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MEDIA RELEASE – THE VICTORIAN BAR AND AUSTRALIAN BAR ASSOCIATION RAISE CONCERNS ABOUT THE COVID-19 OMNIBUS BILL 2020

Concerns about the criteria for appointment and power of “authorised officers” under the Bill have been raised by the Victorian Bar with the Attorney-General, supported by the Australian Bar Association

Melbourne, 23 September 2020: The Victorian Bar has expressed its concerns to the Victorian Attorney-General The Hon. Jill Hennessy about the criteria for appointment, and scope of powers, of “authorised officers” as part of proposed amendments to the Public Health and Wellbeing Act 2008 made by the COVID-19 Omnibus (Emergency Measures) Bill.

The Victorian Bar’s concerns about provisions of the Omnibus Bill, tabled in Parliament on 17 September 2020, refer principally to the broad and generic criteria on which “authorised officer” appointments may be made under s. 30 of the Act. The proposed criteria potentially open the door for those who are not trained as health professionals to be appointed as “authorised officers”. This is of significant concern as it is imperative that the qualifications of these officers are relevant to the public health functions that they are intended to perform.

The Victorian Bar is also concerned with the proposal that people may be detained by authorised officers for failure to abide by a public health direction on the basis of an authorised officer’s “reasonable belief”. This standard of validation is broad and subjective. The power to detain should be reviewed against an objective standard, for example, one of

“reasonable likelihood”. Furthermore, the public interest would best be served if decisions made by authorised officers were reviewed by the Chief Health Officer (or senior delegate) within a short, stipulated period (preferably not longer than 24 hours). In the Bar’s view, the power of detention should be expressly based on a test of the least restrictive means reasonably available in the circumstances to achieve public health and safety.

Wendy Harris QC, President of the Victorian Bar, said, “It is vital that, as the Government crafts powers to assist in the enforcement of public health and safety regulations, the individuals who are empowered to enforce those powers meet appropriate standards of professional knowledge and training, and the enforcement of those powers meets common and well-tested standards of objectivity. This is essential in order that public confidence is retained in the enforcement of public health measures, and that the rights of members of the community are protected.”

Matthew Howard SC, President of the Australian Bar Association, said, “The Australian Bar Association fully endorses the Victorian Bar’s position on this important matter. Whilst the Victorian Government needs to take appropriate measures to manage this extraordinary health crisis, these should not be implemented without appropriate oversight and protections.”

Media Enquiries:

Elizabeth Gray on +61 401 561 554 or by email to elizabeth.gray@vicbar.com.au

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