

Originating Application

No. of 20

10 Federal Court of Australia
District Registry: Victoria
Division: The Administrative and Constitutional Law and Human Rights National Practice Area

Solihin Millin on behalf of 27,771 Class Action Co-joiners
Applicants

The State of Victoria
Respondent

20 To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and Date of Hearing:

30 Place:

The Court ordered that the time for serving this application be abridged to:

Date:

Signed by an officer acting with the authority of the District Registrar

Part I: STATEMENT OF CLAIM

On the grounds stated in the statement of claim, accompanying affidavit or other document prescribed by the Rules, the Applicant claims:

1. Our Australian Nation is under Criminal attack from an insidious Foreign Power that is influencing the Federal and State Governments through a False Covid Emergency to overthrow our Australian Constitution and wreak havoc with our basic Australian Human Rights under our Constitution.

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2. The Victorian Government will be found Guilty or not Guilty of Treason based on the answering of the Questions of Law and Questions of Fact included in this Writ.

3. Under Section 80 of the Australian Constitution we insist on Trial by Jury in particular of the Victorian Government for overthrowing our Australian Constitution based on this False Covid Emergency.

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4. The final and paramount purpose of the exercise of federal judicial power is "to do justice". Sir Isaac Isaacs said so in typically emphatic language in 1923 and added "[a]ll other considerations are means to that end. They are ancillary principles and rules." [1] The language may have been emphatic but it was not extravagant. It was quoted with approval by six Justices of this Court in 2011 in *Hogan v Hinch* [2].

5. The Full Bench of the Federal Court Judges will be called to give expert opinion by answering 24 important Questions of Law relating to the Australian Constitution and Federal Law.

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6. The Victorian Government will be called to give evidence to support their False Covid Emergency, evidence including FOI information which they have withheld and not supplied. Here is that application which was due to be answered by the 22nd April 2021:

Application F21/0524 under FOI (Freedom of Information) from the Victorian Government has not been forthcoming.

Application F21/0524 is as follows:

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Supply under the Victorian Freedom of Information Act 1982 (FOI Act), the authorisation in writing as defined below under Section 201 of the Public Health and Wellbeing Act 2008 No. 46 of 2008 for the current Covid Emergency in Victoria.

In the FOI response please be sure to include specific written authorisation relating to Section 201 (3) (b) and (c).

Kind Regards, Solihin Millin - Victorian Citizen

Health and Wellbeing Act 2008 No. 46 of 2008

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201 How may an authorisation be given?

(1) An authorisation to exercise any of the public health risk powers or emergency

powers for the purposes of section 199 may be given orally or in writing.

(2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.

(3) An authorisation must—

(a) state that the authorisation is given under this Division;

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(b) generally describe the serious risk to public health to which it relates;

(c) if the serious risk to public health has occurred, name or describe the place at which the serious risk to public health has occurred;

(d) specify the time at which the authorisation is given;

(e) specify any restrictions or limitations to which of the public health risk powers or emergency powers may be exercised under the authorisation;

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(f) specify the period of time for which the authorisation continues in force.

(4) The Chief Health Officer may extend the period of time for which an authorisation continues in force before the authorisation expires.

7. Statistical and Scientific data will be tabled proving a False Covid Emergency.

8. We the People of Australia insist on the Truth under Good Governance of our Great Nation Australia and under our Australian and State Constitutions.

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9. In addition our Criminal Australian and State Governments are forcing a lethal and poisonous and completely unnecessary experimental medical procedure on all Australians under this False Emergency, which is demonstrably killing and maiming large numbers of Australians. Factual evidence of this is contained in the TGA Covid19 weekly Safety Report Pages on the TGA website.

10. This State condoned murder and maiming of Australian Citizens has to cease immediately.

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11. The outcome of this Trial will have immediate ramifications for all States and Territories of Australia.

12. This trial is the biggest class action in the History of Australia.

13. The State of Victoria and its Officers on approximately March 2020 to the current date have unlawfully forced under penalty and threat of violence (inter alia): mask wearing, social distancing, curfews, lock-downs, stopped freedom of political speech and protest, quarantined healthy individuals, restricted peoples movements, prevented people from conducting their daily business, forced Covid tests prior to medical procedures, forced hand sanitisation, prevented family association, stopped the free passage of people across State borders, restricted all gatherings including, social religious, sport, funerals, weddings etc. Thus criminalizing Australians Constitutional rights. The Australian public have been subject to assault, abuse false arrested etc. for failing to comply with unconstitutional directives.

