

## BRIEF ON VICTORIA'S PUBLIC HEALTH AND WELLBEING (PANDEMIC MANAGEMENT) BILL

### BACKGROUND

The [Victorian Public Health and Wellbeing \(Pandemic Management\) Bill 2021](#) was introduced into parliament on 26 October with the debate beginning on 27 October and concluded by 5pm on 28 October. The Bill was passed by the Legislative Assembly (Lower House) 53 in favour to 25 Noes. All members of the Coalition voted against the Bill. The final debate is in [Hansard](#) of 28 October on pages 43-75 and pages 85-94 and the final vote is recorded on page 116.

The Bill has gone to the Legislative Council (Upper House) and will be debated there in the sitting week beginning 16 November.

### GENERAL COMMENTS

The lack of consultation and information about the specifics of the proposed powers is an abuse of our parliamentary democracy:

- The Opposition and Independent MPs did not get a copy of the actual Bill until it was introduced into the parliament. They were then forced to debate this 116 page long, detailed and complex piece of legislation immediately, without adequate time to consider its implications and how it will operate.
- The time allowed for debate was severely restricted. It was only debated in any detail for several hours on 28 October. The government refused to allow further time. The debate had to conclude and a vote on the Bill finalised by 5pm that day. This was strenuously objected to by Coalition MPs (see for egs pages 86 and 94 of Hansard). Why the rush? MPs usually are given time when a Bill is introduced to consider the proposal and to consult with advisors and stakeholders before coming to a view to present in a full debate. The Premier can go back to the parliament in December when the current emergency powers granted in March expire and show the need for and seek a further extension. There is no urgency about passing this Bill before wide-ranging and vigorous debate about such an important matter. There is adequate powers already under the current provisions of the Public health and Wellbeing Act to manage the present situation.
- Even the Greens thought the Bill has concerning flaws and that more time could have been allowed for consideration, consultation and debate.
- The President of the Victorian Bar Association is quoted on Hansard of 28 October (page 87) as expressing the opinion that: "The Bill confers on the health minister in a practical sense an effectively unlimited power to rule the state by decree, for effectively an indefinite period, and without effective judicial or parliamentary oversight ... "

## THE BILL

The Bill seeks to insert new provisions into and to consequentially amend parts of the Public Health and Wellbeing Act (PHWA) to make provision for further wide reaching powers to manage “pandemic disease” and “potential pandemic disease”. It is not restricted to COVID19. Are we facing an era of pandemics in which we will need to be protected by a Premier exercising wide ranging powers by decree?

### 1. Definitions:

“Pandemic disease” and “disease of pandemic potential”:

#### Section 4:

**4 (6) (5) - “ ... an infectious disease is a pandemic disease ... if ... there is a pandemic outbreak of that infectious disease.”**

The definition of “infectious disease” is in Section 3 of the current Public Health and Wellbeing Act - “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.”

This definition is not exhaustive. What other types of disease might it include?

There does not appear to be any definition of “pandemic”. The dictionary definition is an infectious disease that spreads over multiple countries/across the world. This is as opposed to an epidemic which may be wide spread in a particular area. There should be a clear definition of “pandemic” and what the conditions are for it to be declared for the wide powers proposed under this Bill to be activated.

**4 (6) (5) – “ ... an infectious disease is a disease of pandemic potential at a particular time if:**

- at that time, the infectious disease **has the potential to give rise to a pandemic**, but is **not yet a pandemic disease**; or
- before that time the infectious disease was a pandemic disease and **although is no longer a pandemic disease has the ongoing potential to give rise to a pandemic**.

The definition of “disease of pandemic potential” is circular. It is not a definition at all. The basis on which the powers under the Bill can be exercised is not clearly defined.

This definition would mean that there could be a disease of pandemic potential present all the time.

**4 (6) (6) - "... a pandemic disease or a disease of pandemic potential may pose a material risk of substantial injury or prejudice to the health of human beings, even when—**

- (a) the rate of community transmission of the disease in Victoria is low; or**
- (b) there have been no cases of the disease in Victoria for a period of time."**

1. The operative part of the Bill is to insert a new Part 8A into the current Public Health and Wellbeing Act (PHWA) setting out when and by whom a state of pandemic can be declared and what powers that gives rise to.

## **STATE OF PANDEMIC**

### **Pandemic Declaration:**

#### **Section 165AB:**

**(1) The Premier may make a declaration ... (a pandemic declaration)** if the Premier is **satisfied that there is a serious risk to public health** arising from—

- (a) a pandemic disease; or**
- (b) a disease of pandemic potential**

**(2) The Premier must consult with, and consider the advice of, the Minister and the Chief Health Officer before making a pandemic declaration.**

**(3) The Premier may make a pandemic declaration whether or not, at the time the declaration is made—**

- (a) the pandemic disease is present in Victoria; or**
- (b) the disease is a disease of pandemic potential that is present in Victoria.**

**Section 165AC (1) (c)** – The period for which a pandemic declaration can continue in force must not exceed a period of 4 weeks but may be extended under section 165AE which allows for extensions for up to 3 months at a time indefinitely (Section 165AE (5)).

