

Public Health and Wellbeing Bill 2008

Introduction Print

EXPLANATORY MEMORANDUM

General

The purpose of the proposed Act (the "Act") is to enact a new legislative scheme to protect and promote public health and wellbeing in Victoria. The Act repeals the **Health Act 1958** and makes consequential amendments to other Acts.

Clause Notes

PART 1—PRELIMINARY

Part 1 explains the purpose of the Act and contains the commencement provisions.

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the commencement of the Act over a period ending on 1 January 2010. The commencement period allows for the making of new regulations and for other necessary implementation measures.

The provisions of the Act will commence operation when proclaimed, or if not proclaimed before 1 January 2010, on that day.

Clause 3 defines certain words and phrases for the purposes of the Act.

PART 2—OBJECTIVE, PRINCIPLES AND APPLICATION

Part 2 sets out the objective that the legislation is intended to achieve and the guiding principles by which the Act is to be administered in seeking to achieve the objective.

Clause 4 sets out the objective of the legislation.

Subclause (1) recognises the public health context in which the Act will operate. This includes the role of the State in health promotion and protection, the collective nature of public health,

the role of public health interventions in increasing community health and wellbeing and the responsibility of the State of Victoria to respond to public health concerns of national and international significance.

Subclause (2) provides that the objective of the Act is to achieve the highest attainable standard of public health and wellbeing and sets out the means by which it aims to achieve this.

Subclause (3) specifies that in achieving this objective the principles set out in sections 5 to 11 should guide the administration and interpretation of the Act.

- Clause 5 describes the principle of evidence based decision-making.
- Clause 6 describes the precautionary principle.
- Clause 7 describes the principle of the primacy of prevention.
- Clause 8 describes the principle of accountability.
- Clause 9 describes the principle of proportionality.
- Clause 10 describes the principle of collaboration.
- Clause 11 provides that the principles that apply to the management and control of infectious diseases are found in section 111 of the Act.
- Clause 12 provides for the application of Part 6 of the Act to areas outside a municipal district. Part 6 contains regulatory provisions administered by municipal councils and each Council administers Part 6 within its municipal district. There are some areas, for example the alpine resorts, that do not form part of a municipal district. This clause allows the Governor in Council, on the recommendation of the Minister, to order that a nominated Council is to administer Part 6 in one of these areas. Alternatively, the Governor in Council may order that the Secretary is to administer Part 6 in that area. The Order may specify that either some or all of the Divisions of Part 6 are to apply in that area.

The clause requires the Minister administering the Act to consult with the Minister responsible for the **Local Government Act 1989** before recommending that an order be made making a council responsible for administering Part 6 outside the council's municipal district.

- Clause 13 specifies that the Crown is required to comply with the provisions of the Act. The clause also confirms the Crown's status as a body corporate for the purposes of the Act and the regulations made under it.
- Clause 14 the Act provides that it is the intention of the Parliament that the provisions relating to the making of examination and testing orders and public health orders in Division 2 of Part 8, and to blood and tissue donation in Division 8 of Part 8, should operate outside Victoria as far as is possible.

PART 3—ADMINISTRATION

Part 3 establishes the Secretary to the Department of Human Services as a body corporate and requires the appointment of a Chief Health Officer. This Part sets out the role and functions for the purposes of the administration of this legislation of the Secretary, the Chief Health Officer, and of municipal councils. It also makes provision for the appointment of authorised officers and analysts to assist in the administration of the Act.

Division 1—The Minister and the Secretary

- Clause 15 provides a power of delegation for the Minister by which the Minister may delegate a power, duty or function of the Minister under this or any other Act or under regulations under this or any other Act to persons employed under Part 3 of the **Public Administration Act 2004**.
- Clause 16 Subclause (1) establishes a body corporate under the name "Secretary to the Department of Human Services".
- Subclause (2) provides that the body corporate has perpetual succession, has a corporate seal, may sue and be sued, may transact and hold real and personal property and has all the powers and responsibilities of bodies corporate required or desirable for the purposes of this Act or other Acts.
- Subclause (3) provides that the body corporate created by subclause (1) is the same body corporate in existence under section 6 of the **Health Act 1958** immediately prior to that Act being repealed and this Act coming into operation.
- Subclause (4) provides that any act involving dealings in land, or other act intended to bind the Department Head of the Department of Human Services, must be done by the body corporate established by this section.

Subclause (5) specifies that references to Secretary to the Department of Human Services in any Act other than this Act or in any document must be taken to be references to the Secretary as defined in section 3 of this Act.

Clause 17 sets out the role and functions of the Secretary for the purposes of this Act. Subclause (1) provides that this includes public health planning at the state level, developing and implementing policies designed to achieve the objects of the Act, performing the functions and exercising the powers conferred by this Act and the regulations and administering the Act in accordance with the specified objectives and guiding principles.

Subclause (2) provides that the functions of the Secretary include: to promote public awareness, to develop policy, to assist people to protect public health, to support, equip and empower communities to address public health needs. These aims could be achieved through means of discussion papers, forums, working groups, and other similar means of consultation.

It is also a function of the Secretary to make recommendations and reports to the Minister on public health matters and to advise the Minister on the administration of the Act and the regulations.

The Secretary is also given a statutory function to establish and maintain a comprehensive information system that includes information on the health status of individuals and groups, factors determining health and wellbeing and the effectiveness of health interventions in improving public health. This will continue a function already performed under section 9 of the **Health Act 1958**. Information collected by the Secretary is used in the preparation of publications and reports such as the Population Health Survey, epidemiological studies and infectious disease surveillance reports such as the Surveillance of Notifiable Infectious Diseases in Victoria. These reports and findings assist the Secretary to adjust policy and resources as required.

Clause 18 provides that the Secretary is subject to the direction and control of the Minister.

Clause 19 provides a power of delegation for the Secretary by which the Secretary may delegate a power, duty or function of the Secretary under this or any other Act or under regulations under this or any other Act to the persons set out in this section.

Division 2—The Chief Health Officer

- Clause 20 specifies that the Secretary is to appoint a registered medical practitioner to the position of Chief Health Officer. The employment of the Chief Health Officer is to comply with the **Public Administration Act 2004**. This is intended to ensure that the statutory functions requiring expert medical expertise are performed by a registered medical practitioner with a level of independence necessary to perform those functions.
- Clause 21 sets out the statutory functions and powers of the Chief Health Officer, subject to the general direction and control of the Secretary. These include: to develop and implement strategies to promote and protect public health and wellbeing and to prepare a report on public health and wellbeing in Victoria and make it available to the public.
- Clause 22 provides a power of delegation for the Chief Health Officer.
- Clause 23 Subclause (1) allows persons to be employed pursuant to Part 3 of the **Public Administration Act 2004** to assist the Chief Health Officer in the performance of his or her responsibilities. Subclause (2) permits the Chief Health Officer to contract with other persons for the purpose of obtaining appropriate expertise to assist in the exercise of his or her statutory responsibilities.

Division 3—Councils

- Clause 24 provides that the function of municipal councils under this Act is to seek to protect, improve and promote public health and wellbeing within their municipal district and sets out the means by which a Council is to perform these functions. These include developing and implementing public health planning in the district.
- The important role of Councils in enforcing the Act and the regulations is recognised in paragraphs (c), (d) and (g) of the specified functions.
- Clause 25 provides that the Secretary can require a municipal council to report to the Secretary on matters relevant to public health and wellbeing and the performance of specified functions or duties, or exercise of powers specified powers under an Act administered by the Minister. The request is by notice in writing. The Secretary can set time limits for the provision of the report and may specify the format in which the report is to be provided.

- Clause 26 Subclause (1) provides that municipal council must, in consultation with the Secretary, prepare a municipal public health and wellbeing plan in the first year after each general election of the Council.
- A Council may be exempted from this obligation by the Secretary on the grounds set out in clause 27. Essentially a Council may be exempted if the requirements for the municipal public health and wellbeing plan have already been met in another form, namely in a Council Plan prepared under the **Local Government Act 1989** or in a Strategic Plan prepared by the Council.
- Subclause (2) specifies the requirements of a municipal public health and wellbeing plan.
- Subclause (3) provides that a Council must have regard to the State Public Health and Wellbeing Plan prepared under section 49 of this Act when preparing its municipal plan.
- Subclause (4) provides that councils must review public health and wellbeing plans annually and if appropriate make amendments.
- Subclause (5) provides that councils are not required to provide for community participation when undertaking the annual update of the public health and wellbeing plan.
- Subclauses (6) and (7) require a Council to give copies of the municipal public health plan to the Secretary and make copies available for inspection by members of the public at the same place as copies of the current Council Plan are made available.
- Clause 27 This clause enables the Secretary to grant an exemption from the obligation to prepare a public health and wellbeing plan if a council has already adequately dealt with the requirements set out in section 26 in its Council Plan, or a Strategic Plan. This is to avoid double regulation.
- The clause sets out the procedure by which the Secretary may grant an exemption from the obligation specified in section 26, and includes a requirement that the Secretary provide reasons when refusing to grant an exemption.
- Clause 28 sets out special powers available to the Secretary only during a "state of emergency" declared by the Minister in accordance with Division 3 of Part 10 of this Act. In that period, the Secretary may direct a Council to perform any function or duty, or exercise any power as directed by the Secretary. The Secretary may also perform all the functions and duties and exercise the powers of a Council during the state of emergency.

During the state of emergency the Secretary may order council officers to perform a particular function or duty or exercise a particular power, and may order an authorised officer of a Council to perform any function or duty, or exercise any power, in another municipal district.

Division 4—Officers

Clause 29 requires a municipal council to appoint one or more environmental health officers, who are officers trained in the administration and enforcement of public and environmental health legislation. The Secretary has the authority to declare the qualifications and experience required of persons that are to be appointed as environmental health officers.

The same person may be appointed as an environmental health officer for two or more Councils. Environmental health officers are authorised officers for the purposes of the Act.

Subclause (6) provides that sections 31(4) and 31(5) of the **Local Government Act 1989** allowing courts to grant a person relief from disqualification otherwise preventing appointment because of specified criminal convictions applies in respect of environmental health officers.

The clause also provides that the requirements in sections 224(2) and (3) of the **Local Government Act 1989** regarding identity cards for authorised officers apply to environmental health officers.

Clause 30 allows the Secretary to appoint a person with suitable qualifications or training employed under Part 3 of the **Public Administration Act 2004** to be an authorised officer for the purposes of the Act.

The instrument of appointment may specify the functions, duties and powers of the authorised officer to which it relates and may impose conditions on the appointment.

Subclauses (4) and (5) set out the requirements for identity cards for authorised officers including the information to be included on identity cards.

The Secretary may give directions to authorised officers in relation to the performance of an officer's functions or duties or the exercise of an officer's powers, and the direction may be general or specific in nature.

Clause 31 allows for the appointment of authorised officers by municipal councils under the **Local Government Act 1989**. The clause specifies that the Council must be satisfied that the person appointed is suitably qualified or trained to be an authorised officer for the purposes of this Act. The qualifications and training would not have to be the equivalent to those declared by the Secretary as suitable for an environmental health officer.

This clause also makes provision for the appointment of an authorised officer to specify the functions, duties or powers under this Act or the regulations to which it relates and to be made subject to conditions. A power for Councils to direct authorised officers is also provided for.

Clause 32 provides that the Secretary may appoint a person with the necessary expertise or experience to be an analyst to carry out analysis for the purposes of the Act or the regulations. The function of an analyst is specified in the clause. The clause also specifies the requirements for the preparation of certificates of analysis.

PART 4—CONSULTATIVE COUNCILS

Part 4 provides for the establishment or appointment of Consultative Councils that are comprised of expert health professionals and play an important role in the continual evaluation and improvement of health services. Examples of existing Councils are the Victorian Consultative Council on Anaesthetic Mortality and Morbidity and the Victorian Surgical Consultative Council. The Part also makes particular provision for the continuation of the role of the Consultative Council on Obstetric and Paediatric Mortality and Mobility. The Part contains detailed provisions relating to the collection and disclosure of information by Consultative Councils and the confidentiality of that information.

Division 1—General provisions

Clause 33 provides that the Minister may by Order establish a Consultative Council to deal with matters and perform functions as specified in the Order. Bodies already established under other Acts may be appointed to be a Consultative Council. The Order establishing a Consultative Council can specify the number of members of which it is to consist.

