (1) The Chief Health Officer must include information about—
  - (a) the number of orders made by the Chief Health Officer under each of section 113, 117 and 134;
  - (b) the reasons for the making of those orders—  
during the financial year in the relevant annual report of operations under Part 7 of the **Financial Management Act 1994**.
- (2) The information included in the annual report under subsection (1) must not include any information that identifies, or is likely to lead to the identification of, any person.

**Division 7—Immunisation**

**144 Application of sections 145 and 146**

Sections 145 and 146 apply in relation to any child that is to attend a primary school.

**145 Immunisation status certificates to be produced before attendance at primary school**

The parent of a child must give an immunisation status certificate in respect of each vaccine-preventable disease to the person in charge of each primary school that the child is to attend.

**146 Obligations of person in charge of primary school**

- (1) A person in charge of a primary school must take reasonable steps to obtain an immunisation status certificate in respect of each child attending the primary school.
- (2) A person in charge of a primary school must take reasonable steps to ensure that the student immunisation record in respect of each child attending the primary school is kept up to date.

**147 Immunisation status certificate**

- (1) An immunisation status certificate is a document—
  - (a) which is provided to a parent of a child under section 46E(1)(c) of the Health Insurance Act 1973 of the Commonwealth; or
  - (b) which is issued by—
    - (i) a person authorised to do so by a Council; or
    - (ii) a person who is a recognised immunisation provider within the meaning of section 46A of the Health Insurance Act 1973 of the Commonwealth; or

(iii) a person who is prescribed to be a prescribed person for the purposes of this section—

which certifies that the person issuing the document has been given the evidence required by subsection (2) in respect of each vaccine-preventable disease; or

(c) which is a document which is prescribed to be a prescribed document for the purposes of this section.

(2) The evidence required is one of the following—

(a) evidence as to whether or not the child has been immunised against the vaccine-preventable disease;

(b) laboratory evidence that the child has developed a natural immunity against the vaccine-preventable disease and does not require immunisation;

(c) a statutory declaration made by a parent declaring that the parent believes that the child has been immunised against the vaccine-preventable disease;

(d) evidence of a kind which is prescribed for the purposes of this section.

#### **148 Issuing of immunisation status certificate**

(1) A person authorised to do so by a Council may issue an immunisation status certificate to a parent of a child if—

(a) the parent produces for each vaccine-preventable disease evidence of the kind required by section 147(2); and



(b) the child—

(i) resides in the municipal district of the Council; or

(ii) attends or proposes to attend a primary school located in the municipal district of the Council.

(2) A person who is—

(a) a recognised immunisation provider within the meaning of section 46A of the Health Insurance Act 1973 of the Commonwealth; or

(b) prescribed to be a prescribed person for the purposes of section 147—

may issue an immunisation status certificate to a parent of a child if the parent produces for each vaccine-preventable disease evidence of the kind required by section 147(2).

#### **149 Effect of immunisation status certificate**

A person in charge of a primary school may rely on statements in an immunisation status certificate.

### **Division 8—Blood and tissue donations**

#### **150 Application**

(1) This Division applies in respect of any proceedings in an action referred to in section 151 or 152 commenced on or after the day on which this section comes into operation.

#### **Note**

See section 244 for transitional provisions that relate to proceedings.

- (2) Sections 154 and 155 apply in respect of any donation of blood or tissue in relation to which the donor signs a statement on or after the day on which this section comes into operation.

### **151 Blood donations**

- (1) This section applies to an action brought in tort, in contract, under statute or otherwise by or on behalf of—
- (a) a person who claims—
    - (i) to have been infected with HIV, Hepatitis C or a prescribed disease because he or she was given, or in any way dealt with, blood supplied by the Society or a health service or a blood product derived from blood so supplied; or
    - (ii) to have been infected with HIV, Hepatitis C or a prescribed disease by another person who was given, or in any way dealt with, any such blood or blood product; or
  - (b) a dependant or the estate of a person who died as a result of having been infected with HIV, Hepatitis C or a prescribed disease as specified in paragraph (a).
- (2) If a person is found liable in an action brought by a person, or on behalf of the estate, referred to in subsection (1) for damage, this section also applies to an action brought by the person found liable to recover contribution from any other person liable in respect of that same damage.
- (3) Subject to subsection (4), in an action to which this section applies brought against a person specified in column 1 of an item in Table 1 in the Schedule, it is a defence to prove the facts or matters specified in column 2 of that Table unless

any of the facts or circumstances mentioned in column 3 of that Table apply.

- (4) If a person specified in column 1 of an item in Table 1 in the Schedule cannot prove a fact or matter specified in column 2 of that Table, the person can still rely on the relevant defence in column 2 of the Table if the person can prove that, in respect of that fact or matter, the failure to comply did not cause the relevant loss.

## 152 Tissue donations

- (1) This section applies to an action brought in tort, in contract, under statute or otherwise by or on behalf of—

(a) a person who claims—

- (i) to have been infected with HIV, Hepatitis C or a prescribed disease because he or she received tissue (other than semen) taken from a person or the body of a dead person; or
- (ii) to have been infected with HIV, Hepatitis C or a prescribed disease by another person who received such tissue; or

(b) a person who claims—

- (i) to have been infected with HIV, Hepatitis C or a prescribed disease as a result of the carrying out in relation to the person of artificial insemination or a treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**; or
- (ii) to have been infected with HIV, Hepatitis C or a prescribed disease by another person in relation to whom such a procedure was carried out; or

S. 152(1)(b)(i)  
amended by  
No. 76/2008  
s. 157.

- (c) a dependant or the estate of a person who died as a result of having been infected with HIV, Hepatitis C or a prescribed disease as specified in paragraph (a) or (b).
- (2) If a person is found liable in an action brought by a person, or on behalf of the estate, referred to in subsection (1) for damage, this section also applies to an action brought by the person found liable to recover contribution from any other person liable in respect of that same damage.
- (3) Subject to subsection (4), in an action to which this section applies brought against a person specified in column 1 of Table 2 in the Schedule, it is a defence to prove the facts or matters specified in column 2 of that Table unless any of the facts or circumstances mentioned in column 3 of that Table apply.
- (4) If a person specified in column 1 in Table 2 in the Schedule cannot prove a fact or matter specified in column 2 of that Table, the person can still rely on the relevant defence in column 2 of the Table if the person can prove that, in respect of that fact or matter, failure to comply did not cause the relevant loss.

### **153 Evidentiary**

In an action to which section 151 or 152 applies, a certificate purporting to have been issued at the laboratory at which a sample of blood was tested stating—

- (a) that the sample was tested in a manner approved by the Secretary and published in the Government Gazette; and
- (b) that the results of the test were as stated in the certificate—

is proof of the matters so stated and of the facts on which they are based.

### **154 Liability of donors**

- (1) No civil or criminal proceedings, other than proceedings under section 155(1), lie against a donor of blood or tissue by reason only of a person having been infected with HIV, Hepatitis C or a prescribed disease by the administration to, or the use by, the person of blood given by, or of a blood product derived wholly or partly from blood given by, the donor or by the transplanting of tissue or the use of semen or ova given by the donor.
- (2) Subsection (1) does not apply in relation to a donor who has been found guilty of an offence against section 155(1).

### **155 False statements**

- (1) A donor must not, in a statement referred to in the Schedule, knowingly make a statement that is false in a material particular.  
Penalty: 120 penalty units or imprisonment for 1 year.
- (2) A person must not, in response to an inquiry of the kind referred to in paragraph (b)(iii) in column 2 of Table 2 in the Schedule, knowingly make a statement that is false in a material particular.  
Penalty: 120 penalty units.

## **Division 9—Autopsies**

### **156 Autopsies**

- (1) The Chief Health Officer may require a registered medical practitioner who has qualifications or experience that the Chief Health Officer considers appropriate to carry out an autopsy on a body if—

- (a) the Chief Health Officer believes that—
- (i) an infectious disease caused, may have caused, or contributed to, the person's death; and
  - (ii) an autopsy is necessary to determine whether there is a serious risk to public health; and
- (b) the coroner does not have jurisdiction over the body.

S. 156(1)(b)  
amended by  
No. 77/2008  
s. 129(Sch. 2  
item 21.3)

- (2) Before an autopsy is carried out, the Chief Health Officer must comply with section 157.
- (3) For the purposes of carrying out an autopsy under this section, the Chief Health Officer may order the person who has possession of the body to give possession of that body to the registered medical practitioner.
- (4) A person who has possession of a body must comply with an order of the Chief Health Officer under this section.

Penalty: 10 penalty units.

### **157 Notice of and objection to autopsy**

- (1) The Chief Health Officer must immediately give notice in writing of the decision to perform an autopsy to the senior next of kin of the deceased.
- (2) Unless the Chief Health Officer believes that an autopsy must be performed immediately, the autopsy must not be performed until 48 hours after the senior next of kin has been given notice of the decision.
- (3) Within 48 hours after the senior next of kin has been given notice of the decision, the senior next of kin may apply to the Supreme Court for an order that no autopsy be performed.

S. 157(5)  
amended by  
No. 77/2008  
s. 129(Sch. 2  
item 21.4)

- (4) The Supreme Court may make an order that no autopsy be performed if the Supreme Court is satisfied that an autopsy should not be performed in the circumstances.
- (5) In this section, *senior next of kin* in relation to a deceased person, has the same meaning as in the **Coroners Act 2008**.

## **Division 10—Brothels and escort agencies**

### **158 Provision and storage of condoms**

- (1) A brothel proprietor must provide, in the brothel, a free supply of condoms and water based lubricant that is—
- (a) readily accessible by sex workers and clients; and
  - (b) of a sufficient quantity and amount for sex workers and clients.

Penalty: 60 penalty units.

- (2) A brothel proprietor must—
- (a) store unused condoms in conditions which will not lead to a deterioration of their quality; and
  - (b) dispose of unused condoms at their expiry date.

Penalty: 60 penalty units.

- (3) A brothel proprietor must take reasonable steps to ensure that used condoms are kept in sealed containers prior to their removal from the brothel.

Penalty: 60 penalty units.

### **159 Use of condoms**

- (1) A brothel proprietor must take reasonable steps to ensure that a client and a sex worker use condoms in any encounter in a brothel between a client and a sex worker which involves vaginal, oral or anal penetration whether by means of a penis or other part of the body or by a device or object.

Penalty: 60 penalty units.

- (2) A brothel proprietor must not expressly or impliedly discourage the use of condoms in the brothel.

Penalty: 60 penalty units.

- (3) An escort agency proprietor must take reasonable steps to ensure that a client and a sex worker use condoms in any encounter arranged through the escort agency between a client and a sex worker which involves vaginal, oral or anal penetration whether by means of a penis or other part of the body or by a device or object.

Penalty: 60 penalty units.

- (4) An escort agency proprietor must not expressly or impliedly discourage the use of condoms in any encounter arranged through the escort agency.

Penalty: 60 penalty units.

### **160 Refusal of service**

- (1) A brothel proprietor must not require a sex worker to provide a service to a client if the sex worker has refused to provide the service because—

- (a) the sex worker suspects that the client is infected with an infectious disease; or



(b) the client has refused to use a condom.

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

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

(2) An escort agency proprietor must not require a sex worker to provide a service to a client if the sex worker has refused to provide the service because—

(a) the sex worker suspects that the client is infected with an infectious disease; or

(b) the client has refused to use a condom.

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

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

### **161 Evidence of medical examination**

(1) A brothel proprietor must take reasonable steps to ensure that written or oral evidence of the sex worker's attendance at a medical examination or the results of that examination is not displayed or used to induce a client to believe that a sex worker is free from infection with an infectious disease.

Penalty: 60 penalty units.

(2) An escort agency proprietor must take reasonable steps to ensure that written or oral evidence of the sex worker's attendance at a medical examination or the results of that examination is not displayed or used to induce a client to believe that a sex worker is free from infection with an infectious disease.

Penalty: 60 penalty units.

## **162 Information to sex workers and clients**

- (1) A brothel proprietor must provide easily accessible written information about the transmission of sexually transmitted infections in a variety of relevant languages at the brothel for the benefit of sex workers and clients.

Penalty: 10 penalty units.

- (2) A brothel proprietor must take reasonable steps to ensure that any information about sexually transmitted infections provided at the brothel for the benefit of sex workers or clients is medically accurate.

