

PARLIAMENT OF VICTORIA

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**Emergency Powers Safeguards Legislation  
Amendment Bill 2021**

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PARLIAMENT OF VICTORIA

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Introduced in the Council by Tim Quilty

**Emergency Powers Safeguards  
Legislation Amendment Bill 2021**

A Bill for an Act to amend the **Public Health and Wellbeing Act 2008** and the **Emergency Management Act 1986** in relation to limiting emergency powers and for other purposes.

**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purpose**

The purposes of this Act are—

- 5
- (a) to amend the **Public Health and Wellbeing Act 2008** to limit the making of state of emergency declarations and the exercise of powers under such declarations; and
- 10
- (b) to amend the **Emergency Management Act 1986** to limit the making of state of disaster declarations and the exercise of powers under such declarations.

## **2 Commencement**

This Act comes into operation on the day after the day on which it receives the Royal Assent.

## **Part 2—Public Health and Wellbeing Act 2008**

### **3 Declaration of a state of emergency**

- 5 (1) After section 198(1) of the **Public Health and Wellbeing Act 2008** insert—
- "(1A) The Minister must not declare a state of emergency under subsection (1) unless—
- 10 (a) extraordinary action is necessary to eliminate or reduce a serious risk to public health; and
- (b) it is necessary for extraordinary action to be taken before it is possible for legislation to be enacted to authorise the extraordinary action; and
- 15 (c) the declaration of the state of emergency is on a temporary basis until it is possible for legislation to be enacted to respond to the circumstances to which the declaration relates.
- 20 (1B) If the Minister declares a state of emergency under subsection (1) in respect of a period during which a declaration of a state of disaster is in force under section 23(1) of the **Emergency Management Act 1986**, the
- 25 declaration of the state of emergency ceases to be in force when the declaration of the state of disaster ceases to be in force."
- (2) For section 198(4) of the **Public Health and Wellbeing Act 2008** substitute—
- 30 "(4) A declaration of a state of emergency under subsection (1) may provide that it comes into force—

- 5
- (a) immediately after a resolution has been passed by both Houses of Parliament that approves the state of emergency declaration; or
- (b) if it is not possible for such a resolution to be passed by both Houses of Parliament before extraordinary action is necessary, immediately upon its making."
- 10 (3) After section 198(7) of the **Public Health and Wellbeing Act 2008** insert—
- "(7A) A declaration of a state of emergency can only be made once in respect of a particular set of circumstances.
- 15 (7B) An extension of a declaration of a state of emergency under subsection (7)(c)—
- (a) must not be for longer than necessary until it is possible for legislation to be enacted in response to the circumstances to which the declaration relates; and
- 20 (b) comes into force immediately after a resolution has been passed by both Houses of Parliament that approves the extension."
- 25 (4) After section 198(9) of the **Public Health and Wellbeing Act 2008** insert—
- "(10) On the first sitting day after a declaration of a state of emergency is published in the Government Gazette, the Minister must ensure that a copy of that declaration is laid before each House of Parliament.
- 30 (11) A declaration of a state of emergency may be disallowed by either House of Parliament.
-

(12) In this section—

*extraordinary action* means actions taken  
(including the giving of directions)  
under the emergency powers."

5           **4 Chief Health Officer may authorise exercise of  
certain powers**

After section 199(2) of the **Public Health and  
Wellbeing Act 2008 insert—**

10           "(2A) An authorisation under subsection (1) must  
not be given unless it is necessary for the  
public health risk powers and the emergency  
powers specified in the authorisation to be  
exercised before it is possible for a resolution  
15           to be passed by both Houses of Parliament  
approving the declaration of the state of  
emergency concerned."

**5 Emergency powers**

After section 200(10) of the **Public Health and  
Wellbeing Act 2008 insert—**

20           "(11) A direction given under subsection (1), being  
a direction that applies to persons generally  
or to a class of persons, may provide that it  
comes into force—

25           (a) immediately after a resolution has been  
passed by both Houses of Parliament  
that approves the direction; or

30           (b) if it is not possible for such a resolution  
to be passed by both Houses of  
Parliament before it is necessary for the  
direction to come into force in order to  
eliminate or reduce a serious risk to  
public health, immediately upon its  
making.

5 (12) On the first sitting day after a direction is given under subsection (1) that applies to persons generally or to a class of persons, the Minister must ensure that a copy of that direction is laid before each House of Parliament, unless it was approved by both Houses of Parliament as mentioned in subsection 11(a).

10 (13) A direction under subsection (1), other than a direction approved by both Houses of Parliament as mentioned in subsection 11(a), may be disallowed by either House of Parliament."

