

LEGISLATIVE COUNCIL

PUBLIC HEALTH AND WELLBEING AMENDMENT (PANDEMIC
MANAGEMENT) BILL 2021

(Amendments and New Clause to be proposed in Committee by Mr DAVIS)

1. Clause 12, page 8, after line 25 insert—
 - "(3) In the administration of this Part and in seeking to achieve the objective of this Part, regard is to be given to the guiding principles set out in sections 5 to 10."
2. Clause 12, page 12, lines 12 and 13, omit "but the period of each extension must not be longer than 3 months" and insert "but an extension does not come into force unless the extension is approved by a resolution of both Houses of the Parliament passed by a special majority within the meaning of section 18(1A) of the **Constitution Act 1975**".
3. Clause 12, page 12, after line 13 insert—
 - "(5A) A resolution passed by a special majority of both Houses of the Parliament that approves an extension of a pandemic declaration—
 - (a) must specify the period of the extension, which must not exceed one month; and
 - (b) must not be moved until—
 - (i) there has been laid before the House a statement of the basis for, and objectives of, the extension, including as to how these objectives relate to the objective of this Part, the objective of the Act and the guiding principles set out in sections 5 to 10; and
 - (ii) all members of Parliament who so request have received appropriate briefings and appropriate information on the circumstances causing a serious risk to public health to which the pandemic declaration and the extension of the pandemic declaration relate."
4. Clause 12, page 13, lines 8 and 9, omit ", extension or revocation of a pandemic declaration" and insert "or revocation of a pandemic declaration or the approval by the Parliament of an extension of a pandemic declaration".
5. Clause 12, page 16, after line 12 insert—

"165AHA Measures to enhance transparency during pandemic

 - (1) This section applies during any period when a pandemic declaration is in force.

- (2) The Leader of the Opposition, the leader of any other political party represented in the Parliament or an independent elected member may request that the Premier provide briefings or specified information in relation to the circumstances causing a serious risk to public health in relation to which the pandemic declaration was made or any other matter relating to the pandemic declaration.
 - (3) The Premier must, as soon as practicable, provide the requested briefings or information to the person who requested it."
- 6. Clause 12, page 19, line 11, omit ", attributes".
 - 7. Clause 12, page 19, lines 13 to 23, omit all words and expressions on these lines.
 - 8. Clause 12, page 20, after line 17 insert—

"165ALA Requirement to obtain advice in relation to the Charter of Human Rights and Responsibilities before making, varying or extending a pandemic order

Before making a pandemic order, or varying or extending a pandemic order under section 165AO, the Minister must obtain written advice in relation to the impact that the proposed pandemic order, or variation or extension of the pandemic order, (as the case requires) may have on the human rights protected by the Charter of Human Rights and Responsibilities."

- 9. Clause 12, page 24, after line 16 insert—
 - "(ab) a copy of the written advice referred to in section 165ALA on which the Minister has relied in making, varying or extending the order;"
- 10. Clause 12, page 26, lines 3 to 26, omit all words and expressions on these lines and insert—
 - "(1) Subject to subsection (2), if a House of the Parliament is sitting on the day after the coming into force of a pandemic order or a variation, extension or revocation of a pandemic order (the *relevant day*), the Minister must cause to be laid before that House on the relevant day—
 - (a) a copy of the pandemic order or the instrument of variation, extension or revocation, as the case requires; and
 - (b) a copy of each document that is required to be published under section 165AP(2) in relation to the making, variation, extension or revocation of the pandemic order.
 - (2) If—
 - (a) a House of the Parliament is not sitting on the relevant day; or
 - (b) for another reason it is not reasonably practicable for the copies referred to in subsection (1)(a) and (b) to be laid before that House on the relevant day—

the Minister must, on the relevant day, give a copy of the documents referred to in subsection (1)(a) and (b) to the Clerk of that House.

- (3) If the Minister fails to comply with subsection (1) or (2) (as the case requires) in relation to a pandemic order or the variation or extension of a pandemic order, the operation of the pandemic order is suspended, and has no force or effect, from the end of the relevant day until a copy of the documents are laid before each House of the Parliament or given to the Clerk of each House.
- (4) If the Clerk of either House is given a copy of documents under subsection (2) or (3), the Clerk must—
 - (a) give a copy of the documents to each member of the House as soon as practicable after receiving them; and
 - (b) cause a copy of the documents to be laid before the House on the next sitting day of the House.

165AQ Documents tabled when Parliament is not sitting

- (1) A document that is given to the Clerk of either House under section 165AQ(2) or (3) is taken to have been published by order under the authority of the Parliament.
- (2) The publication of a document under section 165AQ(2) or (3) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975**, and of any other enactment or rule of law relating to the publication of the proceedings of the Parliament, apply to and in relation to the publication of that document as if—
 - (a) it were a report to which those sections applied; and
 - (b) it had been published by the Government Printer under the authority of the Parliament."