Penalty: 10 penalty units.

- (3) If a sex worker has difficulty in communicating in the English language, the brothel proprietor must provide the information in a language with which the sex worker is familiar.

Penalty: 10 penalty units.

- (4) An escort agency proprietor must, in accordance with the regulations, provide easily accessible written information about the transmission of sexually transmitted infections in a variety of relevant languages for the benefit of sex workers and clients.

Penalty: 10 penalty units.

- (5) An escort agency proprietor must take reasonable steps to ensure that any information about sexually transmitted infections provided by the escort agency for the benefit of sex workers or clients is medically accurate.

Penalty: 10 penalty units.

- (6) If a sex worker has difficulty in communicating in the English language, the escort agency proprietor must provide the information in a language with which the sex worker is familiar.

Penalty: 10 penalty units.

### **163 Clean linen and towels**

A brothel proprietor must provide—

- (a) clean linen; and
- (b) clean towels—

for the use of each client.

Penalty: 10 penalty units.

### **164 Showers and baths**

- (1) A brothel proprietor must provide baths or showers with a continuous and adequate supply of hot and cold water for the use of clients and sex workers.

Penalty: 10 penalty units.

- (2) The brothel proprietor must ensure that baths and showers are cleaned and disinfected after each use.

Penalty: 10 penalty units.

### **165 Inspections and interviews**

- (1) The Secretary must ensure that each brothel in respect of which a licence is in force under Part 3 of the **Sex Work Act 1994** is inspected at least once in every 12 months by an authorised officer.

- (2) At the request of an authorised officer, a brothel proprietor must allow the authorised officer to interview sex workers on the brothel premises without the brothel proprietor being present.

Penalty: 60 penalty units.

S. 165(1)  
amended by  
No. 63/2010  
s. 81(Sch.  
item 9.2).

- (3) In this section, *authorised officer* means an authorised officer appointed by the Secretary under section 30 whose appointment includes the power to conduct inspections and interviews under this section.

## **Part 9—Authorised officers**

### **Division 1—General**

#### **166 Production of identity card**

- (1) An authorised officer must produce their identity card for inspection before exercising a power under this Act or the regulations.
- (2) However, if it is impracticable for an authorised officer to produce their identity card for inspection when exercising a power under this Act or the regulations, the authorised officer need not do so.
- (3) An authorised officer must produce their identity card for inspection if asked to do so by the occupier of any premises during the exercise of a power under this Act or the regulations.
- (4) If an authorised officer does not comply with a request under subsection (3), the authorised officer must immediately cease exercising the power under this Act or the regulations.

#### **167 Power to request information**

- (1) An authorised officer may request a person to provide information to the authorised officer which the authorised officer believes is necessary to investigate whether there is a risk to public health or to manage or control a risk to public health.
- (2) A person is authorised to provide the information requested under subsection (1).

**Note**

See section 227.

- (3) A person may refuse to provide the information requested under subsection (1).

- (4) An authorised officer must at the time of making a request under subsection (1) advise the person that the person may refuse to provide the information requested.

## **Division 2—Powers of entry**

### **168 Power to enter—risk to public health**

- (1) An authorised officer may for the purpose of investigating whether there is a risk to public health or to manage or control a risk to public health—
- (a) enter a public place; or
  - (b) with the consent of the occupier, enter any other premises including any residential premises.
- (2) For the purposes of subsection (1)(b), an authorised officer may in seeking to obtain the consent of the occupier—
- (a) enter land around the premises to the extent that it is reasonable to do so for the purpose of contacting the occupier; or
  - (b) enter a part of the premises which the authorised officer considers can be entered by a member of the public for the purpose of contacting the occupier.
- (3) An authorised officer who enters a public place or any other premises in accordance with subsection (1) may exercise any of the powers specified in section 175.
- (4) For the purposes of this section, *public place* means a place, or part of a place, that—
- (a) the public is entitled to use; or
  - (b) is open to members of the public; or

(c) is used by the public—  
whether or not on the payment of any money.

**169 Power to enter—monitoring compliance or investigating**

- (1) For the purposes of monitoring compliance with this Act or the regulations and investigating a possible contravention of this Act or the regulations, an authorised officer may enter without a warrant, at any reasonable hour in the daytime or any time that the premises are open to the public, any premises that an authorised officer believes is—
- (a) used for the provision of prescribed accommodation; or
  - (b) used for conducting a business specified in section 68; or
  - (c) land on which there is a cooling tower system; or
  - (d) used for the business of a pest control operator; or
  - (e) used for conducting a brothel or escort agency; or
  - (f) used for the provision of services by a health service provider.
- (2) In relation to any possible contravention of the Act or the regulations, an authorised officer may, without a warrant, enter any premises at any time if—
- (a) the authorised officer believes on reasonable grounds that there may be an immediate risk to public health; and
  - (b) the entry is necessary to enable the authorised officer to investigate, eliminate or reduce the risk.

- (3) An authorised officer may enter any premises at any time—
- (a) for the purposes of monitoring compliance with this Act or the regulations, or investigating a possible contravention of this Act or the regulations, with the consent of the occupier; or
  - (b) with a warrant issued under this Act.
- (4) For the purposes of subsection (3)(a), an authorised officer may in seeking to obtain the consent of the occupier—
- (a) enter land around the premises to the extent that it is reasonable to do so for the purpose of contacting the occupier; or
  - (b) enter a part of the premises which the authorised officer considers can be entered by a member of the public for the purpose of contacting the occupier.

**Note**

See section 187.

**170 Issue of search warrants**

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to any premises if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, a particular thing (including a document) at the premises that may afford evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue the search warrant if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, a particular thing (including a document) at the premises that may



afford evidence of the commission of an offence against this Act or the regulations.

- (3) The search warrant may authorise a named authorised officer and any assistants the authorised officer considers necessary—
  - (a) to enter the premises or part of the premises named or described in the warrant; and
  - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, the search warrant must state—
  - (a) the offence suspected;
  - (b) the premises to be searched;
  - (c) a description of the thing for which the search is to be made;
  - (d) any conditions to which the warrant is subject;
  - (e) whether entry is authorised to be made at any time or during specified hours;
  - (f) that the warrant authorises entry on only one occasion;
  - (g) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.
- (5) Subject to subsection (6), a search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise an authorised officer to arrest a person.
- (7) The rules that apply to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search warrants under this section.

### **Division 3—Procedure for entry**

#### **171 Announcement before exercising power of entry**

- (1) Subject to subsection (2), before entering any premises in the exercise of a power conferred under this Act or the regulations, an authorised officer must—
  - (a) announce that they are an authorised officer who is authorised under this Act to enter the premises; and
  - (b) give any person in the premises a reasonable opportunity to allow entry to the premises.
- (2) An authorised officer does not have to comply with subsection (1) if the authorised officer—
  - (a) considers that it is not practicable to do so; or
  - (b) believes on reasonable grounds that immediate entry to the premises is required to ensure—
    - (i) the health or safety of any person; or
    - (ii) the effective exercise of the powers of the authorised officer.

#### **172 Notice if power of entry exercised without owner or occupier being present**

If an authorised officer exercises a power of entry under section 169(3), 190(1)(c) or 229 without the owner or occupier being present, unless the premises are abandoned or vacant or public land, the authorised officer must, on leaving the premises, leave a notice setting out—

- (a) the time of entry;
- (b) the purpose of entry;
- (c) a description of all things done while on the premises;

- (d) the time of departure;
- (e) the procedure for contacting—
  - (i) if the authorised officer was appointed by the Secretary, the Department; or
  - (ii) if the authorised officer was appointed by a Council, the relevant Council—for further details of the entry.

### **173 Announcement before entry on warrant**

- (1) Before executing a search warrant, the authorised officer named in the warrant, or a person assisting the authorised officer, must—
  - (a) announce that they are authorised by the warrant issued under this Act to enter the premises; and
  - (b) give any person at the premises an opportunity to allow that entry.
- (2) However, the authorised officer, or person assisting the authorised officer, need not comply with subsection (1) if they believe on reasonable grounds that immediate entry to the premises is needed to ensure—
  - (a) the health or safety of any person; or
  - (b) that the effective execution of the warrant is not frustrated.

### **174 Copy of warrant to be given to occupier**

If an occupier or apparent occupier is present at the premises when a search warrant is being executed, the authorised officer must—

- (a) identify themselves to that person by producing their identity card for inspection; and

- (b) give that person a copy of the execution copy of the warrant.

## **Division 4—Powers after entry**

### **175 General powers of authorised officers**

- (1) An authorised officer who enters any premises under the powers conferred by this Act may do any of the following—
  - (a) inspect, examine, or make enquiries, at the premises;
  - (b) examine or inspect any thing (including a document or part of a document) at the premises;
  - (c) bring any equipment or materials to the premises that may be required;
  - (d) seize any thing (including a document) at the premises if the authorised officer believes on reasonable grounds that—
    - (i) the seizure is required to determine whether there has been a contravention of this Act or the regulations; or
    - (ii) the seized thing may be used as evidence in a possible prosecution for a contravention of this Act or the regulations; or
    - (iii) the seizure is required to minimise a risk to the health of any person;
  - (e) seal a premises or thing;
  - (f) take a sample of, or from, any thing, at the premises for examination, analysis, measurement or testing;
  - (g) analyse, measure or test any thing at the premises with equipment brought to the premises or already at the premises;

- (h) take any photographs or make any audio or visual recordings at the premises;
- (i) make copies of, or take extracts from, any document kept at the premises;
- (j) use or test any equipment at the premises;
- (k) do any other thing that is reasonably necessary for the purpose of the authorised officer performing or exercising his or her functions or powers under this Act or the regulations.

(2) In doing any thing referred to in subsection (1), an authorised officer may be assisted by any person.

**176 Power to direct persons to produce documents, operate equipment or answer questions**

- (1) An authorised officer who enters any premises under section 169 may direct a person at the premises to—
- (a) produce a document or part of a document located at the premises that is in the person's possession or control;
  - (b) operate equipment to access information from that equipment;
  - (c) answer any questions put by the authorised officer.
- (2) A person must not refuse or fail to comply with a direction under subsection (1) unless the person has a reasonable excuse.

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

- (3) Before directing a person to produce a document or part of a document or to answer questions under subsection (1), an authorised officer must—
- (a) warn the person that a refusal or failure to comply with the direction, without reasonable excuse, is an offence; and
  - (b) inform the person that they may refuse or fail to answer any question if answering the question would tend to incriminate them.
- (4) A person is not liable to be prosecuted for an offence against subsection (2) if the authorised officer concerned failed to comply with section 166 and subsection (3).

**Notes**

- 1 Before directing a person to do a thing under subsection (1), an authorised officer must also produce their identity card for inspection if asked to do so by any person: See section 166.
- 2 This section does not affect the privilege against self-incrimination. See section 212.

**177 Authorised officers to give receipts for seized things and samples taken**

- (1) If an authorised officer seizes a thing, or takes a sample of, or from, a thing at any premises under this Division, the authorised officer must give a receipt in the approved form for the thing to the person in charge of the thing or the premises from which it was taken.
- (2) A receipt in the approved form must—
- (a) specify the name of the authorised officer; and
  - (b) identify the thing seized or sample taken; and
  - (c) state the reason why the thing was seized or the sample taken; and

- (d) include any other matters specified in the approved form.
- (3) If for any reason it is not practicable for an authorised officer to comply with subsection (1), the authorised officer may—
  - (a) leave the receipt at the premises in a conspicuous position and in a reasonably secure way; or
  - (b) send the receipt to the occupier of the premises from where the thing was seized or the sample was taken.

#### **178 Copies of seized documents**

- (1) If an authorised officer retains possession of a document seized from a person under this Division, the authorised officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals as evidence of equal validity to the original.

#### **179 Retention and return of seized documents or things**

- (1) If an authorised officer seizes a document or other thing under this Division, the authorised officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—
  - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and

those proceedings (including any appeal) have not been completed; or

(b) the Magistrates' Court makes an order under section 180 extending the period during which the document or thing may be retained.

(3) This section does not apply to a document or other thing seized under this Division that is forfeited to the Secretary or a Council under section 181.

### **180 Magistrates' Court may extend 3 month period**

(1) An authorised officer may apply to the Magistrates' Court—

(a) within 3 months after seizing a document or other thing under this Division; or

(b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the authorised officer may retain the document or thing but so that the total period of retention does not exceed 12 months.