The Minister may by Order appoint the members of a Consultative Council established under this section, and appoint a Chairperson and Deputy Chairperson.

The clause provides that the majority of members of the Consultative Council must be persons with special knowledge in the matters specified in the Order establishing the Consultative Council and sets out the terms and conditions of membership.

Orders made under this section must be published in the Government Gazette.

- Clause 34 provides that, subject to the approval of the Minister, a Consultative Council may co-opt any person with special knowledge or skills to assist the Consultative Council, and that the co-opted person is to be considered to be a member of the Consultative Council.
- Clause 35 provides for the procedure of meetings of a Consultative Council.
- Clause 36 provides that, subject to the approval of the Minister, a Consultative Council may appoint a sub-committee made up of Council members and others for the purpose of carrying out any of its functions. Sub-committees must report to the Consultative Council.
- Clause 37 allows Consultative Councils to share information with other Consultative Councils if the Chairperson considers that the information is relevant to the functions of another Consultative Council.

The clause allows the Minister or Secretary to direct one or more Consultative Councils to consider and report on relevant matters. Joint reports are permissible.

Division 2—Provisions applying to prescribed Consultative Councils

This Division sets out detailed provisions relating to functions and powers of Consultative Councils established under section 33(1)(a).

- Clause 38 This clause sets out the functions of prescribed Consultative Councils. One of the most important functions of the prescribed Councils is the review of morbidity and mortality in the health system and the dissemination of the results of this research as widely as possible. The research conducted by prescribed Consultative Councils assists health service providers to make systemic changes to the treatment and care they provide. Special provision is made in the Division for the collection and disclosure of health information necessary to fulfil this function. These provisions are similar to those that

apply to the Consultative Council on Obstetric and Paediatric Mortality and Mobility.

Clause 39 provides that the Chairperson of a prescribed Consultative Council may request information from a health service provider or a pathology service.

The term *health service provider* is defined in this Act as having the same meaning as in section 3(1) of the **Health Records Act 2001**.

The information requested by the Chairperson may be general or specific in nature and must be considered by the Chairperson to be necessary to the performance of the functions of the prescribed Consultative Council.

This clause provides that a health service provider or pathology service to which this section applies is authorised to provide the requested information.

The note refers to section 227 which provides protections to persons who give information they are authorised or required to give under this Act.

Clause 40 provides for the mandatory notification by health service providers and pathology services of prescribed information to prescribed Consultative Councils established by the Minister.

Regulations may be made to specify the manner, form and period in which a prescribed health service provider or prescribed pathology service must supply prescribed information to the Council.

For example, the regulations may require a specified class of health service provider to report specified statistical or other information to a particular Council at regular intervals, or to provide other information on a one-off basis within a reasonable time of being requested to do so. Failure to comply with the request is an offence that can result in a penalty of up to 10 penalty units.

The note refers to section 227 which provides protections to persons who give information they are authorised or required to give under this Act.

Clause 41 provides that a prescribed Consultative Council may provide information to the bodies specified in this section if the Consultative Council determines that it is in the public interest to do so. This is a provision designed to be used sparingly and only when there is an overriding public interest to do so, as

public confidence that information given to Councils is generally not disclosed must be preserved.

Clause 42 sets out the confidentiality obligations applying to persons who are or have been members of a prescribed Consultative Council or its sub-committees, or have been employed or engaged or made available to a prescribed Consultative Council or its sub-committees.

Current and former members must not record or disseminate information gained by or conveyed to them by reason of their engagement or relationship with the prescribed Consultative Council.

In addition, current and former members must not use information for any other purpose other than the performance of the functions of the prescribed Consultative Council.

Subclause (4) specifies that a person cannot be required to produce before any judicial officer or tribunal documents or information that is within the person's knowledge or control because of his or her relationship with the Consultative Council.

Subclause (5) provides that it is not possible to apply for the documents or information specified in subclause (4) through provisions of the **Freedom of Information Act 1982**.

Subclause (6) specifies that Part 5 and Health Privacy Principle 6 of the **Health Records Act 2001** do not apply to information or documents referred to in subclause (4).

This means that a person cannot seek health information held about him or her by a prescribed Consultative Council.

This does not mean that the person cannot obtain his or her health records elsewhere, as he or she still has a right to obtain them from the organisation that provided them to the Council, unless they are a document created solely for the purpose of providing information to the Council.

Subclause (7) specifies that prescribed Consultative Councils are able to include in documents information that does not identify individuals.

Clause 43 Subclause (1) provides that a person cannot be required to produce documents or copies of documents to a court, tribunal, board, agency or other person if the documents were created for the sole purpose of providing information to the prescribed Consultative Council and were provided to the prescribed Consultative Council by or on behalf of that person.

The intention of this clause and the preceding clause is to allow health services and health professionals to be candid in the provision of information to Consultative Councils without fear that the information will be used against them in legal proceedings. Information regarding the nature of an incident is available to a plaintiff through the discovery processes that are part of any legal proceedings.

Subclause (2) provides that except for the published reports of the prescribed Consultative Council no material, reports, or information by or in the possession of the Consultative Council is admissible in any action or proceeding before a court, tribunal or other body.

Subclause (3) provides that it is not possible to apply for the documents or information specified in subsections (1) and (2) through provisions of the **Freedom of Information Act 1982**.

Subclause (4) specifies that Part 5 and Health Privacy Principle 6 of the **Health Records Act 2001** do not apply to documents or information referred to in subsections (1) and (2).

Division 3—Provisions applying to the Consultative Council on Obstetric and Paediatric Mortality and Morbidity

- Clause 44 provides that the Consultative Council on Obstetric and Paediatric Mortality and Morbidity (referred to as "CCOPMM" in the Act), established under the previous Act, is continued under this Act.
- Clause 45 provides the particulars of CCOPMM membership including 3-year terms and eligibility for re-appointment. CCOPMM members may resign or may be removed by the Minister.
- Clause 46 Subclause (1) sets out the functions of CCOPMM that include undertaking study, research and analysis into the incidence and causes of maternal deaths, stillbirths and the deaths of children, study, research and analysis into the incidence and causes of obstetric and paediatric morbidity, the conduct of a perinatal data collection unit for the specified purposes and the provision to health services of information to improve obstetric and paediatric care.
- Subclause (2) specifies that the Secretary must make available to CCOPMM resources of the Department of Human Services necessary to enable CCOPMM to carry out its functions.
- Subclause (3) defines the term *maternal death* for the purposes of this section.

Clause 47 provides that the Chairperson of CCOPMM may request a person who provided care or services to a child prior to the child's death to provide to CCOPMM general or specific information that the Chairperson considers necessary to enable the Consultative Council to conduct study, research and analysis into the incidence and causes of maternal deaths, stillbirths and deaths of children.

This clause provides that a person to whom such a request is made is authorised to provide the requested information.

The note refers to section 227 which provides protections to persons who give information they are authorised or required to give under this Act.

Clause 48 provides that a birth must be reported to CCOPMM in a form approved by CCOPMM by the persons specified in the section, depending on the circumstances of the birth. It is an offence for a person not to submit the required report, and a penalty of 10 penalty units applies.

PART 5—GENERAL POWERS

This Part requires the preparation of a State Public Health and Wellbeing Plan, provides for the holding of public inquiries and the preparation of Health Impact Assessments, and makes provision for the collection and disclosure of information.

Division 1—State Public Health and Wellbeing Plan

Clause 49 Subclause (1) provides that the Minister must ensure that a State Public Health and Wellbeing Plan is prepared no later than 1 September 2011 and every 4 years after that date.

Subclause (2) specifies the material to be included in the State Public Health and Wellbeing Plan including an assessment of the health needs and health determinants of the people of Victoria. The Plan must establish objectives and policy priorities for the protection of public health and wellbeing and explain how the available evidence will inform the achievement of the objectives and policy priorities.

The Plan must also specify the manner in which the State will work with other bodies undertaking public health initiatives, projects and programs in order to achieve the objectives and policy priorities.

Division 2—Public inquiries

Clause 50 provides for the conduct by the Secretary of public inquiries into serious public health matters. The Minister has the power to direct the Secretary to conduct a public inquiry and the Secretary may appoint a suitably qualified person or panel of persons to conduct a public inquiry. Section 19(5) of this Act provides for the delegation by the Secretary of the power conferred by this section to an executive or other prescribed senior officer.

The clause provides that details of an inquiry are to be published in the Government Gazette.

Clause 51 defines the term *Convenor* to be the Secretary or the person or panel of persons appointed by the Secretary to conduct a public inquiry.

The procedure of a public inquiry is in the discretion of the Convenor, who may proceed with as little formality as is appropriate in the circumstances. The Convenor may determine whether a hearing will be held, and is not bound by the rules of evidence.

The clause provides that the Convenor must allow a person affected by a public inquiry to legal representation. The Convenor may or may not allow a person to be represented by another person.

The clause provides that sections of the **Evidence Act 1958** regarding the power to send for persons and papers, the power to examine upon oath, penalties for non-attendance or refusing to give evidence and privileges and immunities in relation to inquiries apply to a Convenor in the same way they as they apply to boards appointed by the Governor in Council.

The clause provides that a person who is required to appear as a witness at a public inquiry is entitled to receive reasonable expenses as determined by the Convenor.

The clause provides that it is an offence to give false or misleading information to a Convenor or intentionally hinder or obstruct the conduct of a public inquiry. A penalty of 60 penalty units applies in the case of a natural person and 300 penalty units in the case of a body corporate.

Clause 52 makes provision for the report of a public inquiry. The Secretary must publish the report within 3 months of the conclusion of the inquiry.

Division 3—Health Impact Assessments

- Clause 53 empowers the Minister to direct the Secretary or the Chief Health Officer to conduct a Health Impact Assessment of the public health and wellbeing impact of a matter specified in the direction. The Minister may direct that a Health Impact Assessment is to be completed within a specified period. The intention of this provision is to enable the impact on health of government policy initiatives to be assessed and taken into account in planning and implementation of those initiatives.

Division 4—Collection and disclosure of information

- Clause 54 provides that this clause applies in addition to any provision of the Act and regulations concerning the provision, collection, use or disclosure of information and prevails in the case of any inconsistency.

- Clause 55 Authorises a person to provide information to the Secretary, the Chief Health Officer or an authorised officer if the person reasonably believes that the disclosure is necessary to assist the Secretary, the Chief Health Officer or the authorised officer to perform a function or duty or exercise a power under this Act or the regulations.

The note refers to section 227 which provides protections to persons who give information they are authorised or required to give under this Act.

- Clause 56 This clause permits the Secretary to disclose information held by the Secretary under or for the purposes of this Act and the regulations to a relevant body where an agreement between the parties requires or allows for the disclosure and the disclosure is for the purpose of promoting or protecting public health.

The clause defines the term *relevant body* to include the Commonwealth government and the government of another State or Territory, government departments of the Commonwealth and of the States and a Territory, or an entity established for a public purpose by an Act in any Australian jurisdiction, as well as any body including an international body that is prescribed for the purposes of this section.

It is envisaged that such arrangements may include the sharing of information in relation to communicable diseases to enhance the ability within Australia to identify and respond quickly to public health events of national significance, and the sharing of information to protect against the international spread of disease.

Clause 57 provides for the sharing of information between the different regulators exercising powers and performing functions under the Act and regulations. These powers will allow the Secretary and municipal councils, for example, to administer more effectively provisions relating to nuisance, prescribed accommodation and registered businesses.

The clause also allows a Council or the Secretary to share information held by it as the regulator under Part 6 or 7 respectively of the Act with other government departments, statutory bodies or persons responsible for exercising powers under other Acts and regulations, in order to assist that other department or body to perform its statutory functions.

An example may be the sharing of information about cooling tower systems with the Environment Protection Authority, or about pest control with the Department of Primary Industries.

PART 6—REGULATORY PROVISIONS ADMINISTERED BY COUNCILS

This Part sets out a scheme for municipal councils to manage nuisances that are dangerous to health or offensive and requires the registration with the municipal council of certain premises and businesses.

Division 1—Nuisances

Clause 58 provides that this Division applies to nuisances if they are, or are liable to be, dangerous to health or offensive. This section defines the term *offensive* to mean noxious or injurious to personal comfort. The definition of *offensive* is narrower than that in the **Health Act 1958**, which was "noxious, annoying or injurious to personal comfort".