11. Clause 12, page 27, after line 4 insert—

"165ARA Tabling in Parliament of documents—advices related to state of emergency declaration, extensions and exercise of emergency powers

- (1) The Minister must ensure that—
 - (a) a copy of—
 - (i) the Chief Health Officer's advice referred to in section 198(1) or (8A)(a) for the first state of emergency declared in respect of the COVID-19 pandemic and all subsequent extensions to that declaration; and
 - (ii) any advice on which the Chief Health Officer relied in giving the advice referred to in subparagraph (i); and
 - (b) a copy of any advice on which the Chief Health Officer or a person authorised under section 199 relied in exercising any emergency power under section 200 in relation to a state of emergency in respect of the COVID-19 pandemic—

is laid before each House of the Parliament, unless a copy of the advice has already been laid before both Houses of the Parliament in accordance with section 198(8A).

- (2) An advice referred to in subsection (1) must be laid before each House of the Parliament within 30 days after the day on which the **Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021** receives the Royal Assent.
 - (3) This section applies whether the advice was provided to the Minister, the Chief Health Officer or person authorised under section 199 (as the case requires) before, on or after the commencement of this section."
12. Clause 12, page 27, lines 5 to 31, page 28, lines 1 to 35, page 29, lines 1 to 37, page 30, lines 1 to 36, page 31, lines 1 to 35, page 32, lines 1 to 35 and page 33, lines 1 and 2, omit all words and expressions on these lines.
13. Clause 12, page 33, after line 2 insert—

"Division 4A—Review by VCAT of pandemic declarations and pandemic orders

165AVA Review by VCAT

- (1) A person subject to a pandemic declaration or a pandemic order, at any time while the declaration or order is in force, may apply to VCAT for a review of the decision to make the declaration or order.
 - (2) An application for review must be made within 28 days of the latest of—
 - (a) the day on which the pandemic declaration or pandemic order (as the case requires) is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to make the pandemic declaration or pandemic order, 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."
14. Clause 12, page 70, after line 28 insert—

"165CQA Limitation on powers in relation to Parliament

- (1) For the avoidance of doubt, neither of the following may be made or given in relation to the attendance in the parliamentary precincts of a member of the Parliament, or any other person engaged in the normal carrying on of business of the Parliament—
 - (a) a pandemic order;
 - (b) a direction made in the exercise of a pandemic management power.

Note

Section 19 of the **Constitution Act 1975** provides for the privileges, immunities and powers (parliamentary privilege) of the Council and the Assembly respectively and committees and members thereof. The **Public Health and Wellbeing Act 2008** does not expressly override section 19 of the **Constitution Act 1975**.

- (2) In this section—

parliamentary precincts has the same meaning as it has in the **Parliamentary Precincts Act 2001**."

15. Clause 12, page 70, line 34 and page 71, lines 1 to 5, omit all words and expressions on these lines.

16. Clause 12, page 71, after line 12 insert—

"165CRA Application of Subordinate Legislation Act 1994 to pandemic declarations and pandemic orders

(1) The following instruments are legislative instruments within the meaning of the **Subordinate Legislation Act 1994**—

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

(2) Regulations cannot be made under section 4A of the **Subordinate Legislation Act 1994** exempting an instrument referred to in subsection (1) from the operation of that Act or any specified provision or provisions of that Act, but the following are not required in relation to any proposed instrument—

- (a) consultation under section 12C of that Act;
- (b) the preparation of a regulatory impact statement under section 12E of that Act.

(3) An instrument referred to in subsection (1) is subject to disallowance by a House of the Parliament."

17. Clause 17, page 78, line 11, after "premises" insert "(other than residential premises)".

NEW CLAUSE

18. Insert the following New Clause to follow clause 31—

'31A New section 15 inserted

After section 14 of the **Parliamentary Committees Act 2003** insert—

"15 Sub-committee of Public Accounts and Estimates Committee for matters concerning pandemics

(1) If the Public Accounts and Estimates Committee is referred a matter relating to, arising out of or connected with—

- (a) the COVID-19 pandemic; or
- (b) Part 8A of the **Public Health and Wellbeing Act 2008**—

the Public Accounts and Estimates Committee must appoint a sub-committee for the purposes of inquiring into, considering and reporting to the Parliament on that matter.

- (2) The majority of members appointed to a sub-committee referred to in subsection (1) must not be members of the political party forming the Government.
- (3) The chairperson of a sub-committee referred to in subsection (1) must not be a member of the political party forming the Government.
- (4) A report of a sub-committee referred to in subsection (1) is taken to be a report adopted by the Public Accounts and Estimates Committee for the purposes of sections 35 to 37A.

Note

A report taken to be adopted by the Public Accounts and Estimates Committee under subsection (4) must be laid before each House of the Parliament in accordance with section 35(1).

- (5) In this section—

political party has the same meaning as in the **Electoral Act 2002**.

Note

Division 3 of Part 3 applies to a sub-committee appointed under this section."!