(2) The Magistrates' Court may order such an extension if it is satisfied that—

(a) it is in the interests of justice; and

(b) the total period of retention does not exceed 12 months; and

(c) retention of the document or other thing is necessary—

(i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or



- (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

### **181 Forfeiture and destruction of seized things**

- (1) Any thing (including a document) that an authorised officer has seized and retained under this Division is forfeited to the Secretary (if the authorised officer was appointed by the Secretary) or a Council (if the authorised officer was appointed by the Council) if the Secretary or the Council—
  - (a) cannot find its owner despite making reasonable enquiries; or
  - (b) cannot return it to the owner despite making reasonable efforts; or
  - (c) decides it is necessary to retain the thing to prevent a risk to public health; or
  - (d) decides it is necessary to retain the thing to prevent the commission of an offence against this Act or the regulations.
- (2) If a thing is forfeited to the Secretary or a Council under subsection (1)(c), the Secretary or Council must notify (in writing) the owner accordingly, setting out how the owner may seek review of the decision referred to in that subsection, unless the Secretary or the Council cannot find the owner despite making reasonable enquiries.

**182 Secretary or Council may cause forfeited things to be destroyed or otherwise disposed of**

The Secretary or a Council may cause any thing that has been seized and retained under this Division by an authorised officer, and forfeited to the Secretary or the Council by operation of section 181, to be destroyed or otherwise disposed of.

**Division 5—Offences and complaints**

**183 Offence to hinder or obstruct authorised officer**

A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising a power under this Act or the regulations.

Penalty: 60 penalty units.

**184 Offence to impersonate authorised officer**

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

Penalty: 60 penalty units.

**185 Complaints**

- (1) Any person may complain about the exercise of a power by an authorised officer under this Act or the regulations to—
  - (a) the Secretary, if the authorised officer was appointed by the Secretary; or
  - (b) the relevant Council, if the authorised officer was appointed by the Council.
- (2) A complaint to the Secretary or the relevant Council under subsection (1) may be made in writing or in any other form approved by the Secretary or the relevant Council.

- (3) The Secretary must—
- (a) investigate any complaint made to the Secretary in accordance with subsection (2); and
  - (b) provide a written report to the complainant on the results of the investigation.
- (4) The Council must—
- (a) investigate any complaint made to the Council in accordance with subsection (2); and
  - (b) provide a written report to the complainant on the results of the investigation.

S. 186  
repealed by  
No. 82/2012  
s. 296.

\* \* \* \* \*

## **Part 10—Protection and enforcement provisions**

### **Division 1—Powers to investigate, eliminate or reduce public health risks**

#### **187 Restriction on entry to residential premises**

- (1) This section applies in respect of the exercise of a power conferred on any person by a provision of this Act to enter any residential premises without a warrant.
- (2) The power to enter can only be exercised to enter that part of the residential premises to which entry is necessary for the purposes for which the power is conferred.

#### **188 Chief Health Officer may direct a person to provide information**

- (1) The Chief Health Officer may direct a person to provide information specified in the direction to the Chief Health Officer which the Chief Health Officer believes is necessary to investigate whether there is a risk to public health or to manage or control a risk to public health.

**Note**

See section 227.

- (2) A person must not refuse or fail to comply with a direction given to the person under subsection (1).

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

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

- (3) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction.

- (4) Before directing a person to provide information, the Chief Health Officer must—
- (a) warn the person that a refusal or failure to comply with the direction, without reasonable excuse, is an offence; and
  - (b) inform the person that they may refuse or fail to provide any information if providing the information would tend to incriminate them.

**Notes**

- 1 This section does not affect the privilege against self-incrimination. See section 212.
- 2 Section 167 empowers an authorised officer to request information.

**189 Powers in the case of a risk to public health**

If the Chief Health Officer believes that it is necessary to do so to investigate, eliminate or reduce a risk to public health, the Chief Health Officer may authorise—

- (a) authorised officers appointed by the Secretary to exercise any of the public health risk powers; and
- (b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or Councils, to exercise any of the public health risk powers.

**190 Public health risk powers**

- (1) The public health risk powers are—
- (a) close any premises for the period of time reasonably necessary to investigate, eliminate or reduce the risk to public health;

- (b) subject to subsection (5), direct a person or group of persons to enter, not to enter, to remain at, or to leave, any particular premises for the period of time reasonably necessary to investigate, eliminate or reduce the risk to public health;
- (c) subject to subsection (7), without a warrant, enter any premises and search for and seize any thing that is necessary for the purpose of investigating, eliminating or reducing the risk to public health;
- (d) require the provision of any information needed to investigate, eliminate or reduce the risk to public health;
- (e) require a person to provide their name and address for the purpose of investigating, eliminating or reducing the risk to public health;
- (f) inspect any premises where the risk to public health may be spread if it is necessary for the purpose of investigating, eliminating or reducing the risk to public health;
- (g) require the cleaning or disinfection of any premises where the risk to public health may arise if it is necessary to do so to eliminate or reduce the risk to public health;
- (h) require the destruction or disposal of any thing the destruction or disposal of which is necessary to eliminate or reduce the risk to public health;
- (i) direct the owner or occupier of any premises to take any action necessary to eliminate or reduce the risk to public health;

- (j) direct any other person to take any other action that the authorised officer considers is necessary to eliminate or reduce the risk to public health;
  - (k) exercise any of the general enforcement powers conferred on an authorised officer by this Act or the regulations.
- (2) Before exercising any public health risk power under this section, an authorised officer must, unless it is not practicable to do so, warn the person that a refusal or failure to comply without a reasonable excuse, is an offence.
  - (3) Unless subsection (4) applies, before exercising a public health risk power, an authorised officer must briefly explain to any person who is to be subject to the exercise of the power the reason why it is necessary to exercise the power.
  - (4) An authorised officer is not required to comply with subsection (3) if it is not practicable to do so in the particular circumstances in which the public health risk power is to be exercised.
  - (5) A direction under subsection (1)(b) to remain at any particular premises must specify the period of time, not exceeding 4 hours, during which the direction must be complied with.
  - (6) A direction under subsection (1)(b) to remain at any particular premises may be extended as many times as is reasonably necessary for the purpose of investigating, eliminating or reducing the risk to public health but so as not to exceed a continuous period of 12 hours.

S. 190(3)  
amended by  
No. 29/2011  
s. 3(Sch. 1  
item 75.2).

- (7) An authorised officer may only exercise the power specified in subsection (1)(c) if—
- (a) the authorised officer reasonably believes that there may be an immediate risk to public health; and
  - (b) the entry is necessary to enable the authorised officer to investigate, eliminate or reduce the risk.
- (8) Before requiring the provision of any information under subsection (1)(d), an authorised officer must inform the person that they may refuse or fail to provide the information if providing the information would tend to incriminate them.

**Notes**

- 1 This section does not affect the privilege against self-incrimination. See section 212.
- 2 See Part 9 for provisions relating to the exercise of powers by authorised officers.

**191 How may an authorisation be given?**

- (1) An authorisation to exercise any of the public health risk powers for the purposes of section 189 may be given orally or in writing.
- (2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.
- (3) An authorisation must—
  - (a) state that the authorisation is given under this Division;
  - (b) generally describe the risk to public health to which it relates;
  - (c) if the risk to public health has occurred, name or describe the place at which the risk to public health has occurred;



- (d) specify the time at which the authorisation is given;
  - (e) specify any restrictions or limitations subject to which the public health risk powers may be exercised under the authorisation;
  - (f) specify the period of time for which the authorisation continues in force.
- (4) The Chief Health Officer may extend the period of time for which an authorisation continues in force before the authorisation expires.

### **192 Assistance**

- (1) An authorised officer may be assisted by any person in exercising a public health risk power under an authorisation given under section 189.
- (2) A request for assistance by a police officer must be made to the Chief Commissioner of Police or a delegate of the Chief Commissioner of Police.

S. 192(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 136.4).

### **193 Compliance with direction or requirement**

- (1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a public health risk power under an authorisation given under section 189.

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

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

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

## **Division 2—Improvement notices and prohibition notices**

### **194 Secretary or Council may issue improvement notice or prohibition notice**

- (1) This section applies if the Secretary or a Council believes that a person—
  - (a) has contravened a provision of this Act or the regulations administered by the Secretary or the Council in circumstances that make it likely that the contravention is continuing or will re-occur; or
  - (b) is likely to contravene a provision of this Act or the regulations administered by the Secretary or the Council.
- (2) If this section applies, the Secretary or the Council, as the case requires, may issue to the person—
  - (a) an improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention; or
  - (b) a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until the Secretary or the Council, as the case requires, has certified in writing that the contravention has ceased or that the likelihood of the contravention occurring has passed.

- (3) An improvement notice or a prohibition notice must—
- (a) state the grounds on which the issue of the improvement notice or prohibition notice is based;
  - (b) specify the provision of this Act or the regulations that the Secretary or the Council, as the case requires, considers has been or is likely to be contravened;
  - (c) specify the actions or measures that the person is required to take and the period within which the actions or measures are to be completed;
  - (d) set out the penalty for contravening the improvement notice or prohibition notice;
  - (e) state how the person may seek review of the issue of the improvement notice or prohibition notice;
  - (f) include a statement as to the effect of section 195.
- (4) A person to whom an improvement notice or a prohibition notice is issued must comply with the improvement notice or prohibition notice.

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

### **195 Proceedings for offences not affected by notices**

The issue of an improvement notice or a prohibition notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice or prohibition notice was issued.

**196 Injunction for non-compliance with improvement notice or prohibition notice**

- (1) The Chief Health Officer, the Secretary or a Council may apply to the Magistrates' Court for an injunction—
  - (a) compelling a person to comply with an improvement notice or a prohibition notice; or
  - (b) restraining a person from contravening an improvement notice or a prohibition notice.
- (2) The Chief Health Officer, the Secretary or the Council may do so whether or not proceedings have been instituted for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice or prohibition notice was issued.

**197 Special provisions relating to nuisances**

- (1) This section applies if an improvement notice or a prohibition notice is issued in respect of a nuisance.
- (2) The Council may cause a complaint to be made to the Magistrates' Court if—
  - (a) the person on whom the improvement notice or prohibition notice is served does not comply with it; or
  - (b) in the opinion of the Council the nuisance to which the improvement notice or prohibition notice applies, although abated, is likely to recur.
- (3) The Magistrates' Court may summon the person to appear before the Magistrates' Court.

- (4) If the Magistrates' Court is satisfied that the nuisance exists or is likely to recur, the Magistrates' Court must order that person to do either or both of the following—
- (a) comply with the improvement notice or prohibition notice;
  - (b) carry out works to prevent the recurrence of the nuisance.
- (5) If an order has been made under subsection (4), the Council may—
- (a) enter the land to which the order relates and abate the nuisance and do whatever is necessary to execute the order; and
  - (b) recover the costs and expenses incurred by it from the person on whom the order is made.
- (6) If the person on whom the order is made is the owner of the relevant land for the time being, the costs and expenses may at any time be recovered by the Council in a court of competent jurisdiction, after demand from the occupier of the relevant land for the time being, from the rent, to the extent of the amount of rent due, at the time of demand, from the occupier to the owner.
- (7) A person who fails to comply with an order under subsection (4) is guilty of an offence unless the person satisfies the Magistrates' Court that the person has, in seeking to comply with the order, exercised due diligence.

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

### Division 3—Emergency powers

#### 198 Declaration of a state of emergency

- (1) The Minister may, on the advice of the Chief Health Officer and after consultation with the Minister and the Emergency Management Commissioner under the **Emergency Management Act 2013**, declare a state of emergency arising out of any circumstances causing a serious risk to public health.
- (2) Subject to subsection (3), the Minister may at any time revoke or vary a declaration under this section.
- (3) The Minister must consult with the Minister and the Emergency Management Commissioner under the **Emergency Management Act 2013** before varying a declaration under this section to extend the emergency area.
- (4) Immediately upon the making, revocation or variation of a declaration under this section, a state of emergency exists, ceases to exist or exists as so varied for the purposes of this Part.
- (5) As soon as practicable after the making, revocation or variation of a declaration under this section, the Minister must cause notice of the making, revocation or variation of the declaration to be—
  - (a) broadcast from a broadcasting station in Victoria; and
  - (b) in the case of the making or variation of a declaration, published with a copy of the declaration in the Government Gazette; and
  - (c) in the case of the revocation of a declaration, published in the Government Gazette.