The clause set out some of the main types of nuisance and gives some guidance on how it may be determined that a nuisance is dangerous to health or offensive.

Clause 59 describes the effect of the Division.

Clause 60 provides that a Council has a duty to remedy as far as is possible nuisances existing in its municipal district.

Clause 61 provides that it is an offence for a person to knowingly cause a nuisance, or to knowingly allow or suffer a nuisance to exist on, or emanate from, any land owned or occupied by that person. A penalty of 120 penalty units applies to natural persons, and 600 penalty units to body corporate.

It is defence if a person, who knowingly allows or suffers a nuisance, has a lawful excuse.

Clause 62 states that any person may notify the municipal council in whose municipal district an alleged nuisance exists and that the Council is required to investigate the notification.

The clause provides that where a nuisance is found to exist the Council must take any of the range of actions specified in the clause to abate the nuisance. This includes the issuing of an improvement notice or prohibition notice. If the Council considers it more appropriate, it may advise the person who made the notification of available methods for settling the matter privately.

Clause 197 sets out a procedure by which a municipal council may bring proceedings in the Magistrates' Court if it has issued an improvement or prohibition notice in respect of a nuisance and that notice has not been complied with, or if it considers that the nuisance is likely to recur.

Clause 63 provides that if a municipal council does not, within a reasonable time, investigate the notification of an alleged nuisance, the notifier may make a complaint to the Magistrates' Court. The Magistrates' Court may summon the person alleged to be creating the nuisance and may proceed as if the complaint had been made by a Council.

The clause provides that if the Magistrates' Court considers that the person making the complaint had reasonable grounds for doing so, it may order the Council to pay any costs or expenses incurred by the complainant. The Magistrates' Court must not make such an order without giving the Council an opportunity to be heard.

Alternatively, if it finds the complaint is frivolous or vexatious the Magistrates' Court may order that the complainant pay the costs and expenses of the person who has answered the complaint.

Clause 64 provides that only the municipal council within whose district a nuisance wholly or partly exists may bring proceedings in relation to it.

Clause 65 provides that a municipal council may investigate nuisances existing outside its municipal district if that particular nuisance affects its municipal district.

Clause 66 makes provision for dealing with nuisances on, or emanating from, land for which an owner or occupier is unknown or cannot be found.

The clause provides that the municipal council within whose district the nuisance is wholly or partly located may exercise powers with regard to a nuisance on this type of land. The Council may enter and take steps to abate the nuisance, and do anything necessary for the abatement. Only one municipal council may be taking this abatement action at any time.

The clause provides that any reasonable costs incurred in abating a nuisance in these circumstances is a debt payable to the Council, and specifies how and from whom the debt is recoverable. *Reasonable costs* is defined for the purposes of this section.

Division 2—Registration of prescribed accommodation

Clause 67 provides that the proprietor of accommodation of the type prescribed in regulation must register the accommodation with the Council. The clause specifies that failure to register the prescribed accommodation is an offence. A penalty of 60 penalty units applies to natural persons and 300 penalty units to a body corporate.

The broad categories of *prescribed accommodation* are defined in section 3 of this Act. The definition has been expanded from that in the **Health Act 1958** to include accommodation provided in the course of employment. The types of accommodation required to register may include rooming houses, hostels and motels.

Division 3—Registration of certain businesses

Clause 68 specifies the types of businesses conducting activities that may lead to the transmission of disease to which this Division applies. These include beauty therapy, hairdressing and businesses involving tattooing or other skin penetration, all of which were required to be registered under the **Health Act 1958**. Businesses involving colonic irrigation have been added to those to which the **Health Act 1958** applied.

Clause 69 requires a person conducting a business of the type specified to register the premises at which the business is conducted with the Council in whose municipal district the premises are located. It is envisaged that the specific regulatory scheme set out in regulations would be proportionate to the level of risk associated with the specific activity.

The clause provides that some businesses may be prescribed as exempt from this obligation to register. This would enable hospitals, for example, to be exempted for the requirement to register with the Council.

Division 4—General provisions relating to registration

- Clause 70 applies both to the registration of prescribed accommodation under Division 2 and to the registration of premises under Division 3.
- Clause 71 provides that an application for registration must be made to the Council in the approved form, contain required information and particulars and must be accompanied with the applicable fee.
- Clause 72 provides that registration fees will be determined by resolution of the relevant Council, or by regulation, depending on the circumstances. The clause allows for the setting of fees in the usual circumstance where a Council administers Part 6 within its own municipal district, as well as various other circumstances arising from the making of an Order made under section 12.
- Clause 73 sets out the powers that may be exercised by Councils when considering applications for registration.
- Clause 74 provides that registration must be issued, transferred or renewed in the form of a certificate approved by the Council. Registration must be for a period not longer than 3 years as specified in the registration.
- Clause 75 provides that registration may be subject to the specified types of conditions and that it is an offence for a person to fail to comply with any condition of registration. A penalty of 60 penalty units applies to natural persons and a penalty of 300 penalty units applies to a body corporate.
- Clause 76 sets out the powers of Councils with respect to registration, and the grounds on which they may make decisions regarding registration, such as the decision to issue, refuse to issue, vary, cancel or transfer registration.

Subclause (3) specifies that Councils are obliged to notify the applicant or registration holder in writing of the grounds for making a decision regarding registration.

- Clause 77 provides that despite the delegation powers specified in the **Local Government Act 1989** a decision to refuse an application for registration must be later ratified by the Council to be valid.
- Clause 78 allows a Council to issue replacement certificates where a certificate is lost, stolen or destroyed.

PART 7—REGULATORY PROVISIONS ADMINISTERED BY THE SECRETARY

The provisions in this Part are administered by the Secretary. The Part sets out the obligations applicable to the owners of land on which there are cooling towers and owners of cooling tower systems and to licensed pest controllers. The provisions relating to cooling tower systems were previously contained in the **Building Act 1993**.

Division 1—Cooling tower systems

- Clause 79 defines when a cooling tower system is considered to be in operation. The term *cooling tower system* is defined in section 3 of the Act. The risk to health posed by cooling tower systems relates to the potential spread of Legionnaires' disease.
- Clause 80 provides that cooling tower systems in operation must be registered with the Secretary and that it is an offence for the owner of land on which there is a cooling tower system in operation to fail to ensure that the system is registered. A penalty of 120 penalty units applies for a natural person, 600 penalty units for a body corporate.
- Clause 81 sets out the procedure for applications for registration or renewal of cooling tower systems.
- Clause 82 provides that the Secretary has the power to request the applicant to provide specified information before an application is considered.
- Clause 83 specifies that the Secretary must provide the owner of the relevant land with a certificate of registration or renewal including the date of registration or renewal and the date of expiry.
- Clause 84 provides for the circumstances where a single application may be made in respect of 2 or more cooling tower systems. The application must contain the details of each cooling tower

system and may be made on behalf of one or more owners of the cooling towers.

Clause 85 provides that initial registration periods and subsequent renewal periods for cooling tower systems are for a period up to 3 years from the date on which registration or renewal is made.

The clause makes provision for late renewals.

Clause 86 provides that if the Secretary receives an application for renewal before the registration was due to expire the registration is deemed to continue until a certificate of registration is issued and the registration is deemed to have been renewed on the day after expiry.

Clause 87 provides that it is an offence for the owner of land on which there is cooling tower system to fail to notify the Secretary of a change in ownership of the land, or a change in address or contact details of the owner, within 30 days of the change. A penalty of 10 penalty units applies for a natural person, and 50 penalty units for a body corporate.

Clause 88 provides that it is an offence for a person holding the certificate of registration of a cooling tower system to fail to notify the Secretary in the prescribed form and manner of any addition or removal of cooling towers from a system, the removal or decommissioning of cooling tower systems, or relocation of cooling tower systems within 30 days of such an event. A penalty of 10 penalty units applies for a natural person, and 50 penalty units for a body corporate.

Clause 89 requires the Secretary to maintain a register containing details of the location of registered cooling tower systems and to ensure that the register is available for inspection by members of the public during normal office hours.

Clause 90 allows for the issue of replacement certificates of registration or renewal where original certificates have been lost, stolen or destroyed.

Clause 91 provides that owners of land on which there is a cooling tower system must take reasonable steps to ensure that a risk management plan exists in respect of the cooling tower system. It is an offence not to do so and a penalty of 60 penalty units applies for a natural person, and 300 penalty units for a body corporate.

The clause sets out the requirements for risk management plans.

Clause 92 sets out the requirements on the owner of land to review the risk management plan.

The clause also sets out a number of other triggering events on the occurrence of which the owner of land must take all reasonable steps to review the risk management plan.

It is an offence for the owner not to comply with these requirements. A penalty of 60 penalty units applies for natural persons, and 300 penalty units for a body corporate.

Clause 93 sets out the requirements of the owner in relation to auditing risk management plans.

It is an offence for the owner of land in which there is a cooling tower system to not take all reasonable steps to ensure that an annual audit of the risk management plan is conducted. A penalty of 60 penalty units applies for a natural person, and 300 penalty units for a body corporate.

Subclause (2) provides that an owner of land is not excused from the requirement of undertaking the audit because the audit can only be done at the owner's expense.

Subclause (3) specifies that the risk management plan audit must be undertaken by an approved auditor as defined in the Act. The audit is to determine if the risk management plan complies with the requirements of the Act, if the risk management plan has been implemented and whether the risk management plan has been reviewed in the 12 month period before the audit.

Subclause (4) requires the auditor to inspect all documents prescribed by the Act or Regulations.

Subclause (5) clarifies the role of the auditor.

Subclause (6) requires certificates to be issued by approved auditors. The certificate must be in an approved form.

The clause also provides that approved auditors must provide the Secretary with a copy of the information in the audit certificate within 7 days of completing the certificate. It is an offence for a person to fail to comply with this requirement. A penalty of 10 penalty units applies.

Clause 94 sets out the requirements for the certification of approved auditors.

- Clause 95 provides that only an approved auditor may conduct a risk management plan audit. It is an offence for any person who is not an approved auditor to undertake a risk management plan audit and a penalty of 60 penalty units applies.
- Clause 96 makes it an offence to impersonate an approved auditor. A penalty of 60 penalty units applies.
- Clause 97 sets out requirements by which conflicts of interest are to be avoided in the auditing of risk management plans. It is an offence for an *interested person*, as defined in the section or an employee or officer of that person, to conduct an audit. It is also an offence for a person to conduct an audit as an employee of another person, if any other employee of that other person has written or assisted in preparing the relevant plan. A penalty of 60 penalty units applies to both offences.
- Clause 98 makes allowance for the Secretary, if satisfied it will not result in a higher health risk, to declare by notice in writing optional variations to the risk management requirements applying to a particular cooling tower system or class of cooling tower system.

Division 2—Pest control

- Clause 99 makes it an offence for a natural person, in the course of the business of a pest control operator, to use any pesticide or class of pesticide without a pest control licence authorising him or her to use that pesticide or class of pesticides. A penalty of 120 penalty units applies. These provisions are intended to apply to operators whose business is to control pests in residential or commercial premises.
- Clause 100 provides exemptions from the offence provision for those using pesticides for the purposes specified, such as horticulture, agriculture, and the control of pest animals to protect an area that is not a commercial building or domestic premises.
- Clause 101 provides that the Secretary may receive applications from persons for the issue or renewal of a pest control licence to use a particular pesticide or class of pesticides.

The Secretary must not grant a pest control licence to persons who are under 18 years old, who do not have the prescribed qualifications, or who have not paid the prescribed fees.

Subclause (3) provides that the Secretary may grant an application for a pest control licence to a natural person who has obtained the age of 16 years, has paid the relevant prescribed fee and is enrolled in a prescribed course of training or is undertaking the training in the prescribed units of competency. The Secretary may approve applications under this subsection for a person no more than 3 times unless satisfied there are special circumstances for doing so. This allows for person aged 16 years or older to obtain a "trainee" licence.

Subsection (5) specifies that pest control licence renewal applications may be made before an existing licence expires or within the period of 60 days after the licence has expired.

Clause 102 provides that pest control licences and renewals expire on the date specified on the licence, but no longer than a period of 3 years from the date of issue. The clause also makes provision for the expiry of licences granted pursuant to clause 101(3) and makes provision for renewals.

Clause 103 sets out conditions that apply to all pest control licences and other conditions that may apply only in some cases.

Clause 104 specifies that licence holders may apply to the Secretary in the prescribed form to alter the terms or conditions of a pest control licence.