**6 New section 200F**

15 After section 200E of the **Public Health and Wellbeing Act 2008** insert—

**"200F Offence to make invalid declaration or direction**

20 (1) The Minister must not make a declaration under section 198 if the Minister knows that, or is reckless as to whether, the declaration is invalid.

25 (2) A person must not give a direction or take an action under section 200(1) if the person knows that, or is reckless as to whether, the direction is invalid or the action is unlawful.

Penalty: 600 penalty units or imprisonment for 5 years."

## **Part 3—Emergency Management Act 1986**

### **7 Power of Premier to declare state of disaster**

(1) After section 23(1A) of the **Emergency Management Act 1986** insert—

- 5                   "(1B) The Premier must not declare a state of  
disaster under subsection (1) unless—
- 10                   (a) extraordinary action is necessary to  
address or eliminate an emergency that  
constitutes a widespread danger to life  
or property in Victoria; and
- 15                   (b) it is necessary for extraordinary action  
to be taken before it is possible for  
legislation to be enacted to authorise  
the extraordinary action; and
- 20                   (c) the declaration of the state of disaster is  
on a temporary basis until it is possible  
for legislation to be enacted to respond  
to the circumstances to which the  
declaration relates.
- 25                   (1C) If the Premier declares a state of disaster  
under subsection (1) in respect of a period  
during which a declaration of a state of  
emergency is in force under section 198(1)  
of the **Public Health and Wellbeing**  
**Act 2008**, the declaration of the state of  
disaster ceases to be in force when the  
declaration of the state of emergency ceases  
to be in force."
- 30                   (2) For section 23(3) of the **Emergency**  
**Management Act 1986** substitute—
- "(3) A declaration of a state of disaster under  
subsection (1) may provide that it comes into  
force—



- (a) immediately after a resolution has been passed by both Houses of Parliament that approves the state of disaster declaration; or
- 5 (b) if it is not possible for such a resolution to be passed by both Houses of Parliament before extraordinary action is necessary, immediately upon its making."
- 10 (3) In section 23(6) of the **Emergency Management Act 1986**, for "another declaration may be made before, at or after the end of that period" **substitute** "may be extended before the end of that period in accordance with subsection (6B)".
- 15 (4) After section 23(6) of the **Emergency Management Act 1986 insert—**
- "(6A) A declaration of a state of disaster can only be made once in respect of a particular set of circumstances.
- 20 (6B) An extension of a declaration of a state of disaster under subsection (6)—
- (a) must not be for longer than is necessary until it is possible for legislation to be enacted to respond to the circumstances to which the declaration relates; and
- 25 (b) comes into force immediately after a resolution has been passed by both Houses of Parliament that approves the extension."
- 30 (5) After section 23(7) of the **Emergency Management Act 1986 insert—**
- "(8) On the first sitting day after a declaration of a state of disaster is published in the Government Gazette, the Premier must

ensure that a copy of that declaration is laid before each House of Parliament.

(9) A declaration of a state of disaster may be disallowed by either House of Parliament.

5 (10) In this section—

*extraordinary action* means actions taken under section 24."

### 8 Powers and duties of Minister

10 (1) After section 24(1) of the **Emergency Management Act 1986** insert—

"(1A) The Minister must not exercise a power under subsection (1) unless—

15 (a) it is necessary for extraordinary action to be taken before it is possible for legislation to be enacted to authorise the extraordinary action; and

20 (b) the direction or declaration is on a temporary basis until it is possible for legislation to be enacted to respond to the circumstances to which the direction or declaration relates."

(2) After section 24(7) of the **Emergency Management Act 1986** insert—

25 "(8) On the first sitting day after a direction or declaration under this section is given or made, the Minister must ensure that a copy of that direction or declaration is laid before each House of Parliament.

30 (9) A direction or declaration under this section may be disallowed by either House of Parliament.

(10) In this section—

*extraordinary action* means actions taken under this section.

5 (11) Despite subsection (2)(b), the Minister must not declare that the operation of section 24AA of this Act or section 200F of the **Public Health and Wellbeing Act 2008** is suspended."

**9 New section 24AA inserted**

10 After section 24A of the **Emergency Management Act 1986** insert—

**"24AA Offence to make invalid declaration or direction**

15 (1) The Premier must not make a declaration under section 23 if the Premier knows that, or is reckless as to whether, the declaration is invalid.

Penalty: 600 penalty units or imprisonment for 5 years

20 (2) A person must not give a direction or take an action under section 24 if the person knows that, or is reckless as to whether, the direction is invalid or the action is unlawful.

25 Penalty: 600 penalty units or imprisonment for 5 years."

## **Part 4—Repeal of this Act**

### **10 Repeal of this Act**

This Act is **repealed** on the first anniversary of its commencement.

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#### **Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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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.