

Essential Services (Year 2000) Bill

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EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 states the purposes of the Bill.
- Clause 2 provides for the commencement of the Bill.
- Clause 3 defines certain words and expressions used in the Bill as follows—

"essential service" enumerates those services which are crucial to maintain public health and for community needs to be met. In addition, the Governor in Council may declare a service to be an essential service.

"inspector" means a person who has been appointed by the Minister under section 13.

"person" includes unincorporated bodies and partnerships. It also includes bodies corporate by virtue of the **Interpretation of Legislation Act 1984** (section 38).

"year 2000 event" means an event which occurs in consequence of the processing, transmitting or receiving of data containing any date.

PART 2—YEAR 2000 EMERGENCY PROVISIONS

Division 1—Continuity of Essential Services and Public Safety

- Clause 4 empowers the Governor in Council, by proclamation, to declare the application of emergency provisions if an essential service is likely to be unable to meet reasonable community requirements because of a year 2000 event. The proclamation may be amended or revoked by the Governor in Council at any time.
- Clause 5 empowers the Minister, while a proclamation is in force, to give any directions he or she considers necessary to ensure the

continuity or resumption of an essential service or to secure public safety or order. The Minister may give directions as to what services must be maintained, the conditions of use or prohibition of use of services and the requisition and control of property used to maintain services. The directions may apply to all or parts of Victoria, may be specified to operate for specific periods or occasions and may be published by any means which appear practicable. The Minister may amend or revoke a direction. Amendments to directions may have retrospective effect for not more than 3 months, except that no person can be convicted of an offence or subjected to any liability for an act or omission prior to the amendment which was not then an offence or would not have exposed them to liability, but for the amendment.

- Clause 6 enables the Minister to determine compensation to be given to any person whose property is used under a direction referred to in section 5(2)(e). The determination of compensation may be reviewed by the Victorian Civil and Administrative Tribunal.

Division 2—Offences

- Clause 7 specifies that the contravention of a direction under section 5 is an offence, being an indictable offence in the case of a body corporate. An offence which is committed by the failure to comply with a direction within the time specified in it is deemed to continue as long as the requirement remains undone. There is an additional offence for each day on which an offence is deemed to continue with liability upon conviction for an additional penalty not exceeding one-tenth of the penalty for the original offence.
- Clause 8 specifies an offence for the obstruction of a person exercising a power or complying with an obligation under a direction under section 5, where a copy of the direction has been provided.
- Clause 9 provides that obstructing or hindering an inspector exercising functions under Part 2 is an offence.
- Clause 10 provides that impersonating an inspector is an offence.
- Clause 11 enables an officer of a body corporate (being a director, secretary, executive officer or person involved in the

management of the body corporate) to be convicted of an offence if the body corporate commits an offence, whether or not the body corporate has been convicted of that offence.

- Clause 12 provides that a reference to a partnership or unincorporated body being guilty of an offence is to be read as a reference to each member of the partnership or member of the committee of management of the unincorporated body.

Division 3—Enforcement

- Clause 13 enables the Minister to appoint inspectors to perform the functions specified in Part 2. Inspectors must be given an identity card, bearing their photograph and signature and the Minister's signature, which they must produce on request in the performance of their functions. The Minister must not appoint a person as an inspector unless that person is competent to exercise the functions of an inspector, is of good repute and agrees, in writing, to carry out those functions.
- Clause 14 enables inspectors to obtain assistance from the police to carry out any authorised function.
- Clause 15 enables an inspector to enter land or premises and search where there are reasonable grounds for suspecting that evidence of the commission of an offence under Part 2 is located there. This power must only be exercised with the written consent of the occupier of the property or under a search warrant.
- Clause 16 requires a copy of the signed consent to entry of land or premises under section 15 to be given to the occupier immediately. If that consent is not produced in any court proceedings, it shall be presumed that the occupier did not consent to the entry unless the contrary can be proved.
- Clause 17 enables an inspector to apply to a magistrate for a search warrant to enter land or premises if he or she believes on reasonable grounds that there is, or will be within the next 72 hours, evidence of an offence there. The search warrant may authorise the inspector to enter upon the premises and search for the evidence. The search warrant must state particulars of the suspected offence, the land to be searched, any conditions attached to the warrant and the expiry date.

- Clause 18 requires an inspector to announce his or her authorisation to enter the premises and give the occupier the opportunity to allow entry before executing the warrant unless there are reasonable grounds to believe that immediate entry is required to ensure the safety of any person or that the effective execution of the warrant is not frustrated.
- Clause 19 requires an inspector to identify himself or herself by production of his or her identity card and give the occupier a copy of the warrant when the search warrant is being executed.

Division 4—Infringement Notices

- Clause 20 provides that the offence of using an essential service in contravention of a direction is a "prescribed offence" under this Division. A person is deemed to be aware of a direction if it was published in a newspaper circulated in the applicable area or details of it were broadcast on television or radio in that area. In proceedings for a prescribed offence, a certificate signed by the Minister as to the details broadcast by television or radio on a particular day is evidence of those facts. A sufficient defence to a prescribed offence is that the defendant did not know and could not reasonably have known of the direction.
- Clause 21 empowers inspectors to serve infringement notices upon a natural person who is believed to have committed a prescribed offence. The notice may be served personally or by post addressed to the person's last known residential or business address.
- Clause 22 requires the infringement notice to contain the date of the notice, the particulars of the offence, the manner in which the penalty must be paid and that payment will prevent the matter being brought before the Magistrates' Court. Additional particulars for infringement notices may also be prescribed.
- Clause 23 specifies the infringement penalty for a prescribed offence.
- Clause 24 enables an inspector to accept late payment of an infringement penalty if the notice has not been withdrawn or brought before the Magistrates' Court.
- Clause 25 enables an infringement notice to be withdrawn at any time within 28 days after service by notice of withdrawal served upon

the person served with the infringement notice. If the infringement penalty has been paid, that amount must be refunded.

- Clause 26 provides that payment of an infringement penalty (unless the infringement notice has been withdrawn) expiates the offence and no further proceedings shall be taken or conviction recorded in respect of the offence.
- Clause 27 provides that payment of an infringement penalty must not be taken to be an admission of guilt of the offence or liability in any civil claim and shall not be included in any report provided to court for the purpose of determining sentence for an offence.
- Clause 28 enables a charge to be brought for an offence for which an infringement notice was served if the infringement penalty has not been paid within the required time or the infringement notice has been withdrawn.
- Clause 29 allows payment of the infringement penalty to be enforced in accordance with Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** if the infringement penalty remains unpaid, the infringement notice has not been withdrawn and charges have not been brought under section 28.

Division 5—General

- Clause 30 enables the Minister to delegate any powers or functions under Part 2 (except the power of delegation).
- Clause 31 requires courts and tribunals to take judicial notice of any proclamation or direction under Part 2.
- Clause 32 provides a person acting in good faith with immunity from any action for loss, damage or injury for anything done in the execution of Part 2 or under a proclamation or direction under Part 2.
- Clause 33 ensures that the jurisdiction of the Supreme Court is varied to the extent that an action referred to in clause 32 cannot be brought.

PART 3—AMENDMENT OF EMERGENCY MANAGEMENT ACT 1986

Clause 34 amends the **Emergency Management Act 1986** to define a disruption to an "essential service" (having the same definition as in this Act) as an "emergency" within the meaning of that Act. In addition, the Governor in Council may declare a service to be an "essential service".

PART 4—EXPIRY

Clause 35 provides that the Act will expire on 30 June 2001. This does not affect the amendments made to the **Emergency Management Act 1986** by Part 3.