

**PUBLIC HEALTH AND WELLBEING AMENDMENT (PANDEMIC MANAGEMENT)
BILL 2021**

(Amendments made by the Legislative Council)

1. Clause 4, page 4, after line 21 insert—

"public authority has the same meaning as it has in the Charter of Human Rights and Responsibilities;"
2. Clause 4, page 4, lines 22 to 24, omit all words and expressions on these lines.
3. Clause 12, page 8, lines 19 to 25, omit all words and expressions on these lines and insert—

"(2) The Parliament—

 - (a) recognises the importance of protecting human rights in managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential; and
 - (b) intends that nothing in this Part displaces the operation of the Charter of Human Rights and Responsibilities; and
 - (c) intends that the Charter of Human Rights and Responsibilities therefore applies to the following—
 - (i) the interpretation of this Part and subordinate instruments made under this Part;
 - (ii) acts done, and decisions made, under this Part by public authorities."
4. Clause 12, page 8, line 31, after "satisfied" insert "on reasonable grounds".
5. Clause 12, page 9, line 17, after "satisfied" insert "on reasonable grounds".
6. Clause 12, page 9, line 24, after "satisfied" insert "on reasonable grounds".
7. Clause 12, page 11, line 14, after "satisfied" insert "on reasonable grounds".
8. Clause 12, page 11, line 34, after "satisfied" insert "on reasonable grounds".
9. Clause 12, page 12, line 27, after "satisfied" insert "on reasonable grounds".
10. Clause 12, page 12, line 34, after "satisfied" insert "on reasonable grounds".

11. Clause 12, page 16, lines 9 to 12, omit all words and expressions on these lines.
12. Clause 12, page 19, line 2, after "following" insert ", if such application, differentiation or variation is relevant to the serious risk to public health posed by the disease specified in the pandemic declaration to which the pandemic order relates".
13. Clause 12, page 19, after line 12 insert—

"Examples

A pandemic order might—

- (a) differentiate between persons or classes of person on the basis of their vaccination status in relation to a pandemic disease or a disease of pandemic potential, by restricting persons who are unvaccinated from engaging in specified activities unless they are exempt from vaccination;
- (b) differentiate between persons or classes of person on the basis of age, if age is relevant to the risks to health posed by a pandemic disease or a disease of pandemic potential. For example, a pandemic order might limit the ability of persons or classes of person to receive visitors at, or to move within, residential care facilities.

Note

The Minister may only make a pandemic order that the Minister believes is reasonably necessary to protect public health—see section 165A1.

Further, the Charter of Human Rights and Responsibilities applies to subordinate instruments under this Part. Section 165AP(2)(c) and (d) have the effect that when the Minister makes, varies or extends a pandemic order that applies to, differentiates between or varies in its application to persons or classes of person identified by reference to a matter specified in this subsection, the Minister must publish an explanation of whether, in the Minister's opinion, the order does, or does not, limit any human right set out in the Charter of Human Rights and Responsibilities, and an explanation of any limitations identified."

14. Clause 12, page 19, lines 13 to 23, omit all words and expressions on these lines.
15. Clause 12, page 24, line 6, omit "14" and insert "7".
16. Clause 12, page 24, lines 20 to 31, omit all words and expressions on these lines and insert—

"(c) in the case of the making, variation, or extension of the order, a statement as to whether, in the opinion of the Minister, the order does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and

- (d) if, in the opinion of the Minister, the order as made, varied or extended does limit a human right set out in the Charter of Human Rights and Responsibilities, an explanation of—
 - (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitation and its purpose; and
 - (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve."