S. 198(1)  
amended by  
Nos 56/2011  
s. 31, 73/2013  
s. 102.

S. 198(3)  
amended by  
Nos 56/2011  
s. 31, 73/2013  
s. 102.

- (6) Production of a Government Gazette purporting to contain—
- (a) notice of the making, revocation or variation of a declaration under this section is evidence of that making, revocation or variation; and
  - (b) a copy of the declaration under this section is evidence of the terms of the declaration.
- (7) A declaration under this section—
- (a) must specify the emergency area in which the state of emergency exists being throughout Victoria or in specified areas of Victoria;
  - (b) continues in force for the period not exceeding 4 weeks specified in the declaration;
  - (c) may be extended by another declaration for further periods not exceeding 4 weeks but the total period that the declaration continues in force cannot exceed 6 months.
- (8) If a state of emergency is declared under this section, the Minister must report on the state of the emergency and the public health risk powers and emergency powers exercised to both Houses of Parliament—
- (a) if Parliament is then sitting, as soon as practicable after the declaration is made or varied; and
  - (b) if Parliament is not then sitting, as soon as practicable after the next meeting of the Parliament.
- (9) A declaration under this section does not derogate from or limit any provisions relating to the declaration of an emergency under any other Act.

**199 Chief Health Officer may authorise exercise of certain powers**

- (1) This section applies if—
  - (a) a state of emergency exists under section 198; and
  - (b) the Chief Health Officer believes that it is necessary to grant an authorisation under this section to eliminate or reduce a serious risk to public health.
- (2) If this section applies, the Chief Health Officer may, for the purpose of eliminating or reducing the serious risk to public health, authorise—
  - (a) authorised officers appointed by the Secretary to exercise any of the public health risk powers and emergency powers; and
  - (b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or Councils to exercise any of the public health risk powers and emergency powers.
- (3) The Chief Health Officer may at any time revoke or vary an authorisation given under this section.

**200 Emergency powers**

- (1) The emergency powers are—
  - (a) subject to this section, detain any person or group of persons in the emergency area for the period reasonably necessary to eliminate or reduce a serious risk to public health;
  - (b) restrict the movement of any person or group of persons within the emergency area;
  - (c) prevent any person or group of persons from entering the emergency area;



- (d) give any other direction that the authorised officer considers is reasonably necessary to protect public health.
- (2) Unless subsection (3) applies, before any person is subject to detention under subsection (1)(a), an authorised officer must briefly explain the reason why it is necessary to detain the person.
- (3) If in the particular circumstances in which the power to detain the person is to be exercised, it is not practicable to briefly explain the reason why it is necessary to detain the person before the power is exercised, the authorised officer must do so as soon as is practicable.
- (4) Before exercising any emergency powers under this section, an authorised officer must, unless it is not practicable to do so, warn the person that a refusal or failure to comply without a reasonable excuse, is an offence.
- (5) An authorised officer must facilitate any reasonable request for communication made by a person subject to detention under subsection (1)(a).
- (6) An authorised officer must at least once every 24 hours during the period that a person is subject to detention under subsection (1)(a) review whether the continued detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health.
- (7) An authorised officer must as soon as is reasonably practicable give written notice to the Chief Health Officer—
- (a) that a person has been made subject to detention under subsection (1)(a);
  - (b) that following a review under subsection (6) a person is to continue to be subject to detention under subsection (1)(a).

- (8) A notice under subsection (7) must include—
  - (a) the name of the person being detained; and
  - (b) a brief statement as to the reason why the person is being, or continues to be, subject to detention under subsection (1)(a).
- (9) The Chief Health Officer must as soon as is reasonably practicable advise the Minister of any notice received under subsection (7).

**201 How may an authorisation be given?**

- (1) An authorisation to exercise any of the public health risk powers or emergency powers for the purposes of section 199 may be given orally or in writing.
- (2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.
- (3) An authorisation must—
  - (a) state that the authorisation is given under this Division;
  - (b) generally describe the serious risk to public health to which it relates;
  - (c) if the serious risk to public health has occurred, name or describe the place at which the serious risk to public health has occurred;
  - (d) specify the time at which the authorisation is given;
  - (e) specify any restrictions or limitations to which of the public health risk powers or emergency powers may be exercised under the authorisation;
  - (f) specify the period of time for which the authorisation continues in force.

- (4) The Chief Health Officer may extend the period of time for which an authorisation continues in force before the authorisation expires.

## **202 Assistance**

- (1) An authorised officer may be assisted by any person in exercising a power under an authorisation given under section 199.
- (2) A request for assistance by a police officer must be made to the Chief Commissioner of Police or a delegate of the Chief Commissioner of Police.

S. 202(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 136.4).

## **203 Compliance with direction or other requirement**

- (1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.

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

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

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

## **204 Compensation**

- (1) A person who suffers loss as a result of a decision by the Chief Health Officer to give an authorisation to an authorised officer under this Division may apply to the Secretary for compensation if the person considers that there were insufficient grounds for the giving of that authorisation.

- (2) If the Secretary decides that there were insufficient grounds for the giving of an authorisation to an authorised officer under this Division, the Secretary is to pay just and reasonable compensation to the applicant.
- (3) The Secretary must send notice in writing of the decision under subsection (2) as to the payment of compensation under this section to each applicant for the payment of compensation.
- (4) The Secretary is taken to have refused to pay any compensation if the Secretary has not decided an application for compensation under this section within—
  - (a) 28 days of receiving the application; or
  - (b) the period agreed to by the Secretary and the applicant for the payment of compensation under subsection (5).
- (5) The Secretary and the applicant for the payment of compensation may agree that the Secretary may decide the applicant's application for the payment of compensation within a period that is greater than the 28 days specified in subsection (4)(a).
- (6) The Secretary must inform each applicant for the payment of compensation in writing of the applicant's right to apply to VCAT for a review.
- (7) An applicant for the payment of compensation under this section who is dissatisfied with a decision by the Secretary as to the refusal to pay compensation or as to the amount of compensation may apply to the VCAT for a review of the decision.

- (8) An application for review must be made within 28 days of the latest of—
- (a) the day on which the decision is made; or
  - (b) the day on which the person was notified under subsection (6) of the right to apply for a review; or
  - (c) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

## **Part 11—General provisions**

### **Division 1—Reviews and appeals**

#### **205 Review by a Council**

(1) In this section—

*decision* means a decision made by a Council under section 74 or 76 in respect of the issue, variation, transfer, renewal, cancellation or suspension of a registration;

*person aggrieved* means the person who is the applicant for, or the holder of, the registration in respect of which the decision was made.

- (2) A person aggrieved by a decision may within 28 days of being notified of the decision apply to the Council for a review of the decision.
- (3) On receiving an application under subsection (2), the Council must review the decision.
- (4) The Council is taken to have affirmed the decision if the Council has not determined an application under this section within—
- (a) 28 days of receiving the application; or
  - (b) the period agreed to by the Council and the applicant under subsection (5).
- (5) The Council and the applicant may agree that the Council may determine the applicant's application within a period that is greater than the 28 days specified in subsection (4)(a).

- (6) The Council may—
- (a) make a decision affirming, varying or revoking the decision; and
  - (b) if the Council revokes the decision, make any other decision as the Council considers appropriate under the provision under which the decision was made.
- (7) The Council must within the period applying under subsection (4) give the applicant for review a written statement of the decision and the reasons for the decision.
- (8) The Council must inform an applicant for review in writing of the applicant's right to apply to VCAT for a review under section 207.

## **206 Review by the Secretary**

- (1) In this section—

*decision* means a decision made by the Secretary in respect of—

- (a) the certification, or revocation of the certification, of a person as an approved auditor under section 94; or
- (b) the issue, variation, renewal, cancellation or suspension of a pest control licence under section 101 or 105;

*person aggrieved* means the person who is the applicant for, or the holder of, the certification or pest control licence in respect of which the decision was made.

- (2) A person aggrieved by a decision may within 28 days of being notified of the decision apply to the Secretary for a review of the decision.
- (3) On receiving an application under subsection (2), the Secretary must review the decision.

- (4) The Secretary is taken to have affirmed the decision if the Secretary has not determined an application under this section within—
  - (a) 28 days of receiving the application; or
  - (b) the period agreed to by the Secretary and the applicant under subsection (5).
- (5) The Secretary and the applicant may agree that the Secretary may determine the application within a period that is greater than the 28 days specified in subsection (4)(a).
- (6) The Secretary may—
  - (a) make a decision affirming, varying or revoking the decision; and
  - (b) if the Secretary revokes the decision, make any other decision as the Secretary considers appropriate under the provision under which the decision was made.
- (7) The Secretary must within the period applying under subsection (4) give the applicant for review a written statement of the decision and the reasons for the decision.
- (8) The Secretary must inform an applicant for review in writing of the applicant's right to apply to VCAT for a review under section 207.

## **207 Review by VCAT**

- (1) This section applies to a decision—
  - (a) made by a Council to cancel or suspend a registration under section 76; or
  - (b) made by a Council on an application under section 205; or
  - (c) made by the Secretary to revoke the certification of a person as an approved auditor under section 94; or



- (d) made by the Secretary to cancel or suspend a pest control licence under section 105; or
  - (e) made by the Secretary on an application under section 206.
- (2) The person who made the application in respect of the decision to which this section applies may apply to VCAT for a review of the decision.
- (3) An application for review must be made within 28 days of the latest of—
- (a) the day on which the decision is made; or
  - (b) if applicable, the day the person was notified under section 205(8) or 206(8) of the right to apply for a review under this section; or
  - (c) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

## **208 Appeal against improvement notice or prohibition notice**

- (1) A person on whom an improvement notice or prohibition notice is served may appeal to the Magistrates' Court within 21 days after the improvement notice or prohibition notice is served on the person.
- (2) The Magistrates' Court must—
- (a) reconsider the decision to issue the improvement notice or prohibition notice;
  - (b) hear any relevant evidence tendered by the applicant or any person on behalf of the person who issued the improvement notice or prohibition notice;

- (c) affirm or revoke the issue of the improvement notice or prohibition notice.
- (3) Unless the Magistrates' Court otherwise orders, the appeal does not affect the status of the improvement notice or prohibition notice pending the determination of the appeal.
- (4) The decision of the Magistrates' Court on an appeal takes effect from the date that the decision is made.
- (5) The costs of and incidental to an appeal are in the discretion of the Magistrates' Court.
- (6) Nothing in subsection (2)(b) prevents the application of Part 3.10 of the **Evidence Act 2008** to an appeal under this section.

S. 208(6)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 47.1).

## **Division 2—Infringements**

### **209 Infringements**

- (1) The Secretary may serve an infringement notice on any person that the Secretary has reason to believe has committed a prescribed offence.
- (2) A Council may serve an infringement notice on any person that the Council has reason to believe has committed a prescribed offence.
- (3) An offence referred to in subsection (1) or (2) for which an infringement notice may be issued is an infringement offence within the meaning of the **Infringements Act 2006**.
- (4) The infringement penalty for an offence against a prescribed offence is the prescribed penalty.

- (5) In this section, *prescribed offence* means—
- (a) in relation to a Council, an offence against Part 6, 9 or 10 (or any regulations made under Part 6, 9 or 10) which is prescribed for the purposes of this section and is committed wholly or partly in the Council's municipal district; and
  - (b) in relation to the Secretary, an offence against this Act (other than section 61) or the regulations which is prescribed for the purposes of this section, wherever committed.

**Note**

See the **Infringements Act 2006** for provisions relating to infringement notices.

### **Division 3—Offences**

#### **210 False or misleading information**

- (1) A person must not—
- (a) give information that is false or misleading in a material particular; or
  - (b) make a statement that is false or misleading in a material particular; or
  - (c) produce a document that is false or misleading in a material particular—

to the Secretary, a Council, the Chief Health Officer or an authorised officer under this Act or the regulations without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

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

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

- (2) A person must not make an entry in a document required to be kept by this Act or the regulations that is false or misleading.

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

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

- (3) In a proceeding for an offence against subsection (1) or (2) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.

### **211 Destroying or damaging records**

A person must not, without lawful authority, destroy or damage any record required to be kept in accordance with this Act or the regulations.