Clause 105 specifies the powers of the Secretary in relation to a pest control licence, and sets out the grounds on which a decision in relation to a licence may be made.

Subclause (3) empowers the Secretary to vary or delete conditions where satisfied such actions will not make the licence inconsistent with requirements of the Act.

Subclause (4) specifies that the Secretary must advise the licence holder in writing of any decision and must specify the grounds on which the decision was made.

Subclause (5) provides that the Secretary may require a licence holder to give the licence to the Secretary so that a new licence with revised conditions can be issued.

Subclause (6) specifies that it is an offence to fail to comply with a requirement to give a pest control licence to the Secretary. A penalty of 10 penalty units applies.

Clause 106 sets out the matters to be specified on pest control licences and requires the Secretary to advise the applicant in writing of the licence conditions.

- Clause 107 allows the issue of replacement licences.
- Clause 108 provides that it is an offence for a pest control operator not to keep records as specified in the regulations. A penalty of 10 penalty units applies for a natural person, and 50 penalty units for a body corporate.
- Clause 109 provides that it is an offence for the holder of a pest control licence to fail to comply with the licence conditions. A penalty of 120 penalty units applies.
- The clause also provides that it is an offence if a pest control operator does not take all reasonable steps to ensure that his or her employees comply with the Act and regulations. A penalty of 60 penalty units applies for a natural person, and 300 penalty units for a body corporate.
- Clause 110 makes it an offence for a person who does not hold a pest control licence to claim to be the holder of a pest control licence, advertise as being qualified to use pesticide that would require a licence, or represent that they have used pesticide in circumstances requiring a licence. A penalty of 60 penalty units applies for a natural person.

PART 8—MANAGEMENT AND CONTROL OF INFECTIOUS DISEASES, MICRO-ORGANISMS AND MEDICAL CONDITIONS

Part 8 concerns the management and control of infectious diseases. The Part allows the Chief Health Officer to make public health orders and examination and testing orders in relation to a person who has or may have an infectious disease and who is, as a result, a serious risk to public health. The Chief Health Officer will make these decisions based on his knowledge and expertise as a registered medical practitioner.

This Part also provides for the making of orders by the Chief Health Officer or a senior medical officer in a health service in response to an incident involving a caregiver or custodian in which there is a risk of an infectious disease having been transmitted.

This Part contains the requirements for notification to the Secretary of occurrences of prescribed infectious diseases, micro-organisms and medical conditions by registered medical practitioners and pathology laboratories as part of disease surveillance and prevention.

Provisions relating to the immunisation of primary school children, donations of blood and tissue, the conduct of autopsies as well as infectious disease control in the sexual services industry are included in this Part.

Division 1—Principles

- Clause 111 describes the principles that are to apply to the management and control of infectious diseases. In the administration of this Part, the interests of the public in being protected from infectious diseases must be balanced against the rights of an individual who may be infected.

Division 2—Examination and testing orders and public health orders

- Clause 112 provides that when considering taking action under this Division to minimise the risk that a person poses to public health, the measure least restrictive of the rights of the person should be chosen. The common law requirements of procedural fairness apply to the making of orders by the Chief Health Officer under section 113 and 117.

- Clause 113 permits the Chief Health Officer to make an examination and testing order relating to a person who has, or has been exposed to, an infectious disease. The clause sets out the grounds on which the Chief Health Officer may take this action, which include that if the person has the disease, there is a serious risk to public health. It also sets out requirements for the form and content of the examination and testing order.

An examination and testing order may require a person to undergo one or more specified examinations and tests by a registered medical practitioner. The specified examinations and tests must be the least intrusive and invasive necessary to ascertain whether the person has the infectious disease. If the person fails to undergo a specified examination or test, the person may be detained, in isolation if necessary given the nature of the disease, at a specified place for a period up to 72 hours for the purpose of testing and examination. This is equivalent to section 121(5) of the **Health Act 1958**.

The examination and testing order may be subject to any conditions the Chief Health Officer considers appropriate.

- Clause 114 provides that examination and testing orders have effect from the time of service on the person subject to the order and that copies must be provided to any registered medical practitioner specified in the order.

The clause provides that if a person is detained under an order, the period of detention commences when the person is in the physical custody of the person who is going to take the person to the specified place of detention.

The clause also sets out the circumstances in which an examination and testing order may be revoked, and the limited circumstances in which a further order providing for a person to be detained may be made.

- Clause 115 obliges a registered medical practitioner who conducts an examination or test to provide the results to the Chief Health Officer and to the person on whom the examination or test was conducted.

The note refers to section 227 that provides protections to persons who give information authorised or required to be given under this Act.

- Clause 116 makes it an offence for a person to fail to comply with an examination and testing order. A penalty of 60 penalty units applies.

- Clause 117 Subclause (1) permits the Chief Health Officer to make a public health order relating to a person who has, or has been exposed to, an infectious disease and sets out the grounds on which the Chief Health Officer may take this action. These include that the action is necessary to eliminate or reduce the risk of the person causing a serious risk to public health.

Subclause (2) specifies the factors to be taken into account by the Chief Health Officer when making a decision about a public health order.

Subclause (3) sets out the requirements for the form and content of a public health order. A person subject to a public health order also has the right under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998** to request the Chief Health Officer to provide a written statement of reasons for the decision.

Subclause (4) provides that a public health order must not continue to have effect for a period greater than 6 months from the day it is made and must be proportionate to the risk that the person poses to public health.

Subclause (5) sets out an incremental range of restrictions that a person subject to a public health order may be required to comply with. These range from participating in counselling, to undergoing assessment by a psychiatrist or neurologist, to refraining from carrying out specified activities or behaviour absolutely or unless specified conditions are complied with, refraining from visiting a specified place or class of place, residing at a specified place during specified times and informing the Chief Health Officer of a change of residence, to

submitting to the supervision of a nominated person, to receiving a specified treatment and to submitting to detention or detention and isolation as specified. A power to make similar orders was found in section 121 of the **Health Act 1958**, but is set out in more detail in this section.

For example under clause 117(5)(c) a person may be directed not to use public transport or attend school or work (either absolutely or unless stated conditions are observed) in order to minimise the person's contact with others.

Clause 118 provides that public health orders are effective from the time the order is served on the person subject to the order and requires copies to be provided to any registered health practitioner required to perform any activity under the order.

The clause sets out the process and requirements for varying, revoking and extending public health orders.

Clause 119 provides that if the Chief Health Officer requests in writing that a registered medical practitioner provide information in relation to a person to the Chief Health Officer for the purpose of making a decision about a public health order, the registered medical practitioner must provide that information in writing to the Chief Health Officer as soon as is reasonably practicable.

The note refers to section 227 that provides protections to persons who give information authorised or required to be given under this Act.

Clause 120 makes it an offence for a person to fail to comply with a public health order. A penalty of 120 penalty units applies.

Clause 121 provides that a person subject to a public health order may apply to the Chief Health Officer for a review of the order and sets out the procedure for review. In response to the application, the Chief Health Officer may revoke, vary or confirm the order. Although there is no limit on the number of applications that may be made, it is intended that application for further review would be made on the basis of a claim of changed circumstances. There is an alternative avenue of review by the Victorian Civil and Administrative Tribunal under section 122.

Clause 122 provides that a person subject to a public health order may at any time while the order is in force apply to the Victorian Civil and Administrative Tribunal for a review of the order. Unless a stay is applied for and granted by the Tribunal, the order will remain in force pending the outcome of the review. Section 50 of the **Victorian Civil and Administrative Tribunal Act 1998** provides that the commencement of a proceeding for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless the Tribunal has made an order staying the operation of the decision. A person subject to a public health order would not need to apply to the Chief Health Officer for a review of the order under clause 121 before he or she applied for the order to be reviewed under this clause.

Clause 123 provides that an authorised officer who is a registered medical practitioner may enforce an examination and testing order or a public health order. The authorised officer may request the assistance of a member of the police force. It is an offence against section 183 of the Act to hinder or obstruct an authorised officer.

The clause states explicitly that a requirement in an examination and testing orders or a public health order that a person undergo any examination, test, pharmacological treatment or prophylaxis cannot be enforced by the use of force.

The clause provides that a member of the police force may use reasonable force to detain the person subject to an order under this section and to take that person to a place where an examination or test is to be carried out, or to another place where the person is required to be under the order. The reasons why a person is arrested or detained under this section must be explained to the person arrested or detained.

The clause provides that if he or she believes it necessary to enforce an order under this Division, an authorised officer may apply to the Magistrates' Court for a warrant for the arrest of a person subject to the order. The warrant may specify any conditions to which it is subject.

Clause 124 provides that no action lies against a registered health practitioner who in good faith and with reasonable care takes specified action in accordance with or authorised by this Division.

Clause 125 provides that the Chief Health Officer must facilitate any reasonable request for communication with others made by a person detained under an order made under this Division.

Division 3—Notifiable conditions and micro-organisms

Clause 126 provides that the Governor in Council may by Order declare an infectious disease or micro-organism to be a notifiable condition or notifiable micro-organism and sets out the details of notification that must be specified in the Order.

Subclauses (3) to (5) specify procedural matters in relation to the Orders made under this section.

The Orders have effect for a period of up to 12 months from the date they are gazetted to allow time for regulations to be made to permanently describe the diseases and micro-organisms as notifiable conditions or notifiable micro-organisms

Clause 127 sets out the requirements for a registered medical practitioner to notify the Secretary of a notifiable condition and the details that must be provided with the notification.

A notifiable condition is defined in section 3 of the Act. It is envisaged that notifiable diseases and conditions will be prescribed in regulations.

Failure to comply with these requirements is an offence. A penalty of 60 penalty units applies.

Clause 128 sets out the requirements for a person in charge of a pathology service to notify the Secretary of a notifiable condition and the details that must be provided with the notification. The term *pathology service* is defined in section 3 the Act.

Failure to comply with these requirements is an offence. A penalty of 60 penalty units applies.

Clause 129 provides that a health service and a pathology service must implement procedures to ensure that the registered medical practitioners employed at or engaged by the health service, and the person in charge of the pathology service comply with the notification requirements specified in this Division.

Clause 130 provides for the notification by a person in charge of a laboratory service within Victoria of the isolation or detection of a notifiable micro-organism in food and sets out the notification details that must be provided with the notification. Failure to provide notification details is an offence. A penalty of 60 penalty units applies.

The obligation to inform the Secretary does not apply if the notifiable micro-organism is isolated or detected during a test carried out for educational or academic purposes.

The clause also provides that if the proprietor of a food premises or a food vending machine is informed by a laboratory service that a sample of food handled by that proprietor has been tested and a notifiable micro-organism isolated or detected in the food, the proprietor must notify the Secretary of the notification details. Failure to provide notification details is an offence. A penalty of 60 penalty units applies.

Definitions of *food*, *laboratory service*, *food premises*, *handled* and *food vending machine* for the purposes of this section are included.

Division 4—HIV and other prescribed diseases

- Clause 131 provides requirements relating to pre-test counselling for HIV and other prescribed diseases. The information to be provided to a person requesting to be tested for one of these diseases will be prescribed in regulations.
- Clause 132 provides requirements relating to post-test counselling for HIV and other prescribed diseases. The classes of persons who may provide this counselling together with the details of information to be provided to the person to whom a positive test result relates will be prescribed in regulations.
- Clause 133 provides for the making of orders for the closure of a court or tribunal if the court or tribunal is satisfied that social or economic consequences to a person may follow the disclosure of information regarding HIV or other prescribed disease during court or tribunal proceedings. The powers outlined in this clause are additional to any other powers the court or tribunal may have.

The clause provides it is an offence to contravene orders made and posted under this section. A penalty of 120 penalty units applies for a natural person, and 600 penalty units for a body corporate.

Division 5—Orders for tests if an incident has occurred

- Clause 134 The purpose of this Division is to promote the occupational health and safety of certain "caregivers" (such as medical practitioners and nurses) and "custodians" (such as police officers) who are exposed to blood or other body fluids during the course of their work and may therefore have contracted a specified infectious disease. In this context, *specified infectious disease* is defined in section 3 to mean HIV, any form of hepatitis which may be transmitted by blood or body

fluids, and any infectious disease that has been prescribed to be a specified infectious disease.

