

Legislative Council—No 11

As received from the House of Assembly and read a first time, 5 May 2022

South Australia

**South Australian Public Health (COVID-19)
Amendment Bill 2022**

A BILL FOR

An Act to amend the *South Australian Public Health Act 2011*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *South Australian Public Health (COVID-19) Amendment Act 2022*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *South Australian Public Health Act 2011*

3—Insertion of Part 11A

10 After section 90 insert:

Part 11A—COVID-19 arrangements

90A—Interpretation

- (1) In this Part—

15 ***COVID-19*** means the Human Disease known as COVID-19 (also referred to as SARS-CoV-2);

relevant emergency declaration means a declaration under section 23 of the *Emergency Management Act 2004* in respect of the outbreak of COVID-19 within South Australia.

- (2) Powers under this Part are in addition to, and do not limit, any other power under this Act.

90B—Directions

- 5 (1) The Governor may, by notice in the Gazette, issue directions under this section imposing requirements in relation to persons generally, or classes of persons, who—
- (a) have tested positive for COVID-19; or
 - (b) are close contacts (as may be defined from time to time in the directions issued under this subsection).
- 10 (2) Without limiting subsection (1), directions of the Governor under this section may—
- (a) require or allow a person or a class of persons to act in contravention of another law of the State; and
 - 15 (b) affect the lawful rights or obligations of any person or class of persons (including by requiring persons to isolate or quarantine); and
 - (c) refer to or incorporate, wholly or partially and with or without modification, information prepared or published by a prescribed body or person, either as in force at the time the directions are made or as in force from time to time; and
 - 20 (d) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (e) provide that a matter or thing is to be determined according to the discretion of the Chief Public Health Officer, an emergency officer or any other specified person or body;
 - 25 (f) make provisions of a savings or transitional nature.
- (3) Directions under this section may not come into operation, or continue to operate, if a relevant emergency declaration is in force.

90C—Enforcement of directions

- 30 (1) Subject to the regulations, an emergency officer may, if of the opinion that it is necessary to do so for the purposes of enforcing a direction under this Part, exercise any power referred to in section 25(2) of the *Emergency Management Act 2004*.
- 35 (2) If a direction under this Part applies to a class of persons or applies in respect of any place or during any period, an emergency officer, may exempt (conditionally or unconditionally) any person or class of persons from the direction.

- (3) A person must not, without reasonable excuse, refuse or fail to comply with a direction issued under this Part or a direction or requirement of an emergency officer given for the purposes of this Part.

Maximum penalty:

- (a) if the offender is a body corporate—\$75 000;
(b) if the offender is an individual—\$20 000 or imprisonment for 2 years.

Expiation fee:

- (a) in the case of a body corporate—\$5 000;
(b) in the case of an individual—\$1 000.

- (4) A person must not hinder or obstruct operations carried out under, or for the purposes of, this Part.

Maximum penalty: \$10 000.

- (5) If a body corporate is guilty of an offence against this section, each director and the manager of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by an individual unless the director or the manager (as the case may be) proves that they could not by the exercise of due diligence have prevented the commission of the offence.

- (6) A person may be prosecuted and convicted of an offence under subsection (5) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

- (7) An emergency officer may require a person who the officer reasonably suspects has committed, is committing or is about to commit, an offence against this Part to state the person's full name and usual place of residence and to produce evidence of the person's identity.

- (8) A person must immediately comply with a requirement under subsection (7).

Maximum penalty: \$5 000.

90D—Expiry of directions etc

- (1) The Minister—

- (a) may, by notice in the Gazette, fix a day or days, on which a direction under section 90B, or specified provisions of such a direction, will expire; and
(b) must, by notice in the Gazette, fix a day on which section 90B and all directions under that section will expire (if they have not previously expired in accordance with this section).

(2) The day fixed by the Minister for the purposes of subsection (1)(b) must be not later than 6 months after the day on which this section came into operation.

(3) For the avoidance of doubt (and without derogating from section 32 of the *Legislation Interpretation Act 2021*), the expiry of a provision of a direction under this section does not affect the validity or operation of anything done in accordance with the direction before that expiry.

90E—Modifications of Act

If a public health incident or public health emergency is declared under Part 11 in respect of COVID-19, the following provisions do not apply to a direction given in relation to that emergency:

- (a) section 14(6), (7) and (9);
- (b) section 90(3), (4) and (5).

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

last relevant emergency declaration means the relevant emergency declaration in force immediately before the commencement of this Schedule;

relevant direction means a direction or requirement apparently in force under section 25 of the *Emergency Management Act 2004* immediately before the cessation of the last relevant emergency declaration;

relevant emergency declaration means a declaration under section 23 of the *Emergency Management Act 2004* in respect of the outbreak of COVID-19 within South Australia.

2—Continuation of directions

(1) On the cessation of the last relevant emergency declaration, a relevant direction continues in force as a direction under section 90B of the *South Australian Public Health Act 2011* (as inserted by this Act) whether or not it is a direction of a kind that could be made under that section as in force after the commencement of this Act.

(2) For the purposes of this clause, a reference in a relevant direction—

- (a) to an authorised officer will be taken to be a reference to an emergency officer under the *South Australian Public Health Act 2011*; and
- (b) to the State Co-ordinator will (where the context permits) be taken to be a reference to the Chief Public Health Officer; and
- (c) to another relevant direction will be taken to be a reference to that direction as continued in force under subclause (1).

- (3) If a relevant direction continues in force under subclause (1), any approval or exemption granted under that direction that is in force immediately before the cessation of the last relevant emergency declaration also continues in force as if it had been granted under the direction as continued under subclause (1).

5 **3—Emergency officers**

A person who was, immediately before the cessation of the last relevant emergency declaration, appointed as an authorised officer under section 17 of the *Emergency Management Act 2004* will, on the cessation of the last relevant emergency declaration, be taken to be appointed as an emergency officer under the *South Australian Public Health Act 2011* and—

- 10 (a) any conditions applying to the person's appointment under the *Emergency Management Act 2004* will also apply to the person's appointment under the *South Australian Public Health Act 2011*; and
- 15 (b) the identity card issued to the person under the *Emergency Management Act 2004* will be taken to be the person's identity card under section 48 of the *South Australian Public Health Act 2011*.