## **DURATION OF STATE OF PANDEMIC**

### **Section 165AE**

**(1) The Premier may vary or extend a pandemic declaration** if the Premier is satisfied that there continues to be a serious risk to public health arising from—

- (a) a pandemic disease, including a disease that was a disease of pandemic potential when the pandemic declaration first came into force but is a pandemic disease at the time of the variation or extension; or**
- (b) a disease of pandemic potential, including a disease that was a pandemic disease when the pandemic declaration first came into force but is a disease of pandemic potential at the time of the variation or extension.**

(2) Subsection (1) **applies whether or not, at the time of the variation or extension, the disease is present in Victoria.**

(3) The Premier— (a) must revoke a pandemic declaration if the Premier is satisfied that there is no longer a serious risk to public health arising from a pandemic disease or a disease of pandemic potential; and  
(b) may at any other time revoke a pandemic declaration if the Premier considers it appropriate to do so.

(5) There is **no limit on the number of times a pandemic declaration may be extended** under subsection (1), but the period of each extension must not be longer than 3 months.

## **POWERS UNDER PANDEMIC ORDERS**

### **Section 165AI**

(1) **The Minister (of Health) may, ...make any order (a pandemic order) that the Minister believes is reasonably necessary to protect public health.**

(2) ...a pandemic order may include, but is not limited to, an order—

- (a) that **requires persons to be detained** in a pandemic management area for the period specified in the order: or
- (b) that **requires that the detention of persons** in a pandemic management area **be extended for the period specified** in the order—
- (c) that **restricts movement** in a pandemic management area; or
- (d) that **requires movement** in, into or from a pandemic management area;

or

- (e) that **prevents or limits entry** to a pandemic management area; or
- (f) that **prohibits or regulates gatherings whether public or private** in a pandemic management area; or
- (g) that **requires the use of personal protective equipment** in a pandemic management area; or
- (h) that **prohibits or regulates the carrying on of activities, businesses or undertakings** in a pandemic management area; or
- (i) that **requires the provision of information** (including information about the identity of any person), the **production of documents** or the **keeping of records**; or
- (j) that **requires the medical examination or testing of persons** in a pandemic management area or as a condition of entry to a pandemic management area; or
- (k) that **requires the quarantining, destruction or other management of disease vectors** in a pandemic management area.

## **FURTHER POWERS**

### **Section 165B (1) The pandemic management order powers are as follows—**

- (a) to take any action or give any direction, other than to detain a person, that the authorised officer believes is reasonably necessary to implement or give effect to a pandemic order;
- (b) to detain a person in a pandemic management area in accordance with a pandemic order that requires the detention or extends the period of detention of the person.

### **165BA**

#### **(1) The pandemic management general powers are as follows—**

- (a) to take any action or give any direction, other than to detain a person, that the authorised officer believes is reasonably necessary to protect public health;
- (b) to detain a person in a pandemic management area for the period the authorised officer believes is reasonably necessary to eliminate or reduce a serious risk to public health.

#### **(2) Without limiting the pandemic management general powers, an authorised officer may give a written or oral direction in the exercise of a pandemic management general power—**

- (a) that restricts movement in a pandemic management area; or
- (b) that requires movement in, into or from a pandemic management area; or
- (c) that prevents or limits entry to a pandemic management area; or
- (d) that requires a person to refrain from organising or participating in a gathering whether public or private in a pandemic management area; or
- (e) that requires the use of personal protective equipment in a pandemic management area; or
- (f) that requires a person to refrain from carrying on activities, businesses or undertakings, or to carry them on in a specified manner, in a pandemic management area; or
- (g) that requires the provision of information (including information about the identity of any person), the production of documents or the keeping of records; or
- (h) that requires medical examination or testing in a pandemic management area or before entering a pandemic management area; or
- (i) that requires the quarantining, destruction or other management of disease vectors in a pandemic management area.

## **WHO PANDEMIC ORDERS APPLY TO**

### **Section 165AK**

(1) A pandemic order may be expressed to apply to the following—

- (a) all persons;
- (b) specified classes of person;
- (c) specified persons.

(2) A pandemic order must not be expressed to apply to a single named individual.