While the risk of acquiring HIV or hepatitis following occupational exposure to contaminated blood is low, such an incident may cause significant distress to the relevant person and his or her family. Knowing whether the person who was the source of the exposure (the source) has a specified infectious disease can minimise the anxiety of the exposed person as well as inform decisions about the person's medical treatment. For these reasons, the source of an occupational exposure is routinely asked to provide their informed consent to be tested for HIV and various types of hepatitis. Consent to be tested is usually provided in these circumstances.

The purpose of this Division is to provide a framework for obtaining information about whether the source has a specified infectious disease in those rare circumstances where that person is unable or refuses to consent to be tested for a specified infectious disease. The diagnostic test for the diseases currently specified is a test of a sample of blood or urine. An order may be necessary if any person involved refuses to undergo this diagnostic test.

The clause sets out the circumstances in which the Chief Health Officer may make an order for a person involved in the one of these workplace incidents to be tested for a specified infectious disease.

The Chief Health Officer can only make an order under this section if he or she believes that the making of the order is necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment of a person involved in the incident.

Subclause (2) sets out the requirements for the form and content of an order made under this section. In these circumstances an order will require a person to give a sample of blood or urine or submit to a sample of blood or urine being taken. It must specify the place that the person named in the order is required to attend to have the test.

Subclause (3) provides that if the Chief Health Officer believes that it is necessary to do so to enforce an order made under this section, the Chief Health Officer may apply to the Magistrates' Court for an order to authorise a member of the police force to use reasonable force to—

- (a) take the person named in the order to the place specified in the order; or

- (b) restrain the person named in the order so as to enable a registered medical practitioner to take a sample of blood or urine; or
- (c) take the person named in the order to the place specified in the order and restrain the person named in the order so as to enable a registered medical practitioner to take a sample of blood or urine.

Subclause (4) provides that if the Magistrates' Court is satisfied by evidence on oath, whether orally or by affidavit, that the circumstances are so exceptional that the making of the order is justified, the Magistrates' Court may make the order applied for by the Chief Health Officer subject to any conditions that the Magistrates' Court considers are appropriate

The clause also provides for circumstances in which an order may be made when the person to be tested has died, or is unconscious or otherwise lacks capacity to consent to being tested.

Caregiver or custodian is defined in subclause (10) for the purposes of this section. This section is intended to apply to those occupations which by their nature involve a risk of contact with another person's blood or body fluids, and involve dealing with groups at risk of having a specified infectious disease. The classes of persons have been expanded on those in the **Health Act 1958**.

The clause also provides that where alternative measures are available which are effective in ensuring rapid diagnosis and clinical management, the measure least restrictive to the rights of the person should be implemented.

Orders made under this section can be distinguished from the examination and testing orders made under Division 2, in that orders are made under Division 2 if there is a serious risk to public health and the order is necessary to control that risk. Division 2 applies to risks posed by all infectious diseases, including, for example, tuberculosis, rather than a specified few.

In contrast, the orders made under this section are not a response to a serious risk to public health, but a response to a particular type of risk of infection to which caregivers and custodians may be exposed in the occupational setting.

Clause 135 provides that if the circumstances exist under which the Chief Health Officer could make an order under 134 for a person to be tested, and there is a suitable sample of blood or urine of that person already stored, then the Chief Health Officer can

authorise that the required test be carried out on that existing sample.

Clause 136 provides that if the Chief Health Officer believes that the circumstances exist for the making of an order in respect of a person involved in an incident under section 134, the Chief Health Officer may examine relevant health information held by the Department in relation to that person. The Chief Health Officer may also require a health service provider to provide to the Chief Health Officer any relevant health information held by it in relation to that person.

The section provides that the Chief Health Officer can only use the information obtained under this section for the purposes of this Division. These are the rapid diagnosis and clinical management and where appropriate, treatment, of any of those involved.

The clause outlines the conditions under which the Chief Health Officer may disclose health information about a person obtained under this section to another person involved in an incident.

It also limits the disclosure of identifying information about a person by another person to whom it has been provided for the purposes of this section. It is an offence for a person to breach this obligation. A penalty of 60 penalty units applies.

Health information about a person obtained under this section is not admissible in any legal proceedings including a criminal prosecution.

Clause 137 provides for the making of orders for, or the authorisation of, a test by a senior medical officer of a health service where an incident involving a caregiver or custodian has taken place. These orders can be made if a person involved in the incident is unable for the reasons specified to consent to being tested.

A senior medical officer is not empowered to make an order if a person involved in an incident at the health care service refuses to be tested. Application for an order in relation to any person who has refused a test must be made to the Chief Health Officer.

Senior medical officer is defined for the purposes of the section as a senior medical officer employed or engaged by a denominational hospital, multi-purpose service or public hospital and authorised by the chief executive officer of that hospital to make orders or authorise testing for the purposes of this section. The definition also includes senior medical officers employed by approved private hospitals registered

under Part 4 of the **Health Services Act 1998** and authorised by the chief executive officer to make orders or authorise testing for the purposes of this section. If a health service does not have a senior medical officer appointed to perform this role, application for an order must be made to the Chief Health Officer.

Subclause (2) deems that Director of the Victorian Institute of Forensic Medicine appointed pursuant to section 68 of the **Coroners Act 1985** is a senior medical officer for the purpose of this clause. The Director may authorise a senior medical officer employed or engaged by the Victorian Institute of Forensic Medicine to make orders or authorise testing in accordance with this section.

The authorised senior medical officer has all the powers of the Chief Health Officer to make orders under 134(1)(c)(ii) or 134(5), that is, in circumstances where a person who should be tested is unable to consent because they are unconscious, lack capacity to consent or are dead. The senior medical officer may make an order subject to conditions and vary or revoke the order. In order to make the order the senior medical officer would need to be satisfied that the circumstances referred to in section 134 exist.

The provisions in the Division apply to orders and authorisations made by senior medical officers as if the order or authorisation were made by the Chief Health Officer under section 134 and 135 respectively, except that sections 134(3) and (4) regarding the use of reasonable force when a person refuses to undergo a test do not apply to an order made by a senior medical officer.

Clause 138 requires that persons who made orders in the circumstances specified in section 134(1)(c)(ii), or 134(5), or authorised testing under section 135 in the circumstances specified in section 134(1)(c)(ii) or 134(5), must ensure that the relevant person is counselled by a registered medical practitioner. This applies to orders made when a person has been unable to consent because they are unconscious, lack capacity to consent or are dead.

In the case of a person whose sample of blood was tested who regains capacity to consent to testing, the counselling must be provided to that person.

In the case of a person whose body sample is tested who is dead or has not regained capacity to consent to testing, the relevant person to be counselled is specified in this section. The section sets out the matters to be addressed in counselling.

Clause 139 provides that a registered medical practitioner or pathologist who conducts a test under, or in relation to, an order or authorisation must communicate the results to the Chief Health Officer, or the senior medical officer who ordered or authorised the test without delay.

On receiving the test results, Chief Health Officer or senior medical officer must without delay give notice of the test results to the specified persons including the person tested.

Health information about a person obtained under this section is not admissible in any legal proceedings including a criminal prosecution.

Clause 140 imposes an obligation on the specified persons who receive notice of the test results of another person under this Division, not to disclose information that would identify another person.

The clause provides that it is an offence for the specified persons to disclose information identifying a tested person. A penalty of 60 penalty units applies.

Subclause (2) provides that the Chief Health Officer and senior medical officers must not include information identifying the person tested when advising other persons involved of test results.

Clause 141 provides that the Chief Health Officer may give direction to a health services, authorised senior medical officers and others about the specified matters relating to the operation of this Division. The health service, authorised senior medical officers and others must comply with such a direction.

Clause 142 provides that no action lies against a registered health practitioner who in good faith and with reasonable care takes a sample of blood or urine, or conducts a test in accordance with this Division or provides information about tests results or counselling authorised by this Division.

Division 6—Reporting requirements

Clause 143 provides that the Chief Health Officer must report on the numbers of orders made under sections 113, 117 and 134 and the reasons for the making of those orders in the Department's annual report.

Division 7—Immunisation

- Clause 144 provides that the requirements regarding immunisation status certificates in section 145 and 146 apply in relation to any to children that are to attend primary school.
- Clause 145 requires the parent of a child to give an immunisation status certificate documenting the child's immunisation status in respect of each vaccine preventable disease to the person in charge of the primary school that the child is to attend. An immunisation certificate does not serve as a basis for exclusion of children from school. It is used to identify those children who may be at risk if there is an outbreak of an infectious disease at the school in order to be able to protect them from that risk.
- Clause 146 requires a person in charge of a primary school to take reasonable steps to obtain an immunisation status certificate in respect of each child attending the school and to ensure that student immunisation records are kept up to date.
- A person in charge of a primary school must not refuse a child admission to the school only because an immunisation status certificate has not been produced in respect of that child. The Act provides regulatory power for excluding unvaccinated children during outbreaks at the school for the purpose of protecting unvaccinated children's health.
- Clause 147 states what an immunisation status certificate is. The clause also defines what is to be considered evidence for the purposes of the certificate.
- Clause 148 sets out when and by whom an immunisation status certificate may be issued to a parent.
- Clause 149 provides that person in charge of a primary school may rely on statements in an immunisation status certificate.

Division 8—Blood and tissue donations

- Clause 150 sets out the application of this Division. The Division applies to any legal action in tort, in contract, under statute or otherwise by or on behalf of a person who claims to have been infected with an infectious disease (being HIV, Hepatitis C or a prescribed disease) by donated blood or blood products made from donated blood, or by donated tissue. It provides a statutory defence in specified circumstances to any action commenced after this section comes into effect.

Section 244 provides transitional provisions relating to these legal actions.

- Clause 151 relates to blood donations. The circumstances in which the statutory defence is available are set out in detail in Table 1 in the Schedule to the Act. The defence provides protection from legal liability to the Australian Red Cross Society and other health services, to those employed by them, and to registered health professionals that deal appropriately with donated blood for the benefit of the community.
- Clause 152 refers to tissue donations. The circumstances in which the statutory defence is available are set out in Table 2 in the Schedule to the Act. The defence provides protection from legal liability for health services, registered medical practitioners and others that deal with donated tissue in the course of infertility treatment and other medical treatment.
- Clause 153 relates to evidence presented in proceedings for any action referred to in sections 151 and 152.
- Clause 154 provides that no action lies against a donor for the transmission of an infectious disease to another person from his or her donation unless the donor has been prosecuted and found guilty of the offence of knowingly making a false statement on the donation form. This provision is designed to encourage donors to donate blood and tissue without fear of legal liability if they act in good faith.
- Clause 155 provides that it is an offence for a person to knowingly make a false statement in relation to his or her donation of blood or tissue. A penalty of 120 penalty units or imprisonment for 1 year applies.

The clause also provides that it is an offence for a person to make a false statement, in response to inquiries made before the use of tissue from a deceased person, about whether the deceased person had engaged in behaviour that meant that he or she was at high risk of having an infectious disease. A penalty of 120 penalty units applies.

Division 9—Autopsies

- Clause 156 permits the Chief Health Officer to cause an autopsy to be conducted on a deceased person if the Chief Health Officer believes that an infectious disease caused or contributed to that person's death, and the disease presents a serious risk to public health.

The clause does not apply to a body over which the Coroner has jurisdiction.

The Chief Health Officer may require a registered medical practitioner who has appropriate qualifications and experience to carry out the autopsy.

The provision permits the Chief Health Officer to order a body to be transported to a particular registered medical practitioner.

Subclause 4 specifies that it is an offence for a person to fail to give possession of the body to a registered medical practitioner when directed to do so by the Chief Health Officer. A penalty of 10 penalty units applies.

Clause 157 provides that the Chief Health Officer must notify the senior next of kin of a person of a decision to perform an autopsy on that person.

The clause specifies that the notice to the senior next of kin of the deceased must be in writing, and that unless the Chief Health Officer believes that an autopsy must be performed immediately, the autopsy must not be performed until 48 hours after the senior next of kin has been given notice.

The senior next of kin may apply to the Supreme Court at any time within 48 hours after receiving notice for an order preventing the autopsy. The Supreme Court may order that no autopsy be performed depending on the circumstances of the case.

In this clause the term *senior next of kin* has the same meaning as in section 29 of the **Coroners Act 1985**.

Division 10—Brothels and escort agencies

This Division contains regulatory requirements for the control of infectious disease by proprietors of brothels and escort agencies.