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

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

### **212 Protection against self-incrimination**

- (1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.
- (2) However, subsection (1) does not apply to—
- (a) the production of a document or part of a document that the person is required by this Act or the regulations to produce; or
  - (b) the giving of a person's name or address in accordance with this Act or the regulations.

S. 213  
(Heading)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 47.2).

### **213 Legal professional privilege and client legal privilege not affected**

Nothing in this Act or the regulations—

S. 213(a)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 47.3).

(a) entitles or requires a person to disclose information that is the subject of legal professional privilege or client legal privilege; or

S. 213(b)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 47.3).

(b) affects the law or practice relating to legal professional privilege or client legal privilege.

### **214 Offences by corporations**

- (1) If a corporation is guilty of an offence against this Act or the regulations, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (2) If in a proceeding for an offence against this Act or the regulations it is necessary to establish the intention of a corporation, it is sufficient to show that an employee or agent of the corporation had that intention.
- (3) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or the regulations.
- (4) In this section, *officer*—
  - (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and

(b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—

but does not include an employee of the corporation.

### **215 Persons who are liable for offences**

- (1) If two or more persons are responsible for the same offence against this Act or the regulations, each of those persons is liable to the penalty provided by this Act or the regulations for that offence and the liability of each of them is independent of the liability of any other person.
- (2) If this Act or the regulations provide that a person is guilty of an offence and the person who is guilty of the offence is a partnership, firm, unincorporated body or association, the reference to a person must be construed as a reference to each member of the partnership or firm or of the committee of management of the unincorporated body or association who knowingly authorised or permitted the commission of the offence.
- (3) If in any proceeding for an offence against this Act or the regulations against a person who is a partnership, firm, unincorporated body or association it is necessary to establish the state of mind of the partnership, firm, unincorporated body or association, it is sufficient to show that an employee or agent of the partnership, firm, unincorporated body or association had that state of mind.

## **Division 4—Proceedings and legal matters**

### **216 Responsible agency for the Crown**

- (1) If the Crown is to be served with an infringement notice, or proceedings are brought against the Crown, for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in the infringement notice or any document initiating, or relating to, the proceedings.
- (2) In this section, the responsible agency in respect of an offence is the agency of the Crown—
  - (a) whose acts or omissions are alleged to constitute the offence; or
  - (b) if that agency has ceased to exist, that is the successor of that agency; or
  - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

### **217 Infringement and other notices may be issued to the Crown**

- (1) The Crown in any capacity may be issued with an infringement notice for an offence against this Act or the regulations.

- (2) If an improvement notice or a prohibition notice is to be issued to the Crown, the improvement notice or prohibition notice may be issued to the agency of the Crown that would be the responsible agency under section 216 if the Crown were prosecuted for an offence of contravening the notice.

### **218 Proceedings against successors to public bodies**

- (1) Proceedings for an offence against this Act or the regulations that were instituted against a public body before its dissolution, or that could have been instituted against a public body if not for its dissolution, may be continued or instituted against its successor if the successor is a public body.
- (2) An infringement notice served on a public body for an offence against this Act or the regulations is taken to be an infringement notice served on its successor if the successor is a public body.
- (3) Any penalty paid by a public body in respect of an infringement notice is taken to be a penalty paid by its successor if the successor is a public body.
- (4) In this section, *public body* means—
- (a) a body corporate representing the Crown; or
  - (b) a State owned enterprise or reorganising body within the meaning of the **State Owned Enterprises Act 1992**; or
  - (c) a Council; or
  - (d) a public entity within the meaning of the **Public Administration Act 2004**.



## **219 Power to bring proceedings**

S. 219(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 136.4).

- (1) The Secretary, an authorised officer appointed by the Secretary or a police officer may bring proceedings for an offence under this Act (other than section 61) or the regulations wherever committed.
- (2) A Council or an authorised officer appointed by the Council may bring proceedings for any of the following—
  - (a) an offence against Part 6, 9 or 10 (or any regulations made under Part 6, 9 or 10) committed wholly or partly in the Council's municipal district;
  - (b) an offence relating to an improvement notice or a prohibition notice issued by the Council.

## **220 Time within which proceedings for offences may be brought**

S. 220  
amended by  
No. 68/2009  
s. 97(Sch.  
item 99).

Despite section 7(1) of the **Criminal Procedure Act 2009**—

- (a) proceedings for an offence against section 127, 130(2), 130(5), 159(1), 159(2), 159(3), 159(4), 160(1) or 160(2) may be commenced within 2 years of the commission of the alleged offence; and
- (b) proceedings for an offence against section 155 may be commenced within 3 years of the commission of the alleged offence.

## **221 Service of notices, orders and other documents**

- (1) Any notice, order or other document under this Act or the regulations required or authorised to be given or served to or upon any person may be served by—

- (a) giving it or serving it personally on the person; or
  - (b) sending it by post or electronic communication to the person at that person's usual or last known place of residence or business; or
  - (c) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently at least 16 years old; or
  - (d) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently at least 16 years old.
- (2) This section is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.
- (3) If a notice, order or other document is addressed to the owner or occupier of premises, the notice, order or document may be served by—
- (a) delivering the notice, order or other document or a true copy to a person on the premises who is apparently at least 16 years old; or
  - (b) if there is no person on the premises who can be so served, by fixing the notice, order or other document on some conspicuous part of the premises.
- (4) If a notice, order or other document is required to be given to or served on a person whose name and address are unknown, the notice, order or other document may be served by publishing the notice, order or other document in—
- (a) the Government Gazette; and

- (b) a newspaper generally circulating in Victoria 3 times at intervals of not less than one week between any 2 publications.
- (5) Any notice, order or other document required to be given to or served on the owner or occupier of any premises may if the name of the owner or occupier is not known be addressed to the owner or occupier by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice, order or other document is given without further name or description.
- (6) If there are more owners or occupiers than one it is sufficient if the notice, order or other document is served on any one of them and the name of any one of them is specified with the addition of the words "and others".
- (7) Non-service on the owner does not affect the validity of service on the occupier.
- (8) Non-service on the occupier does not affect the validity of service on the owner.
- (9) Instead of attending at any proceedings under this Act or the regulations, a person who gives or serves any notice, order or other document under this Act or the regulations may make an affidavit that—
- (a) identifies and is endorsed on, or attached to, a true copy of the original notice, order or other document; and
- (b) states the time and manner in which the original notice, order or other document was given or served.

S. 221(8)  
amended by  
No. 56/2012  
s. 23.

- (10) A document purporting to be an affidavit under subsection (9) is to be received in any proceedings and is evidence of the statements contained in the document.

## **222 Validity and effect of notices, orders and other documents**

- (1) The validity of any notice, order or other document or of the service of the notice, order or other document is not affected by any error, misdescription or irregularity which in the opinion of the court is not likely to mislead or which in fact does not mislead.
- (2) If due service of a notice, order or other document required under this Act or the regulations to be given or served on any owner or occupier has been once made on any owner or occupier, the notice, order or other document is binding on all persons claiming by from or under that owner or occupier and on all subsequent owners or occupiers to the same extent as if served on each of those persons respectively.

## **223 Evidence of signatures**

A signature purporting to be the signature of the Minister, the Secretary, the Chief Health Officer, an authorised officer or an analyst is evidence of the signature it purports to be.

## **224 Certificate of examination and analysis**

- (1) This section applies to the following—
- (a) proceedings under section 122 (application to VCAT for review of a public health order);
  - (b) proceedings under section 196 (application for an injunction to compel compliance with, or to restrain a contravention of, an improvement notice or a prohibition notice);

- (c) proceedings under section 197 (special provisions relating to nuisances);
  - (d) proceedings under section 208 (appeal against an improvement notice or a prohibition notice);
  - (e) proceedings for an offence against this Act or the regulations.
- (2) A certificate of examination and analysis signed by an analyst stating any of the following matters is evidence of the matter—
- (a) the analyst's qualifications;
  - (b) the analyst took, or received from a stated person, a thing or sample;
  - (c) a thing or sample was examined, analysed, measured or tested at a stated place on a stated day or during a stated period;
  - (d) the methodology used to examine, analyse, measure or test a thing or sample;
  - (e) the results of the examination, analysis, measurement or test.

**225 Evidentiary certificate signed by the Secretary**

- (1) This section applies to the following—
- (a) proceedings under section 122 (application to VCAT for review of a public health order);
  - (b) proceedings under section 196 (application for an injunction to compel compliance with, or to restrain a contravention of, an improvement notice or a prohibition notice);
  - (c) proceedings under section 208 (appeal against an improvement notice or a prohibition notice);

- (d) proceedings for an offence against this Act or the regulations brought under section 219(1).
- (2) A certificate signed by the Secretary stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given or issued under this Act or the regulations—
    - (i) an appointment or a decision;
    - (ii) a notice, direction or requirement;
    - (iii) a registration, licence or authority;
    - (iv) a record or an extract from a record;
    - (v) a register or an extract from a register;
  - (b) a stated document is a copy of a thing referred to in paragraph (a);
  - (c) on a stated day, or during a stated period, a stated person was or was not the holder of a registration, licence or authority;
  - (d) on a stated day, or during a stated period, a registration, licence or authority—
    - (i) was or was not in force; or
    - (ii) was or was not subject to a stated condition;
  - (e) on a stated day, or during a stated period, a registration or licence was suspended;
  - (f) on a stated day a registration or licence was cancelled, varied, transferred or surrendered;
  - (g) on a stated day, or during a stated period, an appointment as an authorised officer or analyst was, or was not, in force for a stated person;

- (h) on a stated day, a stated person was given a stated notice or direction under this Act;
- (i) on a stated day, a stated requirement was made of a stated person;
- (j) a stated amount is payable under this Act or the regulations by a stated person and has not been paid.

**226 Evidentiary certificate signed by Chief Executive Officer of a Council**

- (1) This section applies to the following—
  - (a) proceedings under section 196 (application for an injunction to compel compliance with, or to restrain a contravention of, an improvement notice or a prohibition notice);
  - (b) proceedings under section 197 (special provisions relating to nuisances);
  - (c) proceedings under section 208 (appeal against an improvement notice or a prohibition notice);
  - (d) proceeding for an offence against this Act or the regulations brought under section 219(2).
- (2) A certificate signed by the Chief Executive Officer of a Council stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given or issued under this Act or the regulations—
    - (i) an appointment or a decision;
    - (ii) a notice, direction or requirement;
    - (iii) a registration;
    - (iv) a record or an extract from a record;
    - (v) a register or an extract from a register;

- (b) a stated document is a copy of a thing referred to in paragraph (a);
- (c) on a stated day, or during a stated period, a stated person was or was not the holder of a registration;
- (d) on a stated day, or during a stated period, a registration—
  - (i) was or was not in force; or
  - (ii) was or was not subject to a stated condition;
- (e) on a stated day, or during a stated period, a registration was suspended;
- (f) on a stated day a registration was cancelled, varied, transferred or surrendered;
- (g) on a stated day, or during a stated period, an appointment as an authorised officer or analyst was, or was not, in force for a stated person;
- (h) on a stated day, a stated person was given a stated notice or direction under this Act;
- (i) on a stated day, a stated requirement was made of a stated person;
- (j) a stated amount is payable under this Act or the regulations by a stated person and has not been paid.

### **227 Protection of person giving certain information**

The giving of information that is authorised or required to be given under this Act in accordance with this Act—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; or



- (b) does not make the person by whom it is given subject to any liability in respect of it; or
- (c) does not constitute a contravention of any other Act or law (including common law).

### **Division 5—Costs**

#### **228 Recovery of costs**

- (1) If a person is found guilty of an offence against this Act or the regulations, the Secretary or the Council may seek the reimbursement of costs incurred by the Secretary or the Council as a result of the contravention.
- (2) If the Secretary or a Council is awarded legal costs in any proceedings for an offence against this Act or the regulations, the Secretary or the Council may seek payment for the cost of any work conducted by the Secretary or the Council.
- (3) For the purposes of this section, *work conducted by the Secretary or the Council* means any analysis, measurement, recording, evaluation, testing or inspection conducted by the Secretary or the Council through any officers, employees or agents.

#### **229 Actions to ensure compliance with direction, requirement or notice**

- (1) This section applies if a person fails to comply with—
  - (a) a direction or requirement under section 190 or 200; or
  - (b) an improvement notice or a prohibition notice issued in respect of a contravention to which section 193 or 203 applies.