- 17. Clause 12, page 25, line 26, omit "14" and insert "7".
- 18. Clause 12, page 26, line 3, omit "6" and insert "4".
- 19. Clause 12, page 26, line 23, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
- 20. Clause 12, page 26, lines 24 and 25, omit "under section 165AS" and insert "(see section 165AU(1)(b))".
- 21. Clause 12, page 27, lines 9 to 12, omit "Scrutiny of Acts and Regulations Committee may report to each House of Parliament if the Scrutiny of Acts and Regulations Committee" and insert "Pandemic Declaration Accountability and Oversight Committee may report to each House of Parliament if the Pandemic Declaration Accountability and Oversight Committee".
- 22. Clause 12, page 27, lines 15 and 16, omit "laid before Parliament under section 165AQ(1)(a)".
- 23. Clause 12, page 28, lines 1 to 4, omit "A report of the Scrutiny of Acts and Regulations Committee under this section may contain such recommendations as the Committee" and insert "Subject to subsection (3), a report of the Pandemic Declaration Accountability and Oversight Committee under this section may contain such recommendations as the Pandemic Declaration Accountability and Oversight Committee".
- 24. Clause 12, page 28, after line 9 insert—
 - "(3) The Pandemic Declaration Accountability and Oversight Committee must not recommend that a pandemic order, or an instrument that extends, varies or revokes a pandemic order, should be disallowed in whole or in part unless the Pandemic

Declaration Accountability and Oversight Committee has first requested and considered the advice of the Independent Pandemic Management Advisory Committee in relation to the pandemic order concerned."

25. Clause 12, page 28, line 12, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
26. Clause 12, page 28, line 30, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
27. Clause 12, page 29, line 1, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
28. Clause 12, page 29, line 7, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
29. Clause 12, page 29, lines 36 and 37, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
30. Clause 12, page 30, line 16, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
31. Clause 12, page 30, lines 21 and 22, omit "Scrutiny of Acts and Regulations" and insert "Pandemic Declaration Accountability and Oversight".
32. Clause 12, page 31, lines 17 to 20, omit "each House on or before the 12th sitting day of each House after the giving of the notice of the resolution" and insert "a joint sitting of the Legislative Assembly and the Legislative Council held in accordance with subsection (6) and held before the end of the period of 3 months after the giving of the notice of the resolution".
33. Clause 12, page 32, after line 5 insert—
 - "(6) At a joint sitting of the Legislative Assembly and the Legislative Council for the purposes of subsection (2)(b)—
 - (a) the members have the same privileges and immunities as the members of the Legislative Assembly in relation to proceedings before that House; and
 - (b) a question is to be decided by an absolute majority of the total number of the members of the Legislative Assembly and the Legislative Council; and

(c) in the event of an equality of votes on a question, the question is to be taken to have been determined in the negative."

34. Clause 12, page 35, line 32, omit "with".
35. Clause 12, page 49, line 1, omit "6" and insert "6A".
36. Clause 12, page 49, line 11, omit "120" and insert "60".
37. Clause 12, page 49, line 13, omit "600" and insert "300".
38. Clause 12, page 49, lines 17 to 32 and page 50, lines 1 to 26, omit all words and expressions on these lines.
39. Clause 12, page 50, lines 27 to 35 and page 51, lines 1 to 26, omit all words and expressions on these lines.
40. Clause 12, page 51, lines 27 to 34, and page 52, lines 1 and 2, omit all words and expressions on these lines.
41. Clause 12, page 64, line 13, omit "6" and insert "4".
42. Clause 12, page 74, line 31, omit "**Review**" and insert "**Independent review**".
43. Clause 12, page 74, line 32, omit "a review" and insert "an independent review".
44. Clause 12, page 75, line 1, before "review" insert "independent".
45. Clause 12, page 75, line 2, omit "2 years" and insert "18 months".
46. Clause 12, page 75, after line 3 insert—
 - "(2A) For the purposes of this section, an *independent review* means a review by persons who—
 - (a) in the opinion of the Minister, possess appropriate qualifications or expertise to undertake the review; and
 - (b) collectively, have qualifications or expertise in public health and law; and
 - (c) include one or more persons who are not employed by the State of Victoria or a State agency and have not, since the commencement of this Part, provided services to the State of Victoria or a State agency under or in connection with a contract.