Clause 158 Subclause (1) provides it is an offence for a brothel proprietor to fail to provide a free supply of condoms and water based lubricant readily accessible by sex workers and clients and available in sufficient quantities for the sex workers and clients. A penalty of 60 penalty units applies.

Subclause (2) provides it is an offence for a brothel proprietor to not store unused condoms in protective containers and that it is an offence for a brothel proprietor to fail to dispose of unused

condoms at their expiry date. A penalty of 60 penalty units applies.

Subclause (3) provides it is an offence for a brothel proprietor to fail to take reasonable steps to ensure used condoms are kept in sealed containers prior to their removal from the brothel. A penalty of 60 penalty units applies.

Clause 159 Subclause (1) provides that it is an offence for a brothel proprietor to fail to take reasonable steps to ensure clients and sex workers use condoms during any sexual activity involving penetration. A penalty of 60 penalty units applies.

Subclause (2) provides that it is an offence for a brothel proprietor to discourage the use of condoms in a brothel. A penalty of 60 penalty units applies.

Subclause (3) provides that it is an offence for an escort agency proprietor to fail to take reasonable steps to ensure that a client and a sex worker use condoms during any sexual activity involving penetration arranged by an escort agency. A penalty of 60 penalty units applies.

Subclause (4) provides that it is an offence for an escort agency proprietor to discourage the use of condoms during any sexual activity arranged by the agency. A penalty of 60 penalty units applies.

Clause 160 provides that it is an offence for the proprietor of a brothel or an escort agency to require a sex worker to provide a service to a client if the sex worker has refused to provide the service because the sex worker suspects the client is infected with an infectious disease or because the client has refused to use a condom. A penalty of 120 penalty units applies for a natural person, and 600 penalty units for a body corporate.

Clause 161 provides that it is an offence for the proprietor of a brothel or escort agency to fail to take reasonable steps to ensure sex workers do not use or display evidence of the sex worker's attendance at a medical examination in order to induce a client to believe that the worker is free from infection with an infectious disease. A penalty of 60 penalty units applies.

Clause 162 provides that it is a requirement on the proprietor of a brothel or an escort agency to provide easily accessible written information in a variety of languages about sexually transmitted infections for the benefit of sex workers and clients. A penalty of 10 penalty units applies for failure to comply with the requirements set out in the section.

- Clause 163 provides that it is an offence for a brothel proprietor to fail to provide clean linen and towels for the use of each client. A penalty of 10 penalty units applies.
- Clause 164 Subclause (1) provides that it is an offence for a brothel proprietor to fail to provide adequate baths and showers for the use of sex workers and clients. A penalty of 10 penalty units applies.
- Subclause (2) provides that a brothel proprietor must ensure that baths and showers are cleaned and disinfected after each use. A penalty of 10 penalty units applies.
- Clause 165 provides that the Secretary must ensure that each brothel licensed pursuant to Part 3 of the **Prostitution Control Act 1994** is inspected at least once in any 12 month period.
- Subclause (2) provides that that it is an offence for a brothel proprietor to refuse the request of an authorised officer to interview sex workers on brothel premises without the proprietor present. A penalty of 60 penalty units applies.
- Subclause (3) specifies that authorised officer in this section means an authorised officer whose appointment includes the power to conduct inspections and interviews under this section

PART 9—AUTHORISED OFFICERS

Part 9 deals with the exercise of powers under the Act and the regulations by authorised officers.

Division 1—General

- Clause 166 provides that an authorised office must produce an identity card for inspection before exercising powers under the Act or regulations, unless it is impractical to do so. Authorised officers are also required to produce an identity card when requested to do so by the occupier of any premises during the exercise of a power under the Act or regulations. If the authorised officer does not comply with the request the authorised officer must immediately cease exercising the power.
- Clause 167 provides that an authorised officer may request a person to provide information which the officer believes is necessary to investigate whether there is a risk to public health, or to manage or control a risk to public health.

The authorised officer must at the time of making the request advise the person that he or she may refuse to provide the information.

A person is authorised by this section to provide the information requested.

The note refers to section 227 that provides protections to persons who give information authorised or required to be given under this Act.

Division 2—Powers of entry

Clause 168 This clause provides for entry to premises for the purpose of investigating a possible risk to public health or managing or controlling a risk to public health. It provides that an authorised officer may enter a public place and, with the consent of the occupier, may enter other premises including residential premises, for this purpose.

Having entered the premises in accordance with this section, an authorised officer may exercise the powers set out in section 175.

The clause provides that an authorised officer may also enter land around the premises if it is necessary to do so to contact the occupier to obtain consent to entry under this section. For the purpose of contacting the occupier, an authorised officer may also enter any part of the premises that the officer considers can be entered by a member of the public.

The clause defines public place for the purposes of the section.

Clause 169 This clause provides for entry to premises for the purpose of monitoring compliance with the Act and regulations, and investigating a possible contravention of this Act or the regulations. Authorised officers may enter regulated premises during daylight hours, or while the premises are open to the public. The clause sets out the types of regulated premises to which this power of entry applies. For example, an authorised officer may enter land on which there is a cooling tower to ensure that prescribed requirements are being met.

If a registered business premises, such as a hairdresser, is located in or is part of a residential premises, the power to enter extends only to those parts of the premises it is reasonably necessary to enter to monitor compliance with the Act and regulations.

In relation to any possible contravention of the Act or regulations, if an authorised officer believes on reasonable grounds there may be an immediate risk to public health on any premises, the officer may enter the premises without a warrant at any time in order to investigate, eliminate or reduce the risk to public health. The clause sets out requirements for the exercise of this power of entry.

The clause clarifies that an authorised officer may enter any premises for the purpose of monitoring compliance with the Act and regulations, and investigating a possible contravention of this Act or the regulations at any time with the consent of the occupier, or with a warrant. Otherwise, the powers are as set out above.

The clause makes similar provision to section 168 for entry onto premises for the purpose on contacting the occupier to obtain consent to enter under this section.

It is noted that any powers conferred by this Act in relation to entry to residential premises without a warrant must be exercised in accordance with section 187.

Clause 170 Search Warrants.

This clause sets out the procedure by which an authorised officer may obtain a search warrant from the Magistrates' Court.

The clause sets out the grounds on which the Magistrates' Court may grant a search warrant, and the requirements for the form and content of the warrant.

Division 3—Procedure for entry

Clause 171 sets out the requirements on authorised officers to announce the exercise of a power of entry before entering the premises.

Clause 172 sets out the requirements on authorised officers to leave notice if a power of entry conferred by this Act is exercised at premises where an owner or occupier is not present. This applies to a power of entry to investigate, manage or control a risk to public health under section 169(3), to exercise public health risk powers under section 190(1)(c), or to ensure compliance with a direction or notice under section 229.

Clause 173 sets out the requirements on authorised officers to announce the exercise of a power of entry under search warrant before entering premises to execute the warrant, and the circumstances in which announcement is not required.

Clause 174 requires authorised officers to identify themselves to an occupier present when a search warrant is being executed by producing an identity card and giving the person present the execution copy of the warrant.

Division 4—Powers after entry

Clause 175 sets out in detail the powers that may be exercised by an authorised officer who enters premises under powers conferred by this Act. An authorised officer may be assisted by any person in the exercise of any of these powers. For example, these powers may be exercised after entry in accordance with section 168.

Clause 176 provides that authorised officers entering regulated premises under section 169 for the purpose of monitoring compliance with the Act and regulations, and investigating a possible contravention of this Act or the regulations may direct a person at the premises to produce a document, operate equipment to access information from that equipment, or answer questions.

The clause provides that it is an offence for a person at the premises not to comply with a direction given under this section unless the person has a reasonable excuse. A penalty of 60 penalty units applies in the case of a natural person and 300 penalty units in the case of a body corporate.

The clause provides that before giving the direction the authorised officer must warn the person that refusal or failure to comply with a direction without reasonable excuse is an offence. The officer must also inform the person that they do not have to answer any question if answering the question would intend to incriminate them. If the warning is not provided a person may not be prosecuted for an offence against this section.

Clause 177 sets out the requirements on authorised officers to provide receipts for samples taken or items seized. Receipts may be left in a conspicuous and secure place at the premises or sent to the occupier of the premises.

Clause 178 provides that if an authorised officer retains possession of a seized document the authorised officer must give the person a copy of the document certified as correct by the authorised officer.

Subclause (2) provides that a copy of a document certified under this section will be received by all courts and tribunals as evidence of equal validity to the original document.

Clause 179 sets out requirements for the retention and return of seized documents and things within 3 months of seizure.

The clause does not apply to property forfeited to the Secretary or to a municipal council under section 181.

Clause 180 provides that the Magistrates' Court may grant an extension to the period for which an authorised officer may retain a document if satisfied of the grounds set out in this section. Owners of documents must be advised of extension applications made under this section.

Clause 181 Subclause (1) provides grounds for the forfeiture to the Secretary or municipal council of things seized and retained under the Division.

Subclause (2) provides that if a thing is forfeited to the Secretary or Council the owner must be given notice in writing setting out how the owner may seek review of the decision to forfeit the property. This provision does not apply if the owner cannot be found after reasonable inquiries are made.

Clause 182 provides that the Secretary or Council may destroy or otherwise dispose of any thing forfeited under section 181.

Division 5—Offences and complaints

Clause 183 makes it an offence for a person to hinder or obstruct an authorised officer exercising a power under this Act or the regulations without reasonable excuse. A penalty of 60 penalty units applies.

Clause 184 provides that it is an offence for a person to impersonate an authorised officer. A penalty of 60 penalty units applies.

Clause 185 provides that a person may complain about the exercise of a power by an authorised officer under this Act or the regulations to the Secretary or municipal council. Complaints must be investigated and a written report of the results provided to the complainant.

Clause 186 empowers the Ombudsman to enquire into or investigate the conduct of an authorised officer in the capacity of an authorised officer.

PART 10—PROTECTION AND ENFORCEMENT PROVISIONS

Part 10 deals with the protection of public health by the investigation, elimination and reduction of public health risks. It permits the issuing of improvement and prohibition notices and the declaration by the Minister for Health of a state of emergency and sets out the powers to be exercised in relation to each.

Division 1—Powers to investigate, eliminate or reduce public health risks.

Clause 187 places a general restriction on the exercise of any power conferred on a person by this Act to enter residential premises without a warrant. It states that the entry can only be to the part of the premises to which entry is necessary for the purposes for which the power is conferred.

Clause 188 Empowers the Chief Health Officer to direct a person to provide information that the Chief Health Officer believes is necessary to investigate a risk to public health or to manage or control a risk to public health.

The note refers to section 227 that provides protections to persons who give information they are authorised or required to give under this Act.

The clause provides that it is an offence for a person not to comply with a direction of the Chief Health Officer made under this section. A penalty of 60 penalty units applies in the case of a natural person and 300 penalty units in the case of a body corporate. A person is not guilty of the offence if they had a reasonable excuse.

Before directing a person the Chief Health Officer must warn the person that refusal to comply is an offence, and that the person may refuse to provide any information that would tend to incriminate them.

Clause 189 provides that if the Chief Health Officer believes it is necessary to do so, the Chief Health Officer may authorise authorised officers appointed by the Secretary to exercise any of the public health risk powers set out in section 190 in order investigate, eliminate or reduce a risk to public health. This means that that there can be an appropriate and flexible response to any risk to public health, but that only those powers that are required to deal with the level of risk in any particular circumstances will be exercised.

This clause also provides that on the same grounds the Chief Health Officer may authorise a class of authorised officers appointed by a municipal council to exercise any of the public health risk powers set out in section 190.

The requirements as to the form and content of the authorisation are set out in section 191.

Clause 190 this clause contains the public health risk powers.

It is envisaged that some of these powers will be exercised more frequently than others in response to everyday risks, such as an outbreak of gastroenteritis or salmonella, but that some will only be exercised sparingly when necessitated by unusual circumstances. A typical exercise of a power is that, during an outbreak of Legionnaires' disease, an authorised officer may direct that a cooling tower system be disinfected.

The clause sets out requirements to be followed by authorised officers when exercising these powers, and in particular, the power in 1(b) to direct a person to remain at particular premises. It is envisaged that the exercise of the power in 1(b) to direct a person to remain at particular premises would only be necessary in very rare cases.

A direction under that power must specify the period of time, not exceeding 4 hours, for which the direction must be complied with. If extended, the period must not exceed a continuous period of 12 hours.