- (2) If this section applies, the Chief Health Officer may authorise a person or a Council to take the actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice.
- (3) An authorisation under subsection (2) authorises the person or Council to take the actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice.
- (4) Without limiting the generality of subsection (2), actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice include—
  - (a) entering onto any relevant land;
  - (b) executing or performing any action which is necessary to give effect to the direction, requirement, improvement notice or prohibition notice.

**230 Cost recovery in respect of failure to comply with direction, requirement or notice**

- (1) Any reasonable costs incurred under section 229 are a debt payable to the Secretary or the Council by the person given the direction or who was subject to the requirement, improvement notice or prohibition notice.
- (2) Any reasonable costs incurred under section 229 in relation to any premises—
  - (a) are until recovered a charge on the relevant land; and
  - (b) may at any time be recovered by the Secretary or the Council in a court of competent jurisdiction—

- (i) from the owner of the relevant land for the time being; or
  - (ii) after demand from the occupier of the relevant land for the time being, from the rent, to the extent of the amount of rent due, at the time of demand, from the occupier to the owner.
- (3) In this section, *reasonable costs* means—
- (a) the costs and expenses of taking the actions necessary to ensure as far as is possible compliance with the direction, requirement, improvement notice or prohibition notice; and
  - (b) all other costs and expenses lawfully incurred by the Secretary or the Council in respect of any premises whether or not any judgment or order has been obtained; and
  - (c) interest at the percentage rate per annum fixed in accordance with section 2 of the **Penalty Interest Rates Act 1983**.

**231 Expenses recoverable by a Council in the abatement of any nuisance**

- (1) Subject to subsection (2), if it is provided by or under this Act or the regulations that any works for the abatement of any nuisance may be done by the Council at the expense of the occupier of any land, the occupier may—
- (a) recover the expenses from the owner as money paid to his or her use; or
  - (b) deduct the expenses from, or set off against, any rent due or to become due.

- (2) Subsection (1) does not apply in the case of a contravention of section 61 by the occupier.
- (3) Subsection (1) applies despite any covenant or agreement to the contrary.
- (4) For the purposes of this section, *occupier* includes—
  - (a) the person in occupation of any premises;
  - (b) any person in possession of the premises;
  - (c) any agent receiving rent for the premises.

### **Division 6—Regulations**

#### **232 General**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) prescribing forms to be used for the purposes of this Act;
  - (b) prescribing fees for the purposes of this Act;
  - (c) prescribing the keeping and the form of any records or other documents as may be necessary for the administration of this Act;
  - (d) the collection, provision, transfer, disclosure or use of information for the purposes of this Act;
  - (e) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations made under this Act—
  - (a) may be of general or of specially limited application;
  - (b) may differ according to differences in time, place or circumstance;

- (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or specified class of persons;
- (d) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such extent as is specified;
- (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;
- (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—
  - (i) wholly or partially or as amended by the regulations; or
  - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
  - (iii) as formulated, issued, prescribed or published from time to time;
- (g) may impose a penalty not exceeding 20 penalty units for any contravention of the regulations.

### 233 Consultative Councils

Without limiting the generality of section 232, the regulations may prescribe—

- (a) the procedure of meetings of a Consultative Council;
- (b) a Consultative Council to be a prescribed Consultative Council;
- (c) the powers and duties of a Consultative Council in the performance of the functions of the Consultative Council;
- (d) the powers and duties of a Council Chairperson or other member of a Consultative Council in the performance of his or her functions as a member of the Consultative Council;
- (e) fees, travelling allowances and other allowances (including the reimbursement of expenses) to be paid to members of a Consultative Council or of a sub-committee, other than a member who is an officer or employee (within the meaning of section 4(1) of the **Public Administration Act 2004**) of the Department;
- (f) conditions of confidentiality and safe custody of information held or used by a Consultative Council;
- (g) conditions in respect of the operation by CCOPMM of the perinatal data collection unit;
- (h) conditions under which access to information held by a Consultative Council for the purpose of medical research and studies is to be permitted.

**234 General requirements relating to public health and wellbeing**

Without limiting the generality of section 232, the regulations may prescribe—

- (a) the procedure for a public inquiry;
- (b) requirements and procedures for preventing, controlling or minimising public health risks, including risks posed by infectious diseases.

**235 Nuisances, prescribed accommodation and registered premises**

Without limiting the generality of section 232, the regulations may prescribe—

- (a) matters in respect of the prevention and abatement of nuisances;
- (b) the following matters in respect of prescribed accommodation—
  - (i) requirements relating to the issue, transfer or renewal of a registration of prescribed accommodation, including requirements relating to an application for issue, transfer or renewal;
  - (ii) the number of people who can be accommodated in or at any premises that are, or form part of, prescribed accommodation;
  - (iii) the keeping of a register of people who are accommodated in prescribed accommodation;
  - (iv) the hygiene, sanitation and cleanliness requirements for prescribed accommodation;

- (v) the provision of a proper supply of water for the use of people accommodated in prescribed accommodation;
- (vi) the provision of suitable facilities for cooking, washing and bathing for the use of people accommodated in prescribed accommodation;
- (vii) interior finishes of premises comprising or forming part of prescribed accommodation;
- (viii) the safety requirements for prescribed accommodation;
- (ix) the maintenance of prescribed accommodation;
- (x) the requirements applying in respect of the advertising of prescribed accommodation;
- (xi) obligations that apply to a registration holder or class of registration holder;
- (c) the following matters in respect of registered premises—
  - (i) requirements relating to the issue, transfer or renewal of a registration of registered premises, including requirements relating to an application for issue, transfer or renewal;
  - (ii) the conditions that apply in respect of the use, cleanliness and safety of registered premises;
  - (iii) prescribing equipment standards in respect of equipment provided on the registered premises;



- (iv) safeguards of the health of persons likely to be using registered premises;
- (v) the information to be provided to users of registered premises;
- (vi) age restrictions for users of registered premises;
- (vii) the requirements applying in respect of the advertising of registered premises;
- (viii) the qualifications or training that a person conducting or employed at a business required to be registered under this Act must obtain;
- (ix) obligations that apply to a registration holder or class of registration holder.

### **236 Cooling tower systems**

Without limiting the generality of section 232, the regulations may prescribe—

- (a) requirements in respect of cooling tower systems including—
  - (i) matters relating to water quality, routine inspections, cleaning, testing and water sampling;
  - (ii) remedial actions including cleaning and disinfection;
  - (iii) the giving of notice of the detection of legionella to the Secretary and the details to be included in the notice;
- (b) risk management requirements for cooling tower systems, including requirements in relation to the following—
  - (i) matters to be included in risk management plans;

- (ii) the preparation, review and audit of risk management plans;
  - (iii) the keeping of risk management plans;
  - (iv) the keeping of records relating to the operation, repair, maintenance, service and testing of cooling tower systems;
  - (v) the construction, installation, operation, maintenance, repair, service and testing of cooling tower systems;
  - (vi) control measures used in respect of a cooling tower system;
- (c) requirements in relation to approved auditors;
  - (d) fees for the certification of persons as approved auditors.

### **237 Pest control**

Without limiting the generality of section 232, the regulations may prescribe—

- (a) requirements relating to applicants for pest control licences;
- (b) limitations, obligations or requirements imposed on pest control licences.

### **238 Management and control of infectious disease, micro-organisms and medical conditions**

(1) Without limiting the generality of section 232, the regulations may prescribe—

- (a) a definition of *immunised* in relation to each vaccine-preventable disease;
- (b) an infectious disease as a notifiable condition;
- (c) a medical condition as a notifiable condition;

- (d) a micro-organism as a notifiable micro-organism;
- (e) the period within which notification details of any notifiable condition or notifiable micro-organism required to be given by the regulations must be given;
- (f) notification details for any notifiable condition or notifiable micro-organism;
- (g) the manner of making a notification of any notifiable condition or notifiable micro-organism;
- (h) persons or classes of persons who must notify the Secretary of any notifiable condition or notifiable micro-organism;
- (i) matters relating generally to the giving of information by the Secretary to other persons in relation to any notifiable condition or notifiable micro-organism;
- (j) matters relating generally to the notification of any notifiable condition or notifiable micro-organism;
- (k) matters relating generally to the collection and analysis of information about infectious diseases;
- (l) for the purposes of Division 4 of Part 8, matters relating the notification of test results for HIV and other prescribed diseases including—
  - (i) the classes of persons who may advise of a positive test result or provide information;
  - (ii) the information that must be provided and the manner in which the information is to be provided;

- (m) an infectious disease as a specified infectious disease for the purposes of Division 5 of Part 8;
- (n) vaccine-preventable diseases for the purposes of Division 7 of Part 8;
- (o) a disease to be a prescribed disease for the purposes of Division 8 of Part 8;
- (p) the conditions to apply in respect of prescribed pathology services performing tests for the purposes of this Act;
- (q) matters relating to laboratory services or pathology services forwarding a prescribed class of samples or isolates and prescribed information to prescribed laboratory services or prescribed pathology services for the purpose of sub-typing;
- (r) matters relating to the provision of prescribed information to the Secretary by prescribed laboratory services or prescribed pathology services which perform sub-typing;
- (s) the prescribed information which the person in charge of a pathology service is required to provide in the prescribed manner within the prescribed period to the prescribed person if—
  - (i) the test is performed in Victoria by the pathology service or outside Victoria at the request of the Victorian pathology service; and
  - (ii) it appears to the pathology service that the person from whom the sample was taken does not have a permanent or temporary postal address in Victoria (on the basis of postal address provided by the person, if any); and

- (iii) the sample was not taken in Victoria;  
and
- (iv) the result of the test indicates that the person has, or may have, a notifiable condition;
- (t) the prescribed information which a person is required to provide in the prescribed manner within the prescribed period if—
  - (i) that person provides a food sample or isolate to an interstate or overseas laboratory for testing; and
  - (ii) the interstate or overseas laboratory detects or isolates a prescribed micro-organism or declared micro-organism;
- (u) the preparation, keeping and use of pathogenic micro-organisms or other material capable of causing disease in human beings;
- (v) the diagnosing of infectious diseases;
- (w) the retention of immunisation status certificates by persons in charge of primary schools;
- (x) the persons to whom and the circumstances in which the person in charge of a primary school must allow access to immunisation status certificates;
- (y) matters relating to the closing of primary schools, education and care service premises and children's services centres because of an infectious disease;
- (z) matters relating to the regulation or restriction of attendance at a primary school, an education and care services premises or children's services centre because of an infectious disease.

S. 238(1)(y)  
amended by  
No. 80/2011  
s. 79(Sch.  
item 5.2).

S. 238(1)(z)  
amended by  
No. 80/2011  
s. 79(Sch.  
item 5.3).

- (2) Without limiting the generality of section 232, the regulations may prescribe—
- (a) generally the procedures to be taken to stop, limit or prevent the spread of infectious disease including the use, cleaning, maintenance, examination, testing and decontamination of any place, system or thing likely to give rise to, harbour, propagate or contribute to the spread of, any infectious disease and the keeping of records in relation to those procedures;
  - (b) in the case of premises where infectious diseases may be spread which are premises on which a business is conducted or to which the public has access, requirements to be observed by the proprietor of the business or by the occupier of the premises, including requirements relating to—
    - (i) if the premises is to be required to be registered, the registration of the premises;
    - (ii) cleanliness and hygiene;
    - (iii) activities conducted or engaged in which are likely to increase the risk of the spread of infectious diseases;
    - (iv) the provision at the premises of information about infectious diseases;
    - (v) the general safeguarding of the health of persons likely to be using the premises;
    - (vi) the preparation, maintenance and availability of records in relation to the premises or anything at the premises;

- (c) without limiting paragraph (b), in relation to a premises referred to in that paragraph, requirements relating to the manner in and by which an escort agency proprietor is required to provide written information about the transmission of sexually transmitted infections for the benefit of clients and sex workers.