(3) Without limiting subsection (1), a pandemic order may apply to, differentiate between or vary in its application to persons or classes of person identified by one or more of the following—

- (a) their presence in a pandemic management area or in a particular location in a pandemic management area;
- (b) their participation in or presence at an event;
- (c) an activity that they have undertaken or are undertaking;
- (d) their characteristics, attributes or circumstances.

## **WHO MAY BE AUTHORISED TO EXERCISE PANDEMIC POWERS**

**Section 165AW:** If a pandemic declaration is in force and the Chief Health Officer (CHO) believes that it is reasonably necessary to grant an authorisation under this section to eliminate or reduce a serious risk to public health he may authorise—

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

## **OVERSIGHT/ACCOUNTABILITY**

### **Independent Management Advisory Committee**

**Section 165CE** Establishment of Independent Pandemic Management Advisory Committee

(1) Within 30 days of the first extension of a pandemic declaration, the Minister ... must establish a committee, to be known as an Independent Pandemic Management Advisory

Committee, for the purposes of providing advice in relation to managing the pandemic disease or the disease of pandemic potential to which the pandemic declaration relates.

(2) If the Minister establishes an Independent Pandemic Management Advisory Committee the Minister must, by Order published in the Government Gazette—

(a) appoint as members of the committee persons whom the Minister considers have skills, knowledge or experience relevant to the committee's functions; and

(b) specify the period of appointment and the terms and conditions of the appointment.

(3) Before appointing a person as a member of an Independent Pandemic Management Advisory Committee, the Minister must consult the Chief Health Officer in relation to the appointment.

(4) For the purposes of appointing members to an Independent Pandemic Management Advisory Committee, the Minister must ensure as far as reasonably practicable that members of the committee, taken as a group, have skills, knowledge and experience that encompass all of the following matters—

(a) public health;

(b) infectious diseases;

(c) primary care;

(d) emergency care;

(e) critical care;

(f) law;

(g) human rights;

(h) the interests and needs of traditional owners and Aboriginal Victorians;

(i) the interests and needs of vulnerable communities.

### **Functions of an Independent Pandemic Management Advisory Committee**

**Section 165CF** (1) The functions of an Independent Pandemic Management Advisory Committee are—

(a) to **review and provide advice to the Minister** in relation to the exercise of powers under this Part; and

(b) to prepare and **provide reports** to the Minister including, but not limited to, reports that make **non-binding recommendations**.

## AUTHORISED OFFICERS - WHO MAY BE APPOINTED

**Section 165CN** The Secretary (of the Department of Health) may appoint as authorised officers during any period when a pandemic declaration is in force any of the following —

- (a) a person the Secretary considers appropriate for appointment based on the person's skills, attributes or experience;
- (b) a police officer;
- (c) a protective services officer;
- (d) a Worksafe inspector;
- (e) an employee in the public sector of a State other than Victoria, or a territory;
- (f) a designated health service provider.

NB These “authorised officers” do not have powers of detention or any other “pandemic management powers” (see Sections 165B and 165BA above)

### Immunity of Authorised Officers

**Section 165CU** (1) This section applies to —

- (a) the Chief Health Officer;
- (b) a delegate of the Chief Health Officer;
- (c) an authorised officer;
- (d) a Detention Review Officer.

(2) A person to whom this section applies is **not personally liable for anything done or omitted to be done in good faith**, at a time when a pandemic declaration is in force, in relation to a pandemic disease or a disease of pandemic potential.

## CONCLUSION

The Bill is unnecessary. The COVID19 pandemic has been managed under the current Public Health and Wellbeing Act (PHWA). Why are these new provisions needed?

The current PHWA also requires the parliament to agree to the declaration. There is proper parliamentary oversight. And there is a sunset clause – a state of emergency can only 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** or, in the case of the emergency declaration **in respect of the COVID-19 pandemic, 21 months. (Section 198(7)(c))** The proposed Bill allows a Premier to declare a State of Pandemic/Potential Pandemic and extend it in 3 monthly blocks indefinitely.

The Bill is posing a political response to what should be managed as a health issue. Managing a pandemic should be handled by and decisions made by properly qualified and experienced public health experts and should be directed to protecting the vulnerable,



treating the sick and allowing the healthy freedom of movement and activity and clear instructions as to their responsibility to manage their health to recognise symptoms and immediately seek medical attention/advice.

The grounds on which a state of pandemic could be declared are not clear as the definitions particularly of “pandemic potential” is so open ended. On that rests the authority and the power of a Premier to declare a state of pandemic.

The Bill is micro managing a health issue as a political/legal issue and is so long and complex that it would be impossible for an individual citizen to know his rights and responsibilities in a state of pandemic which is a denial of natural justice.

The Bill should go to a parliamentary Committee for close examination and an inquiry allowing for public consultation.

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