The power of entry exercised under subclause 1(c) may only be exercised if an authorised officer believes that an immediate risk to public health exists, and that the entry is necessary to enable the authorised officer to investigate, eliminate or reduce the risk.

Before requiring the provision of information under subclause 1(d) the officer must inform the person they may refuse to provide information that would tend to incriminate them.

The clause provides that the before exercising any of the public health risk powers, an authorised officer must explain to a person the reason why it is necessary to exercise the power and warn the person that a refusal to comply without a reasonable excuse is an offence. These warnings must be given unless it is impracticable to do so in the circumstances.

Clause 191 provides that an authorisation of the Chief Health Officer made under section 189 empowering authorised officers to exercise the public health risk powers may be given orally or in writing. Oral authorisations must be confirmed in writing. It also sets out what details must be contained in the authorisation.

The clause provides that the Chief Health Officer may extend the period for which the authorisation continues in force.

Clause 192 provides that an authorised officer may be assisted by any person in the exercise of the public health risk powers. It provides that any request for assistance by a member of the police force must be made to the Chief Commissioner of Police.

Clause 193 makes it an offence for a person to refuse or fail to comply with a direction made to them, or requirement made of them, in accordance with this Division. A penalty of 120 penalty units applies to a natural person, and 600 penalty units to a body corporate. A person is not guilty of the offence if they had a reasonable excuse.

Division 2—Improvement notices and prohibition notices

Clause 194 provides the grounds on which the Secretary or a municipal council may issue an improvement notice or a prohibition notice. It provides that if the Secretary or Council believes that a person has contravened a provision of the Act or regulations in circumstances where the contravention is continuing and or likely to re-occur, or is likely to do so, a notice may be issued. Clause 208 provides for appeal the Magistrates' Court against an improvement or prohibition notice.

The clause provides that the Secretary or the Council, whichever is appropriate in the circumstances, may issue an improvement notice requiring the person to remedy the contravention or likely contravention, or a prohibition notice prohibiting the carrying on of an activity in a specified way.

The clause details the matters to be contained in improvement and prohibition notices.

This clause makes it an offence for a person to fail to comply with an improvement or prohibition notice. A penalty of 120 penalty units applies to a natural person, and 600 penalty units to a body corporate.

- Clause 195 provides that the issue of an improvement or prohibition notice has no effect on proceedings for any offences in the Act or regulations in connection with any matters dealt with in the notice.
- Clause 196 provides that the Chief Health Officer, the Secretary or a Council may apply to the Magistrates' Court for an injunction compelling a person to comply with an improvement or prohibition notice or restraining a person from contravening an improvement notice, and that application may be made regardless of the existence of any other proceedings in connection with any matters dealt with in the notice.
- Clause 197 applies where an improvement notice or prohibition notice is issued in respect of a nuisance.

If a person does not comply with an improvement or prohibition notice in respect of a nuisance, or a nuisance, although abated, is likely to recur, the Council may cause a complaint to be made to the Magistrates' Court.

Subclause (3) provides that the Court may summon a person to appear before it.

Subclause (4) provides that if satisfied that the nuisance exists or is likely to recur, the Magistrates' Court may order the person to comply with the improvement or prohibition notice, and or carry out works the prevent the reoccurrence of the nuisance.

Subclause (5) provides that if the Court has made an order in accordance with this section, the Council may enter land and do whatever is necessary to execute the order, and may recover the costs and expenses incurred in doing so from the person on whom the order is made.

Subclause (6) makes further provision for the recovery of costs by the Council.

Subclause (7) makes it an offence for a person to fail to comply with an order made by the Magistrates' Court under subsection 4, unless the Court is satisfied the person has exercised due diligence in seeking to comply with the order. A penalty of 120 penalty units applies to a natural person and 600 penalty units to a body corporate.

Division 3—Emergency powers

Clause 198 provides that the Minister may, on the advice on the Chief Health Officer and after consultation with the Co-ordinator in Chief and the State Co-ordinator under the **Emergency Management Act 1986**, declare a state of emergency arising out of circumstances causing a serious risk to public health.

The consultation is intended to ensure that if the persons consulted consider it more appropriate for action be taken under the **Emergency Management Act 1986** rather than under this Act, that can occur.

The clause provides that the Minister may vary the area specified in the declaration after consulting the Co-ordinator in Chief and the State Co-ordinator under the **Emergency Management Act 1986**. Consultation is not required if the variation has the effect of reducing the emergency area or altering the time the declaration is in force.

The clause sets out requirements for the publication by the mass media and in the Government Gazette of the making, varying or revoking of a declaration under this section. It provides that the details to be contained in the declaration must include details of where the state of emergency exists. It provides that a declaration may continue in force for a period not exceeding 4 weeks, and may be extended, but that the total period that a declaration is in force cannot exceed 6 months.

It also sets out requirements for the reporting to a Parliament of the making of a declaration under this section.

The clause provides that a state of emergency declared under the Act does not derogate from or limit any provisions relating to the declaration of an emergency under any other Act.

Clause 199 provides that during a state of emergency the Chief Health Officer may authorise authorised officers to exercise any of the public health risk powers found in section 190 of this Act, or the emergency powers found in section 200, if the Chief Health Officer believes that it is necessary to do so to eliminate or reduce a serious risk to public health.

In these circumstances, the Chief Health Officer may authorise authorised officers appointed by the Secretary, or if specified in the authorisation, may authorise a specified class of authorised officers appointed by a Council or Councils, to exercise any of the public health risk powers or emergency powers.

The Chief Health Officer may at any time revoke or vary an authorisation made under this section.

Clause 200 sets out the emergency powers able to be exercised in an emergency and requirements regarding the exercise of emergency powers. These powers enable authorised officers to detain persons in the emergency area, restrict the movement of persons within the emergency area, prevent persons from entering the emergency area and give any direction reasonably necessary to protect public health.

Authorised officers must explain, if practicable, the reasons for detention to the detained person. If a person is subject to detention under this section, an authorised officer must at least once every 24 hours review whether the continued detention of the person is reasonably necessary.

An authorised officer must give written notice to the Chief Health Officer of a decision to detain a person, and a decision to continue to detain a person after reviewing the detention after 24 hours. This is intended to enable the Chief Health Officer to monitor the appropriateness of the action given the nature of the risk to public health. The Chief Health Officer must as soon as is reasonably practical inform the Minister of any notice received in accordance with this section.

Clause 201 provides that authorisations by the Chief Health Officer made under section 199 may be made orally or in writing. Oral authorisation must be confirmed in writing as soon as possible.

The clause specifies the details to be included in an authorisation, including the period of time for which the authorisation is to be in force. It allows for an extension of the authorisation.

Clause 202 provides that an authorised officer may be assisted by any person in exercising powers authorised by an authorisation given under section 199. A request for assistance by a member of the police force must be made to the Chief Commissioner of Police.

Clause 203 makes it an offence for a person to fail to comply with a direction or other requirement of an authorised officer given or made in exercising powers under an authorisation given under section 199. A penalty of 120 penalty units applies in the case of a natural person, and 600 penalty units in the case of a body

corporate. A person is not guilty of the offence if they had a reasonable excuse.

Clause 204 allows a person who suffers loss as a result of an authorisation to an authorised officer to apply to the Secretary for compensation, if the person considers there were insufficient grounds for the giving of that authorisation.

If the Secretary finds that there were insufficient grounds for the giving of an authorisation, the Secretary is to pay just and reasonable compensation to the applicant.

The clause sets out the procedure for decision making in response to such applications.

An applicant may appeal to the Victorian Civil and Administrative Tribunal for review of a decision by the Secretary made under this section. Procedural requirements for that application are specified.

PART 11—GENERAL PROVISIONS

Part 11 sets out the mechanisms for reviewing decisions, allows infringements to be issued, creates offences and describes the procedure for prosecuting offences and apportioning costs. Part 11 also contains the power to make regulations.

Division 1—Reviews and appeals

Clause 205 applies to decisions made by a municipal council regarding the registration of prescribed accommodation and business premises under sections 74 or 76 of this Act.

Sets out the procedure and requirements for the application for review by a person aggrieved by the decision, and for the review of the decision by the Council.

Clause 206 applies to decisions made by the Secretary under section 94 in relation to approved auditors or under sections 101 and 105 in relation to pest control licences.

Sets out the procedure and requirements for the application for review by a person aggrieved by the decision, and for the review of the decision by the Secretary.

Clause 207 sets out the right to apply to the Victorian Administrative Review Tribunal for review of a decision made by a Council, or by the Secretary.

This right of review applies to decisions made by Councils to cancel or suspend registration under section 76, or on application for review under section 205, and decisions made by the Secretary under section 94 relating to approved of auditors and section 105 relating to pest control licences or on an application for review under section 206.

Procedural requirements relating to application for review of a decision by VCAT are provided for.

- Clause 208 provides that persons served with an improvement notice or prohibition notice may appeal to the Magistrates' Court within 21 days. The Magistrates' Court must reconsider the decision to issue the improvement or prohibition notice, hear evidence tendered and affirm or revoke the issue of the notice. Unless otherwise ordered, an application to the Magistrates' Court does not affect the status of the improvement or prohibition notice pending the determination of the appeal.

Division 2—Infringements

- Clause 209 permits the Secretary or a Council to serve an infringement notice on a person that the Secretary or Council has reason to believe has committed a prescribed offence.

The clause provides that infringements issued pursuant to this clause are infringements within the meaning of the **Infringements Act 2006**.

The clause provides for the infringement penalty for an offence to be prescribed.

The clause sets which offences will be a *prescribed offence* for the purposes of this section. In relation to a Council, it is an offence against Part 6, 9 or 10 or any regulations made under those Parts that is prescribed and that occurs within that Council's municipal district. In relation to the Secretary, it is any offence (other than an offence against section 61) against the Act and regulations that is prescribed irrespective of where it is committed.

Division 3—Offences

- Clause 210 provides that it is an offence for a person to provide false or misleading information to the Secretary, a municipal council, the Chief Health Officer or an authorised officer under this Act or the regulations. A penalty of 60 penalty units applies for a natural person and 300 penalty units for a body corporate.

The clause provides that it is an offence for a person to make an entry in a document that is required to be kept by the Act or regulations that is false or misleading. A penalty of 60 penalty units applies for a natural person and 300 penalty units for a body corporate.

The clause provides that it is a defence to a charge for an offence against this section for the accused to prove that at the time at which the offence is alleged to have been committed the accused believed on reasonable grounds that the information was true or was not misleading.

Clause 211 makes it an offence for a person to destroy or damage without lawful authority a record required to be kept pursuant to this Act or the regulations. A penalty of 60 penalty units applies for a natural person and 300 penalty units for a body corporate.

Clause 212 provides that a natural person may refuse or fail to give information under this Act or the regulations if giving the information would tend to incriminate the person. This clause does not apply to the provision of a person's name and address, or to the production of documents that the person is required to keep under the Act or regulations.

Clause 213 provides that nothing in the Act or the regulations requires a person to disclose information that is subject to legal professional privilege, or affects the law or practice relating to legal professional privilege.

A number of sections of the Act are relevant to the privileges referred to in sections 212 and 213.

Clause 214 makes provision for offences by corporations, and by officers of corporations. It provides that the intention of a servant or agent of a corporation is sufficient to show the intention of the corporation for the purposes of proceedings for an offence against this Act or the regulations.

Clause 215 provides that where two or more persons are responsible for the same offence against the Act or regulations, each of those persons is liable to the penalty for that offence and the liability of each is independent of the liability of any other person.

The clause provides for the liability of each member of a partnership or committee of management of an unincorporated body who authorised or permitted an offence committed by the partnership or unincorporated body.

The clause makes provision for the proof of the state of mind of a person who is a partnership, firm, unincorporated body or association for the purposes of a proceedings against that person for an offence against the Act or the regulations.

Division 4—Proceedings and legal matters

- Clause 216 makes provision for a *responsible agency* to be identified in proceedings against the Crown for an offence against the Act or the regulations and defines who is the *responsible agency*.
- Clause 217 specifies that the Crown in any capacity may be issued with an infringement notice and that an improvement or prohibition notice issued to the Crown may be issued to the responsible agency as defined in section 216.
- Clause 218 makes provisions for proceedings, infringement notices and penalties to be dealt with by successors to the public bodies involved in them.
- Clause 219 makes provision for the Secretary, an authorised officer appointed by the Secretary or a member of the police force to bring proceedings for offences against this Act or the regulations (except section 61) wherever committed.