### **239 Fees**

- (1) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
  - (a) specific fees;
  - (b) maximum or minimum fees;
  - (c) maximum and minimum fees;
  - (d) scales of fees;
  - (e) the payment of fees either generally or under specified conditions or in specified circumstances, including conditions or circumstances relating to the late lodgement of an application, or the late payment of fees, under this Act;
  - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (2) If under subsection (1)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
  - (a) in respect of certain matters or transactions or classes of matters or transactions; or
  - (b) in respect of certain documents or classes of documents; or

- (c) when an event happens; or
  - (d) in respect of certain persons or classes of persons; or
  - (e) in respect of any combination of matters, transactions, documents, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person.
- (3) A fee that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.



## **Part 12—Miscellaneous**

### **Division 1—General**

#### **240 Supreme Court—limitation of jurisdiction**

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 124 or 142.

#### **241 Repeal of certain provisions**

- (1) Division 4 of Part IV of the **Health Act 1958** is **repealed**.
- (2) Division 7A of Part IV of the **Health Act 1958** is **repealed**.
- (3) Part XIII of the **Health Act 1958** is **repealed**.
- (4) Part XV of the **Health Act 1958** is **repealed**.

#### **242 Repeal and saving**

- (1) The **Health Act 1958** is **repealed**.
- (2) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances authorised, appointed or created by or under the **Health Act 1958** or existing or continuing under that Act immediately before the commencement of this section continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if that Act had not been so repealed.
- (3) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the **Health Act 1958** is to be construed as a reference to this Act, unless the contrary intention appears.

- (4) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to any regulations made under the **Health Act 1958** is to be construed as a reference to the regulations made under this Act, unless the contrary intention appears.
- (5) Nothing in this section or sections 242, 243 or 244 limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

**243 Transitional provisions—Health Act 1958**

- (1) On and from the commencement of this section—
- (a) a Consultative Council established under section 24(1)(a) of the **Health Act 1958** as in force immediately before that commencement is to be taken to have been established under section 33(1)(a) with the same members on the same terms and conditions;
- (b) a Consultative Council appointed under section 24(1)(b) of the **Health Act 1958** as in force immediately before that commencement is to be taken to have been appointed under section 33(1)(b) with the same members on the same terms and conditions;
- (c) the person who was the Chairman of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity established under section 162C of the **Health Act 1958** as in force immediately before that commencement is to be taken to be the Chairperson of CCOPMM on the same terms and conditions;

- (d) a person who was a member of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity established under section 162C of the **Health Act 1958** as in force immediately before that commencement is to be taken to be a member of CCOPMM on the same terms and conditions.
- (2) Subsection (3) applies if—
- (a) a Consultative Council established under section 24(1)(a) of the **Health Act 1958** or appointed under section 24(1)(b) of the **Health Act 1958** is a prescribed Consultative Council immediately before the commencement of this section and the Order under section 33(1)(a) establishing a prescribed Consultative Council under this Act specifies that subsection (3) applies; and
- (b) any document or other information provided to that Consultative Council under the **Health Act 1958** is in the possession of that Consultative Council immediately before that commencement.
- (3) If this subsection applies, any document or other information referred to in subsection (2)(b) is to be taken to have been provided to the prescribed Consultative Council under this Act.
- (4) On and from the commencement of this section, the following are to be taken to be registered under Part 6 on the same terms and conditions which applied immediately before that commencement—
- (a) prescribed accommodation that was registered under Division 1 of Part XII of the **Health Act 1958** as in force immediately before that commencement;

- (b) premises that were registered under Part XIX of the **Health Act 1958** as in force immediately before that commencement.
- (5) An application for the issue, transfer or renewal of registration of prescribed accommodation or premises made under the **Health Act 1958** which has not been dealt with before the commencement of this section is to be taken to have been made under this Act.
- (6) An application for a pest control licence made under the **Health Act 1958** which has not been dealt with before the commencement of this section is to be taken to have been made under this Act.
- (7) For the purposes of section 101(4), the Secretary must take into account the number of times that an application by a person to whom section 101(3) applies has been previously granted under section 108C(2A) of the **Health Act 1958**.
- (8) An Order or authorisation made or given under Division 2A of Part VI of the **Health Act 1958** which is in force immediately before the commencement of this section is to be taken to have been made or given under Division 5 of Part 8.
- (9) An order made under Division 3 of Part VI of the **Health Act 1958** which is in force immediately before the commencement of this section is to be taken to have been made under Division 2 of Part 8.
- (10) An application under section 122 of the **Health Act 1958** for a review of an order which has not been determined before the commencement of this section is to be determined in accordance with that section as if the **Health Act 1958** had not been **repealed**.

- (11) An appeal under section 122 of the **Health Act 1958** to the Supreme Court against an order which has not been determined before the commencement of this section is to be determined in accordance with that section as if the **Health Act 1958** had not been **repealed**.

**244 Transitional provisions for blood and tissue donations**

- (1) Division 7 of Part VI of the **Health Act 1958** as in force immediately before the commencement of section 150 continues to apply in respect of any proceedings in an action referred to in section 132 or 133 of that Act commenced before that commencement as if the **Health Act 1958** had not been repealed.
- (2) Sections 135 and 136 of the **Health Act 1958** as in force immediately before the commencement of section 150 continue to apply to any donation where the donor statement was signed before that commencement as if the **Health Act 1958** had not been repealed.
- (3) Section 151 does not apply in relation to—
- (a) a Hepatitis C infection that occurred or was transmitted by a blood donation made before 5 February 1990;
  - (b) a HIV infection that occurred or was transmitted by a blood donation made before 30 June 1985.
- (4) Section 152 does not apply in relation to—
- (a) a Hepatitis C infection that occurred or was transmitted by a tissue donation made before 16 May 1995;
  - (b) a HIV infection that occurred or was transmitted by a tissue donation made before 15 May 1990.

- (5) For the purposes of section 151, if a blood donation occurred—
- (a) on or after 15 May 1990 but before the commencement of section 150, the form approved by the Secretary and published in the Government Gazette is the prescribed form for the purposes of the table to section 132 of the **Health Act 1958** that applied at the time that the donation occurred;
  - (b) on or after 30 June 1985 but before 15 May 1990, the form approved by the Secretary and published in the Government Gazette is the prescribed form for the purposes of section 139A of the **Health Act 1958** that applied at the time that the donation occurred.
- (6) For the purposes of section 152, if a tissue donation occurred before the commencement of section 150 but on or after 15 May 1990, the form approved by the Secretary and published in the Government Gazette is the prescribed form for the purposes of the table to section 133 of the **Health Act 1958** that applied at the time that the donation occurred.
- (7) If the testing of a sample occurred before the commencement of section 150, the testing of the sample was conducted in an approved manner if the sample was tested—
- (a) in relation to a test for Hepatitis C for the purposes of section 151, on or after 5 February 1990 but before 26 November 1991, using the ABBOTT HCV EIA test;
  - (b) in relation to a test for Hepatitis C for the purposes of section 151, on or after 26 November 1991 but before 16 May 1995

- using the ABBOTT HCV EIA Second Generation test;
- (c) in relation to a test for Hepatitis C for the purposes of section 151, on or after 16 May 1995 but before the commencement of section 150 in a manner approved by the Secretary under section 132 of the **Health Act 1958** that applied at the time that the test occurred;
  - (d) in relation to a test for Hepatitis C for the purposes of section 152, on or after 16 May 1995 but before the commencement of section 150 in a manner approved by the Secretary under section 133 of the **Health Act 1958** that applied at the time that the test occurred;
  - (e) in relation to a test for HIV for the purposes of section 151 or 152 conducted on or after 15 May 1990 but before the commencement of section 150 in a manner approved by the Secretary under section 132 or 133 of the **Health Act 1958** that applied at the time that the test occurred;
  - (f) in relation to a test for HIV for the purposes of section 151 conducted on or after 30 June 1985 but before 15 May 1990, in accordance with the requirements under section 139A of the **Health Act 1958** that applied at the time that the test occurred.
- (8) If a donation of semen was used before the commencement of section 150—
- (a) for the purposes of paragraph (c)(ii) of column 2 of Table 2 in the Schedule, the prescribed period is 6 months;

- (b) for the purposes of paragraph (c)(iv) of column 2 of Table 2 in the Schedule, the prescribed quarantine period is 6 months.
- (9) If a blood donation occurred before the commencement of section 150 but on or after 15 May 1990—
- (a) in respect of which the defence under Item 2, column 2, paragraph (c) of the table to section 132 of the **Health Act 1958** applied at the time that the donation occurred, that defence is a defence in the proceedings for the purposes of section 151; or
  - (b) in respect of which the defence under Item 3, column 2 of the table to section 132 of the **Health Act 1958** applied at the time that the donation occurred, because it incorporated Item 2, column 2, paragraph (c) of the table, that defence is a defence in the proceedings for the purposes of section 151.

#### **245 Saving and transitional—Cooling tower systems**

- (1) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **Building Act 1993** or existing or continuing under that Act immediately before the commencement of section 248 continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if that Act had not been amended by section 248.
- (2) On the commencement of section 248, the Building Commission must provide any documents or other records kept by the Building Commission in respect of the administration of Parts 5A, 5B and 5C of the **Building Act 1993** to the Secretary.



- (3) For the purposes of Division 1 of Part 7, the Secretary is the successor in law of the Building Commission.
- (4) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

S. 246  
expired by  
force of  
No. 46/2008  
s. 246(4).

\* \* \* \* \*

S. 246A  
inserted by  
No. 29/2010  
s. 6.

**246A Abolition of body corporate known as Secretary to the Department of Human Services**

- (1) On the commencement day—
  - (a) the Secretary to the Department of Human Services body corporate is dissolved;
  - (b) the Secretary body corporate becomes the successor in law of the Secretary to the Department of Human Services body corporate.
- (2) Subject to subsection (1), on the commencement day—
  - (a) all property and rights vested immediately before that day in the Secretary to the Department of Human Services body corporate vest in the Secretary body corporate;
  - (b) all liabilities of the Secretary to the Department of Human Services body corporate existing immediately before that day become liabilities of the Secretary body corporate;
  - (c) the Secretary body corporate is taken to be the lessee under any lease of which the Secretary to the Department of Human

- Services body corporate was the lessee immediately before that day;
- (d) the Secretary body corporate is taken to be the licensee under any licence of which the Secretary to the Department of Human Services body corporate was the licensee immediately before that day.
- (3) Nothing effected by this section is to be regarded as placing any person in breach of or as constituting a default under any provision of a lease or licence, including any provision prohibiting, restricting or regulating the assignment of the lease or licence.
- (4) Property vested in the Secretary to the Department of Human Services body corporate vests in the Secretary body corporate under subsection (2) whether the property is registered—
- (a) in the name of "Secretary to the Department of Human Services"; or
  - (b) in the name of "Secretary to the Department of Health and Community Services"; or
  - (c) in the name of "Department of Human Services"; or
  - (d) in the name of "Secretary, the Department of Human Services"; or
  - (e) in the name of "Chief General Manager of the Department of Health"; or
  - (f) in the name of "Health Commission of Victoria"; or
  - (g) in a name that is substantially the same as any name referred to in paragraphs (a) to (f).
- (5) This section is subject to—
- (a) section 225B of the **Disability Act 2006**; and

(b) section 612 of the **Children, Youth and Families Act 2005**.

(6) In this section—

*commencement day* means the day on which section 6 of the **Health and Human Services Legislation Amendment Act 2010** comes into operation;

*liabilities* means all liabilities, duties and obligations, whether actual, contingent or prospective;

*property* means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

*rights* means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

*Secretary to the Department of Human Services body corporate* means the body corporate referred to in section 16, as in force before the commencement day.

S. 246B  
inserted by  
No. 29/2010  
s. 6.

#### **246B Action by Registrar of Titles**

On being requested to do so and on delivery of any relevant instrument or document, the Registrar of Titles must make any recordings in the Register that are necessary because of the operation of section 246A.

S. 246C  
inserted by  
No. 29/2010  
s. 6.

#### **246C Taxes**

No duty or other tax is chargeable under any Act in respect of anything done under section 246A or in respect of any act or transaction connected with or necessary to be done by reason of section 246A, including a transaction entered into or an instrument made, executed, lodged or given,

for the purpose of, or connected with, the transfer of property to the Secretary body corporate.

**246D Property etc. vests subject to encumbrances**

S. 246D  
inserted by  
No. 29/2010  
s. 6.

(1) Subject to section 225B of the **Disability Act 2006** and section 612 of the **Children, Youth and Families Act 2005**, if, under section 246A, property and rights vest in the Secretary body corporate or liabilities become liabilities of the Secretary body corporate—

(a) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

(b) the rights to which the Secretary to the Department of Human Services body corporate was entitled in respect of those liabilities immediately before they ceased to be liabilities of that body corporate vest in the Secretary body corporate.

