

Legislative Council—No 11A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 18 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*, and to make a related amendment to the *Parliamentary Committees Act 1991*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

5 After section 90 insert:

Part 11A—COVID-19 arrangements

90A—Interpretation

(1) In this Part—

10 *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.

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

90AB—Principles

The principles set out in section 14 (other than section 14(6), (7) and (9)) apply for the purposes of this Part in the same way as they apply to Parts 10 and 11.

90B—Directions

(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—

- 25 (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).

(2) Without limiting subsection (1), directions of the Governor under this section may—

- 30 (a) require or allow a person or a class of persons to act in contravention of another law of the State; and
(b) affect the lawful rights or obligations of any person or class of persons (including by requiring persons to isolate or quarantine); and
35 (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

- (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; and
- (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.

(4) The Minister must, before the end of the 7th day after a direction is issued under this section, cause a document or documents setting out the relevant health advice for the direction to be published on a website determined by the Minister.

(5) In this clause—

relevant health advice for a direction means advice provided by the Chief Public Health Officer or by other officers of the Department to any Ministers of the Crown in respect of the issuing of the direction.

90C—Enforcement of directions

(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*.

(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.

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- (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.
- 10
- (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.
- 15
- (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

- 20
- (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
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- (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).
- 30
- (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.
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- (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:

- 40
- (a) section 14(6), (7) and (9);
(b) section 90(3), (4) and (5).

90F—Appeal rights

- 5
- (1) If a person is subject to a direction under this Part that the person must isolate or quarantine at a place other than the person's place of residence or another location chosen by the person, the person may apply to the Magistrates Court for a review of the direction.
- (2) Subsection (1) does not apply in relation to a direction continued in force pursuant to Schedule 1 clause 2 of the *South Australian Public Health (COVID-19) Amendment Act 2022*.
- 10
- (3) An application under subsection (1) may be instituted at any time during the currency of the direction (and, subject to subsection (4), more than 1 application may be made while a direction is in force).
- (4) If a second or subsequent application is made with respect to the same direction, the Magistrates Court must first consider whether there has been a significant change in the material circumstances of the case and should, unless the Magistrates Court in its discretion determines otherwise, decline to proceed with the application (if it appears that the proceedings would simply result in a rehearing of the matter without such a change in circumstances).
- 15
- (5) The following provisions will apply in connection with an application under subsection (1):
- 20
- (a) the making of an application does not suspend the operation of a direction to which the application relates (and the Magistrates Court must not suspend or stay the operation of the direction pending the outcome of the proceedings);
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- (b) the Magistrates Court must consider whether 2 or more applications by separate individuals may be joined or heard together taking into account:
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- (i) the extent to which it is impractical or unreasonable for individual applications to be heard separately in view of the number of applications before the court; and
- (ii) the extent to which there are questions of fact or law that are sufficiently similar or common across a series of applications; and
- 35
- (iii) the extent to which the directions across a series of applications are the same or similar; and
- (iv) such other matters as the court thinks fit in order to best manage the applications in the circumstances;
- 40
- (c) the Chief Magistrate may make such orders as the Chief Magistrate thinks fit (either in a specific case, in a specific class of cases, or generally with respect to applications under subsection (1)) to assist in dealing with the management and hearing of applications under subsection (1) (and any such order will have effect according to its terms).
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- (6) Subject to complying with subsection (4), the Magistrates Court may, on hearing an application under subsection (1)—
- (a) confirm, vary or revoke a direction;
 - (b) remit the subject matter to the person who gave a direction for further consideration;
 - (c) dismiss the matter;
 - (d) make any consequential or ancillary order or direction, or impose any conditions, that it considers appropriate.
- 10
- (7) The Magistrates Court may only revoke a direction under subsection (6) if satisfied that the direction is no longer reasonably necessary in the interests of public health.
- (8) The Magistrates Court is to hear and determine an application under subsection (1) as soon as is reasonably practicable.
- 15
- (9) A party to proceedings on an application under subsection (1) may appeal against a decision of the Magistrates Court under subsection (6).
- (10) An appeal under subsection (9) will be to the District Court.
- (11) The following provisions will apply in connection with an appeal under subsection (9):
- 20
- (a) the making of the appeal does not suspend the operation of a direction that has been confirmed by the Magistrates Court and the District Court may, as it thinks fit, make any other order with respect to the operation of any other direction that has been varied or revoked by the Magistrates Court
- 25
- (including, if the District Court thinks fit, to reinstate or vary an original direction on an interim basis pending the outcome of the appeal);
 - (b) the District Court must consider whether 2 or more appeals by separate individuals may be joined or heard together taking into account:
 - (i) the extent to which it is impracticable or unreasonable for individual appeals to be heard separately in view of the number of appeals before the court; and
 - (ii) the extent to which there are common questions or issues across a series of appeals; and
 - (iii) such other matters as the court thinks fit in order to best manage the appeals in the circumstances;
 - (c) the Chief Judge may make such orders as the Chief Judge thinks fit to assist in dealing with the management and hearing of appeals under subsection (9) (and any such order will have effect according to its terms).
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- (12) The District Court may, on an appeal under subsection (9)—
- (a) confirm or vary the decision of the Magistrates Court, or substitute its own decision;
 - (b) make any consequential or ancillary order or direction that it considers appropriate.
- (13) The District Court is to hear and determine an appeal under subsection (9) as soon as is reasonably practicable.
- 10 (14) An appeal under subsection (9) will be heard in the Administrative and Disciplinary Division of the District Court (but will not be subject to the application of Subdivision 2 of Part 6 Division 2 of the *District Court Act 1991*).
- 15 (15) A person subject to a direction who is a party to proceedings before a court under this section is not entitled to attend those proceedings but is entitled to be represented at any hearing by a person (who need not be a legal practitioner) nominated by them and the court must, if reasonably practicable, allow the person who is subject to the direction to participate in the proceedings by the use of an audio visual link or an audio link.
- 20 (16) A court must, in dealing with proceedings under this section, take into account the need to ensure that its proceedings do not unduly hamper the work of public officials in dealing with the COVID-19 pandemic.