Councils or authorised officers appointed by Councils may bring proceedings for offences against Parts 6, 9 or 10 (and any regulations made under those Parts) committed wholly or partly in that Council's municipal district, or an offence relating to an improvement notice issued by the Council.

- Clause 220 Section 126(1) of the **Magistrates' Court Act 1989** provides that proceedings for a summary offence must be brought within one year of the commission of the offence. This clause allows proceedings for a small number of offences in this Act to be brought within a period of two years after the commission of the offence. These offences by their nature may not come to light through regular monitoring activities, but are reliant on a complaint or a diagnosis of an infectious disease to be made before being discovered, making commencement of prosecution within one year difficult. An extension of the one year period provided for in the **Magistrates' Court Act 1989** is considered appropriate in these cases.

Prosecution for an offence against section 155 must be commenced within three years of the alleged commission of the offence. This offence is that of making a false statement on a blood or tissue donation form. Once again, it is unlikely that the commission of this offence would be discovered until a diagnosis of a transmissible disease was made, and the cause traced back to a donation. Civil action with regard to the transmission of a disease from a donation is dependent on a donor having been convicted of this offence so it is important that there be sufficient time to prosecute this offence.

- Clause 221 Sets out the procedure and requirements for the service of notices or other documents required or authorised to be served under the Act or the regulations.
- Clause 222 provides that the validity of notices, orders and other documents is not affected by reasons of irregularity or errors that a court finds is not likely to mislead or which do not mislead.
- The clause deems that service on an owner or occupier is binding on subsequent owners and occupiers.
- Clause 223 specifies that a signature purporting to be the signature of the Minister, Secretary, Chief Health Officer, authorised officer or analyst is evidence of the signature it purports to be.
- Clause 224 provides for matters relating to the evidence contained in certificates of examination and analysis.
- Clause 225 provides for evidentiary certificates signed by the Secretary.
- Clause 226 provides for evidentiary certificates signed by the Chief Executive Officer of a Council.
- Clause 227 Provides that the giving of information that is authorised or required to be given under this Act does not constitute unprofessional conduct or a breach of professional ethics by, for example, a registered medical practitioner. In addition, the giving of the information does not make the person giving it subject to any liability in respect of it, and does not constitute a contravention of any other Act or law, including common law.

This provision applies to the giving of information under a number of sections in the Act, including to a Consultative Council under sections 39, 40 and 47, to the Chief Health Officer under sections 55, 115, 119 and 188 and to an authorised officer under sections 55 and 167.

Division 5—Costs

Clause 228 provides that if a person is found guilty of an offence against this Act or the regulations, the Secretary or Council may seek reimbursement of the costs incurred as a result of the contravention.

The clause provides that if the Secretary or the Council is awarded legal costs in any proceeding for an offence against the Act or regulations, the Secretary or Council may seek payment for the cost of any work conducted by the Secretary or the Council.

Defines *work conducted by the Secretary or the Council* for the purposes of this section.

Clause 229 provides for action to be taken if a person fails to comply with a direction, requirement or notice given in the exercise of public health risk powers under section 190, or emergency powers under section 200 of the Act, or fails to comply with an improvement or prohibition notice issued in relation to a direction or other requirement given in the exercise of those powers.

The clause provides that the Chief Health Officer may authorise a person or Council to take any action necessary to ensure compliance with the direction, requirement or notice. This means that a person or Council can be authorised to perform the necessary action themselves, when the person originally directed to do it has failed to comply. The provision lists some action that may be taken by the person or Council, such as entering land and performing any action that is necessary to give effect to the direction.

If the Chief Health Officer authorises a person or Council to take the actions necessary, the authorisation may allow the person or Council to engage agents to carry out some of the actions required. For example, a person authorised to ensure compliance with a requirement to disinfect a cooling tower system may engage a specialist contractor to disinfect the system.

Clause 230 provides for cost recovery by the Secretary or a Council if they have performed the action in the place of the person who has been directed to do so and has not complied. *Reasonable costs* is defined for the purposes of the section.

Clause 231 provides that where works for the abatement of nuisance are carried out in accordance with this Act by a Council at the expense of the occupier of any land the occupier of any land may recover the expenses from the owner of the land as money paid, or deduct the expenses from any rent due. Occupiers of land are not able to recover from owners if the occupier caused the nuisance or knowingly allowed or suffered the nuisance.

Occupier is defined for the purposes of the section.

Division 6—Regulations

- Clause 232 provides a general regulation making power.
- Clause 233 provides a regulation making power with regard to Consultative Councils and gives details of the regulations.
- Clause 234 provides a regulation making power with regard to public inquiries, and with regard to requirements and procedures for preventing, controlling or minimising public health risks including risks posed by infectious diseases and gives details of the regulations.
- Clause 235 provides a regulation making power with regard to nuisances, prescribed accommodation and registered premises and gives details of the regulations.
- Clause 236 provides that regulations may be made with regard to cooling tower systems and gives details of the regulations.
- Clause 237 provides that regulations may be made with regard to pest control licences and gives details of the regulations.
- Clause 238 provides that the regulations may be made with regard to the management and control infectious diseases, micro-organisms and medical conditions and gives details of the regulations.
- Clause 239 provides for the exercise of a power conferred by this Act to make regulations for the imposition of fees.

PART 12—MISCELLANEOUS

Part 12 sets out consequential amendments to other Acts required to remove references to the Act repealed by this Act. Part 12 also contains provisions for the repeal of certain provisions and savings and transitionals.

Division 1—Savings and transitional

- Clause 240 notes that it is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 124 or 142. These sections provide that no action lies against a registered medical practitioner who in good faith and with reasonable care conducts an activity ordered or authorised under an order or authorisation made by the Chief Health Officer or a senior medical officer. This clause establishes that the Supreme Court cannot hear such an action.
- Clause 241 repeals Divisions 4 (Offensive waterways) and 7A (Animals) of Part 4 (General Sanitary Provisions), Part 13 (Precautions against fire) and Part 15 (Meat supervision) of the **Health Act 1958**. These are provisions of the **Health Act 1958** that have no equivalent in this Act and are no longer operative, and will be repealed before this Act comes into effect.
- Clause 242 repeals the **Health Act 1958**.
- The clause is also a savings provision for the **Health Act 1958**.
- The clause also provides that after the commencement of this section any reference to the **Health Act 1958** is to be construed as a reference to this Act, and any reference to any regulations made under the **Health Act 1958** is to be construed as a reference to regulations made under this Act.
- It also provides that nothing in the savings and transitional provisions limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.
- Clause 243 provides the transitional provisions in relation to Consultative Councils existing under the **Health Act 1958**.
- Clause 244 provides transitional provisions that apply to blood and tissue donations.
- Clause 245 provides savings and transitional provisions in relation to cooling tower systems registered under the **Building Act 1993** and requires the Building Commission to provide any documents and records kept by the Building Commission in respect of the administration of Parts 5A, 5B and 5C of the **Building Act 1993** to the Secretary. The provisions in those Parts have been transferred to Part 7 of this Act, to be administered by the Secretary.

Clause 246 provides that the Governor in Council may make regulations of a savings or transitional nature consequent on the enactment of this Act.

This provision expires one year after the default commencement date for this Act.

Division 2—Amendments to other Acts

Clause 247 substitutes the definition of Council in section 4(1) of the **Births, Deaths and Marriages Registration Act 1996** with one that refers to this Act instead of the **Health Act 1958**.

Amends Division 4A (Information relating to child deaths) of Part 7 of the **Births, Deaths and Marriages Registration Act 1996** to update the references to the functions of the Consultative Council on Paediatric Mortality and Morbidity (CCOPMM) and to the information from the register that must be provided to CCOPMM to enable it to perform those functions.

Clause 248 makes amendments to the **Building Act 1993** to reflect the transfer of some provisions from it into this Act, and updates references to the **Health Act 1958** to refer to this Act.

Clause 249 In section 156(3)(a) of the **Cemeteries and Crematoria Act 2003**, corrects the reference to a notice produced under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** to a reference to a certificate issued under section 46 of the **Births, Deaths and Marriages Registration Act**.

Clause 250 amends section 22A of the **Coroner's Act 1985** to provide that the Coroner must (rather than may as previously) notify CCOPMM of the particulars of the death of a child reported to a coroner. This implements Recommendation 29 of the Victorian Parliament Law Reform Committee Final Report on the **Coroner's Act 1985**.

Clause 251 amends definitions on section 4(1) of the **Food Act 1984** to amend the definition of the term *authorised officer* in light of amendments to section 20, and substitutes references to the **Health Act 1958** with references to this Act.

Clause 252 updates section 6 in the **Food Act 1984** to be the same as section 13 of this Act. For the purposes of enforcement by local councils, it is more effective if there are consistent provisions in the two Acts.

- Clause 253 substitutes existing section 20(1) of the **Food Act 1984** to make new provision for the appointment by the Secretary and municipal councils of authorised officers for the purposes of the **Food Act 1984**. The requirement in the section for the Secretary or a Council to be satisfied that a person is suitably qualified and trained is a new one that is uniform with a requirement in this Act.
- Clause 254 makes a consequential amendment to section 38 of the **Food Act 1984**.
- Clause 255 inserts a new section 39B into the **Food Act 1984** to allow enforcement of an offence relating to meat at food premises that cannot be sold for human consumption due to section 34(1) of the **Meat Industry Act 1993**.
- Clause 256 makes a consequential amendment to the **Food Act 1984** to substitute a reference to the **Health Act 1958** with one to this Act.
- Clause 257 inserts provisions relating to agencies of the Crown and proceedings against successors to public bodies in the **Food Act 1984** to make them uniform with equivalent provisions in this Act.
- Clause 258 inserts provisions relating to evidentiary certificates, orders, notices and directions in the **Food Act 1984** to replace those in the **Health Act 1958** currently relied upon in accordance with section 59 of the **Food Act 1984**.
- Clause 259 amends section 51 of the **Food Act 1984** to make the provisions relating to offences by a body corporate uniform with equivalent provisions in this Act.
- Clause 260 amends section 55 of the **Food Act 1984** to make the provisions relating to the use of affidavits in proceedings under the Act uniform with equivalent provisions in this Act.
- Clause 261 inserts new provisions into the **Food Act 1984** concerning false and misleading statements, the defacing of documents, offences, the status of certain documents, and cost recovery costs replace those in the **Health Act 1958** currently relied upon in accordance with section 59 of the **Food Act 1984**.
- Clause 262 amends the **Health Act 1958** so that provisions the same as those in this Act relating to the application of the Act outside municipal districts can operate under the **Health Act 1958** until this Act comes into effect.

- Clause 263 amends the **Health Act 1958** so that requirements for Municipal Public Health Plans the same as those in this Act can operate under the **Health Act 1958** until this Act comes into effect.
- Clause 264 Inserts a new section 162FAA into Part 9B of the **Health Act 1958**. The new section enables the Consultative Council on Paediatric Mortality and Morbidity (COPMM) to request a person who provided care or services to a child before that child's death to provide COPMM with information. A person to whom the request is made is authorised to provide the information.
- Clause 265 makes other amendments to the provisions in Part 9B of the **Health Act 1958** relating to CCOPMM. A birth report may now be submitted to CCOPMM in a form approved by CCOPMM rather than in a prescribed form.
- Clause 266 amends the **Radiation Act 2005** with regard to the service of notices, orders and other documents.

Division 3—Amendment of Victorian Civil and Administration Tribunal Act 1998

- Clause 267 inserts a new Part 16B into Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to manage applications for review by VCAT of a public health order imposed on a person under section 117 of this Act.

Division 4—Consequential amendments to other Acts

- Clauses 268 Clauses 268 to 292 make consequential amendments to other Acts, most of which substitute references to the **Health Act 1958** with references to this Act.

Division 5—Repeal

- Clause 293 provides that the amendments to other Acts in Divisions 2, 3 and 4, and Division 5, are repealed on 1 July 2011.

The repeal of these provisions does not affect in any way the operation of the amendments made by this Act. (See section 15(1) of the **Interpretation of Legislation Act 1984**.)

SCHEDULE

Contains Table 1 and Table 2 referred to in sections 151 and 152 of this Act respectively. The tables relate to legal actions and proceedings arising from blood and tissue donations.