(2) In this section *Secretary to the Department of Human Services body corporate* means the body corporate referred to in section 16, as in force before the commencement day.

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Pt 12 Div. 2  
(Heading and  
ss 247–266)  
amended by  
Nos 29/2011  
s. 3(Sch. 1  
item 75.3),  
repealed by  
No. 46/2008  
s. 293.

\* \* \* \* \*

Pt 12 Div. 3  
(Heading and  
s. 267)  
repealed by  
No. 46/2008  
s. 293.

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Pt 12 Div. 4  
(Heading and  
ss 268–292)  
amended by  
Nos 76/2008  
s. 158, 29/2011  
s. 3(Sch. 1  
item 75.4),  
repealed by  
No. 46/2008  
s. 293.

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Pt 12 Div. 5  
(Heading and  
s. 293)  
repealed by  
No. 46/2008  
s. 293.

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Public Health and Wellbeing Act 2008  
No. 46 of 2008  
Schedule

## Schedule

**TABLE 1**

Sch.  
amended by  
No. 13/2010  
s. 51(Sch.  
item 44.5).

<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
1	The Society, a health service or an employee, agent or voluntary worker of the Society or a health service.	<p>The Society or health service—</p> <p>(a) before taking the blood from a donor obtained a statement from the donor which is in the approved form and published in the Government Gazette; and</p> <p>(b) before supplying the blood or a blood product—</p> <p style="padding-left: 20px;">(i) caused a sample; or</p> <p style="padding-left: 20px;">(ii) in the case of a blood product, caused a sample of each unit of blood from which the product was derived—</p> <p style="padding-left: 20px;">to be tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of HIV, Hepatitis C or a prescribed disease (as the case may be); and</p> <p>(c) obtained a negative result from that test or each of those tests.</p>	<p>After the Society or health service supplied blood, the Society or health service had reasonable grounds for believing that the blood was likely to contain HIV, Hepatitis C or a prescribed disease (as the case may be) and did not take all reasonable steps—</p> <p>(a) to find out whether the blood, or a blood product derived from that blood, had been given to a person; and</p> <p>(b) to ensure that any remaining part of the blood, or a blood product derived from that blood, is not given to any person.</p>

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No. 46 of 2008  
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<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
2	<p>A health service or another body at whose premises—</p> <p>(a) blood supplied by the Society or a health service; or</p> <p>(b) a blood product derived from blood supplied by the Society or a health service—</p> <p>is administered or supplied to a person.</p>	<p>Either—</p> <p>(a) when the blood or blood product was administered or supplied, there was attached to the container in which the blood or blood product was contained a certificate purporting to have been issued at the laboratory at which a sample of the blood was tested stating—</p> <p>(i) in the case of blood, that a sample of the blood; and</p> <p>(ii) in the case of a blood product, that a sample of each unit of blood from which the blood product was derived—</p> <p>was tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of HIV, Hepatitis C or a prescribed disease (as the case may be) and that the result of the test was negative; or</p>	<p>If, at any time up to and including the time at which the blood or blood product was administered or used, the health service or other body at whose premises the blood or blood product was administered or used—</p> <p>(a) had been informed that the blood or blood product was likely to contain HIV, Hepatitis C or a prescribed disease (as the case may be); and</p> <p>(b) did not take reasonable steps to ensure that the blood or blood product was not administered to, or used by, any person.</p>

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No. 46 of 2008  
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<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
		<p>(b) the Society or health service from which the blood or blood product was supplied—</p> <p>(i) before taking the blood from a donor obtained a statement from the donor which is in the approved form and published in the Government Gazette; and</p> <p>(ii) before supplying the blood or a blood product—</p> <p>(A) caused a sample; or</p> <p>(B) in the case of a blood product, caused a sample of each unit of blood from which the product was derived—</p> <p>to be tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of HIV, Hepatitis C or a</p>	



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No. 46 of 2008  
Schedule

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<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
		<p>prescribed disease (as the case may be); and</p> <p>(iii) obtained a negative result from that test or each of those tests; or</p> <p>(c) before taking the blood from a donor—</p> <p>(i) the Society or health service obtained a statement from the donor which is in the approved form and published in the Government Gazette; and</p> <p>(ii) the blood was required to be administered urgently; and</p> <p>(iii) it was not reasonably practicable to obtain all the required blood from a source which has been tested in the manner which is approved by the Secretary and published in the Government Gazette;</p>	

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Public Health and Wellbeing Act 2008  
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<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
3	<p>A registered medical practitioner, nurse, midwife or registered pharmacist or a person acting on behalf of a registered medical practitioner, nurse, midwife or registered pharmacist who administered or supplied to a person—</p> <p>(a) blood supplied by the Society or a health service;</p> <p>(b) or a blood product derived from blood so supplied.</p>	<p>The defences set out in column 2 of item 2.</p>	<p>If, at any time up to and including the time at which the blood or blood product was administered or used, the registered medical practitioner, nurse, midwife or registered pharmacist or other person—</p> <p>(a) had been informed that the blood or blood product was likely to contain HIV, Hepatitis C or a prescribed disease (as the case may be); and</p> <p>(b) did not take reasonable steps to ensure that the blood or blood product was not administered to, or used by, any person.</p>

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**TABLE 2**

<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
1	A health service, registered medical practitioner or a person dealing with tissue.	<p>Either—</p> <p>(a) in the case of tissue (other than semen) taken from a living person—</p> <p>(i) the donor completed a statement which is in the approved form and published in the Government Gazette before the tissue was taken; and</p> <p>(ii) a sample of the donor's blood was tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of HIV, Hepatitis C or a prescribed disease (as the case may be); and</p> <p>(iii) the result of the test was negative; or</p> <p>(b) in the case of tissue (other than semen) taken from the body of a dead person—</p> <p>(i) a sample of the blood of the dead person was tested in a manner which</p>	The health service or other person had reasonable grounds for believing that the tissue or semen was likely to contain HIV, Hepatitis C or a prescribed disease (as the case may be) and did not take reasonable steps to ensure that the tissue or semen was not used in a way that might infect the person with HIV, Hepatitis C or a prescribed disease (as the case may be).

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<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
		<p>is approved by the Secretary and published in the Government Gazette for the presence of HIV, Hepatitis C or a prescribed disease (as the case may be); and</p> <p>(ii) the result of the test was negative; and</p> <p>(iii) the registered medical practitioner who transplanted the tissue made, or is satisfied that another person made, reasonable enquiries about the behaviour of the dead person to find out whether that person was at a high risk of being infected with HIV, Hepatitis C or a prescribed disease (as the case may be); or</p> <p>(c) in the case of the use of semen in the carrying out of artificial insemination or a fertilisation procedure—</p>	

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<i>Item</i>	<i>Column 1 Person against whom action brought</i>	<i>Column 2 Defences</i>	<i>Column 3 Exception to defences</i>
		(i) before the semen was provided by a donor, the donor completed a statement which is in the approved form and published in the Government Gazette; and (ii) at the time of the donation and, upon the expiry of the prescribed period after that time, a sample of the donor's blood was tested in a manner which is approved by the Secretary and published in the Government Gazette for the presence of HIV, Hepatitis C or a prescribed disease (as the case may be); and (iii) the results of the tests were negative; and (iv) the semen was not used until after the prescribed quarantine period.	

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 8 May 2008*

*Legislative Council: 26 June 2008*

The long title for the Bill for this Act was "A Bill for an Act to enact a new legislative scheme which promotes and protects public health and wellbeing in Victoria, to amend the **Health Act 1958**, the **Food Act 1984** and certain other Acts, to repeal the **Health Act 1958** and consequentially amend certain other Acts and for other purposes."

#### **Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 8 May 2008*

*Legislative Council: 26 June 2008*

*Absolute majorities:*

*Legislative Assembly: 26 June 2008*

*Legislative Council: 21 August 2008*

The **Public Health and Wellbeing Act 2008** was assented to on 2 September 2008 and came into operation as follows:

Sections 1–3, 246, 249, 254, 255, 263–266 on 1 January 2009: Special Gazette (No. 365) 12 December 2008 page 1; rest of Act on 1 January 2010: section 2(2).

### **INTERPRETATION OF LEGISLATION ACT 1984 (ILA)**

#### **Style changes**

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

#### **References to ILA s. 39B**

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

### **Interpretation**

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

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

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

- **Punctuation**

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

- **Provision numbers**

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

- **Location of "legislative items"**

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

- **Other material**

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

## 2 Table of Amendments

This publication incorporates amendments made to the **Public Health and Wellbeing Act 2008** by Acts and subordinate instruments.

Where a provision has expired, the provision has been omitted and an explanatory sidenote included.

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### **Public Health and Wellbeing Act 2008, No. 46/2008**

*Assent Date:* 2.9.08  
*Commencement Date:* S. 293 on 1.7.11: s. 293  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

### **Assisted Reproductive Treatment Act 2008, No. 76/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* Ss 157, 158 on 1.1.10: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

### **Coroners Act 2008, No. 77/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 129(Sch. 2 item 21) on 1.11.09: s. 2  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

### **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 99) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

### **Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 47), (Sch. Pt 2 item 40) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**



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**Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 51(Sch. item 44) on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Health and Human Services Legislation Amendment Act 2010, No. 29/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* Ss 3–6 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010**

*Assent Date:* 28.9.10  
*Commencement Date:* S. 81(Sch. item 9) on 1.11.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Statute Law Revision Act 2011, No. 29/2011**

*Assent Date:* 21.6.11  
*Commencement Date:* S. 3(Sch. 1 item 75.4) on 2.9.08: s. 2(2)(g); s. 3(Sch. 1 item 75.3) on 31.12.09: s. 2(2)(f); s. 3(Sch. 1 items 75.1, 75.2) on 22.6.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Emergency Management Legislation Amendment Act 2011, No. 56/2011**

*Assent Date:* 2.11.11  
*Commencement Date:* S. 31 on 3.11.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Children's Services Amendment Act 2011, No. 80/2011**

*Assent Date:* 21.12.11  
*Commencement Date:* S. 79(Sch. item 5) on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 2  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Health Professions Registration (Repeal) Act 2012, No. 27/2012**

*Assent Date:* 29.5.12  
*Commencement Date:* S. 22 on 1.7.12: s. 2  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

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**Residential Tenancies and Other Consumer Acts Amendment Act 2012,  
No. 56/2012**

*Assent Date:* 18.9.12  
*Commencement Date:* S. 23 on 19.9.12: s. 2(1); ss 19, 20, 22 on 31.3.13:  
Special Gazette (No. 444) 19.12.12 p. 1; s. 21 on  
1.8.13: Special Gazette (No. 277) 30.7.13 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Public Health and Wellbeing Act  
2008**

**Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* S. 296 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Public Health and Wellbeing Act  
2008**

**Emergency Management Act 2013, No. 73/2013**

*Assent Date:* 3.12.13  
*Commencement Date:* S. 102 on 1.7.14: Special Gazette (No. 148) 13.5.14  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Public Health and Wellbeing Act  
2008**

**Legal Profession Uniform Law Application Act 2014, No. 17/2014**

*Assent Date:* 25.3.14  
*Commencement Date:* S. 160(Sch. 2 item 79) on 1.7.15: Special Gazette  
(No. 151) 16.6.15 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Public Health and Wellbeing Act  
2008**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,  
No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 136) on 1.7.14: Special Gazette  
(No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Public Health and Wellbeing Act  
2008**

**Privacy and Data Protection Act 2014, No. 60/2014**

*Assent Date:* 2.9.14  
*Commencement Date:* S. 140(Sch. 3 item 39) on 17.9.14: Special Gazette  
(No. 317) 16.9.14 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Public Health and Wellbeing Act  
2008**

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**Inquiries Act 2014, No. 67/2014**

*Assent Date:* 23.9.14  
*Commencement Date:* S. 147(Sch. 2 item 30) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

**Statute Law Revision Act 2015, No. 21/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* S. 3(Sch. 1 item 43) on 1.8.15: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Public Health and Wellbeing Act 2008**

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**3 Amendments Not in Operation**

Not updated for this publication.

**4 Explanatory details**

No entries at date of publication.