Schedule a1—Related amendment of *Parliamentary Committees Act 1991*

1—Insertion of Part 5F

After Part 5E insert:

Part 5F—COVID-19 Direction Accountability and Oversight Committee

Division 1—Preliminary

15P—Preliminary

- 30
- (1) In this Part—
- relevant COVID-19 direction* means a direction under section 90B of the *South Australian Public Health Act 2011*, including a direction continued in force as a direction under that section pursuant to Schedule 1 clause 2 of the *South Australian Public Health (COVID-19) Amendment Act 2022*.
- 35
- (2) This Part applies in relation to a relevant COVID-19 direction despite any other Act or law to the contrary.

Division 2—Establishment and membership of Committee

15Q—Establishment of Committee

The *COVID-19 Direction Accountability and Oversight Committee* is established as a committee of the Parliament.

15R—Membership of Committee

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- (1) The Committee must consist of 5 members of whom—
- (a) 2 must be members of the House of Assembly appointed by the House of Assembly; and
- 10 (b) 3 must be members of the Legislative Council appointed by the Legislative Council.
- (2) Not more than 2 members of the Committee may be members of a political party forming the Government.
- (3) A Minister of the Crown is not eligible for appointment to the Committee.
- 15 (4) The Committee must from time to time appoint 1 of its Legislative Council members to be the Presiding Member of the Committee but if the members are at any time unable to come to a decision on who is to be the Presiding Member, or on who is to preside at a meeting of the Committee in the absence of the Presiding Member, the matter is referred by force of this subsection to the Legislative Council and
- 20 that House will determine that matter.

Division 2—Functions of COVID-19 Direction Accountability and Oversight Committee

15S—Functions of Committee

- 25 (1) The COVID-19 Direction Accountability and Oversight Committee may report to each House of Parliament if the Committee considers that a relevant COVID-19 direction—
- (a) does not appear to be within the powers conferred by the Act under which the direction was made; or
- 30 (b) without clear and express authority being conferred by the Act under which the direction was made—
- (i) has a retrospective effect; or
- (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
- 35 (iii) purports to shift the legal burden of proof to a person accused of an offence; or
- (iv) provides for the subdelegation of powers delegated by the Act under which the direction was made.

- (2) A report of the COVID-19 Direction Accountability and Oversight Committee under this section may contain such recommendations as the Committee considers appropriate.

15T—Disallowance of relevant COVID-19 direction

- 5 (1) Subject to this section, if—
- (a) a relevant COVID-19 direction has been laid before each House of Parliament in accordance with section 15U; or
- (b) there was a failure to comply with section 15U in relation to a relevant COVID-19 direction and the Committee has reported that failure to each House of the Parliament,
- 10 the relevant COVID-19 direction may be disallowed by resolution of either House of Parliament and will cease to have effect.
- (2) A resolution is not effective for the purposes of subsection (1) unless—
- 15 (a) in the case of a relevant COVID-19 direction that has been laid before the House in accordance with section 15U—the resolution is passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the direction was laid before the House; or
- 20 (b) in the case of a relevant COVID-19 direction that has been the subject of a report by the COVID-19 Direction Accountability and Oversight Committee under subsection (1)(b)—the resolution is passed in pursuance of a notice of motion given within 6 sitting days (which need not fall within the same session of Parliament) after the report of the Committee has been made to the House.
- 25 (3) When a resolution referred to in subsection (1) of this section has been passed, notice of that resolution shall forthwith be published in the Gazette.
- 30 (4) This section does not apply in relation to a direction continued in force as a direction under section 90B of the *South Australian Public Health Act 2011* pursuant to Schedule 1 clause 2 of the *South Australian Public Health (COVID-19) Amendment Act 2022*.

15U—Tabling of relevant COVID-19 direction

35 On the making of a relevant COVID-19 direction, the Minister with responsibility for the administration of the *South Australian Public Health Act 2011* must, within 2 sitting days, cause a copy of the direction to be laid before each House of Parliament (and the direction is referred by force of this section to the COVID-19 Direction Accountability and Oversight Committee).

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Division 3—Expiry of Part

15V—Expiry of Part

This Part expires on the day on which section 90B of the *South Australian Public Health Act 2011* and all directions under that section expire.

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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;

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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.

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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.

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(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

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(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).

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(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).

3—Emergency officers

5 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—

(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

10 (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*.