(2B) In this section—

State agency means the following—

- (a) the Crown in right of Victoria;
- (b) a Minister of the Crown in right of Victoria;
- (c) a public service body within the meaning of the **Public Administration Act 2004**;
- (d) an instrumentality of the State of Victoria, including a body corporate established for a public purpose by or under a law of the State of Victoria;
- (e) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together—
 - (i) the Crown in right of Victoria;
 - (ii) a person or body covered by paragraph (b) or (d)."

47. Clause 12, page 75, line 5, before "review" insert "independent".

48. Clause 16, omit this clause.

49. Page 82, after line 19 insert the following heading—

**"Part 2A—Establishment of the Pandemic
Declaration Accountability and Oversight
Committee".**

NEW CLAUSES

50. Insert the following New Clauses to follow clause 19 and the heading proposed by amendment 79—

'19A Definitions

In section 3 of the **Parliamentary Committees Act 2003** insert the following definitions—

"Independent Pandemic Management Advisory Committee has the same meaning as it has in the **Public Health and Wellbeing Act 2008**;

pandemic declaration has the same meaning as it has in the **Public Health and Wellbeing Act 2008**;

political party has the same meaning as it has in the **Electoral Act 2002**;"

19B Establishment of Joint House Committees

After section 5(h) of the **Parliamentary Committees Act 2003** insert—

"(i) the Pandemic Declaration Accountability and Oversight Committee;".

19C New section 14A inserted

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

"15 Pandemic Declaration Accountability and Oversight Committee

The function of the Pandemic Declaration Accountability and Oversight Committee is the function conferred on it by Division 4 of Part 8A of the **Public Health and Wellbeing Act 2008** in relation to scrutiny and disallowance of pandemic orders and instruments that extend, vary or revoke pandemic orders.

Note

The Pandemic Declaration Accountability and Oversight Committee may refer a matter to the Ombudsman under section 16(1) of the **Ombudsman Act 1973**."

19D Membership of Joint Investigatory Committees

In section 21(2) of the **Parliamentary Committees Act 2003**, for "As" substitute "Subject to section 21A, as".

19E New section 21A inserted

After section 21 of the **Parliamentary Committees Act 2003** insert—

"21A Membership of Pandemic Declaration Accountability and Oversight Committee

- (1) This section provides for special rules relating to the Pandemic Declaration Accountability and Oversight Committee.
- (2) The members of the Pandemic Declaration Accountability and Oversight Committee must be appointed as soon as practicable after the making of a pandemic declaration.
- (3) The appointments of members of the Pandemic Declaration Accountability and Oversight Committee must be revoked as soon as practicable after the ceasing in force of the pandemic declaration in relation to which they were appointed.
- (4) Subject to this Act, the members of the Pandemic Declaration Accountability and Oversight Committee must be appointed, and their appointments revoked, according to the practice of

Parliament relating to the appointment and revocation of appointment of members to joint select committees.

- (5) Not more than half of the members of the Pandemic Declaration Accountability and Oversight Committee may be members of a political party forming the Government."

19F Election of chairperson and deputy chairperson

After section 22(1) of the **Parliamentary Committees Act 2003**
insert—

- "(1A) The chairperson of the Pandemic Declaration Accountability and Oversight Committee must not be a member of a political party forming the Government."

19G Sittings

- (1) In section 25(5) of the **Parliamentary Committees Act 2003**, for "A" **substitute** "Subject to subsection (6), a".

- (2) After section 25(5) of the **Parliamentary Committees Act 2003**
insert—

"(6) Subsection (5)(a) does not apply to the Pandemic Declaration Accountability and Oversight Committee, and a member of that Committee participating in a meeting of that Committee by audio link or audio visual link—

(a) is present for the purposes of determining whether there is a quorum; and

(b) may vote on a question arising at the meeting.".

51. Clause 31, omit this clause.
52. Clause 35, line 6, omit "being".
53. Clause 35, line 12, omit "being".

Certified -



Clerk of the Legislative Council