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14. The State of Victoria and its Officers have impermissably infringed upon the protections prohibitions, contained within s51 (xxiiiA), s51 (ix), 52 (ii) 69, 76(ii) and s92, afforded by the Constitution and have created State Acts that are inconsistent with a Act (The Biosecurity Act (2015) Cth).
- 150 15. Australian Case law supports the invalidation of sections 20, 21, 22, 115, 116, 119, 120, 121, ,143B,143D,143E, 145, 199, 200 and 203. of the Public Health and Act Victoria (2008) pursuant to s51(xxiiiA) of the Constitution.
16. The subject matter is applicable to all the States and Territories of Australia and given that a decision of the High Court is binding throughout the Commonwealth. This matter requires Constitutional Interpretation of the original jurisdiction of the High Court pursuant to Sect 76 of the Constitution.
- 160 17. The subject matter and its National significance demands Trial by Jury under Section 80 of the Australian Constitution.

Part II: RELIEF SOUGHT

18. Orders of Prohibition Mandamus against the State of Victoria and its Officers for contravention of the Commonwealth of Australia Constitution Act (1901).
- 170 19. Orders clearly stating that there is no Covid Emergency in Australia.
20. Arrest of Daniel Andrews (and others as decided by the Jury) for Treason against the Victorian and Australian People.
21. Appropriate fair and equitable recompense for all damages.

Part III: [*A statement of the plaintiff's argument in support.*]

- 180 22. The State of Victoria and its Officers have impermissably infringed upon the protections prohibitions, contained within s51 (xxiiiA), s51 (ix), 52 (ii) 69 and s92, afforded by the Constitution and have created State Acts that are inconsistent with a Act (The Biosecurity Act (2015) Cth).
23. This can be proved by answering the Questions of Law included below.
24. Supporting case law to invalidate sections 20, 21, 22, 115, 116, 119, 120, 121,143B,143D,143E, 145, 199, 200 and 203. of the Public Health and Act Victoria (2008) pursuant to s51(xxiiiA) of the Constitution is included in the Annexure to this Writ of Summons.
- 190 25. Statistical and Scientific Evidence herewith included below shows the Covid Emergency is a False Emergency.

26. QUESTIONS OF LAW TO BE ADJUDICATED.

1. What authority do the States have to make and enforce laws for quarantine?
- 200 2. Does the Commonwealth Parliament have exclusive powers to make laws for quarantine and has its enforcement been transferred to the Executive Government of the Commonwealth, thus denying the States of such power?
3. Is the Public Health and Wellbeing Act Vic (2008) inconsistent with the Biosecurity Act 2015 (Cth) in relation to Quarantine powers and therefore invalid because of the operation s109 of the Constitution?
4. What authority does the Chief Health Officer have to enforce a medical service based on his or her opinion, onto any person?
- 210 5. Can the Court please define the meaning of medical services contained in s51(xxiiiA) of the Constitution, and does it include wearing of face masks, social distancing, vaccinations, Covid 19 testing, contact tracing and other like services, whether at the direction of a State or the Commonwealth?
6. Do the medical services infringe upon the prohibition contained in s51(xxiiiA) of the Constitution?
7. What authority does The Commonwealth, a State, employer, service provider or registered health practitioner have to force a medical service such as vaccination onto any person without their consent, and does this infringe the prohibition on civil conscription in relation to medical services contained with s51(xxiiiA) of the Constitution?
- 220 8. Under the Biosecurity Act 2015, are sections: 90, 91, 92 and 93 prohibited pursuant to s51(xxiiiA) without the genuine understanding and consent of the affected person?
9. Is section 478(c) of the Biosecurity Act 2015(Cth) invalid pursuant to s51(xxiiiA) of the Constitution?
- 230 10. Is the impugned Act, Public Health and Wellbeing Act Vic (2008) in particular sections 20, 21, 22, 115, 116, 119,120,123,124, 142, 143A, 143B, 143D, 143E 145, 199, 200 and 203 invalid in relation to s 51(xxiiiA) of the Constitution and whether the Act is consistent with the Commonwealth Biosecurity Act 2015?
11. Does the Biosecurity Act 2015 (Cth) only apply to an individual with signs or symptoms of a listed disease and not the population as a whole?
12. What authority does a State Officer have to issue and enforce a biosecurity control order given that the powers of quarantine have been transferred from the States to the Commonwealth?
- 240 13. Are fines issued under the Public Health and Well Being Act of Victoria 2008 invalid absent a human biosecurity control order pursuant to the Biosecurity Act 2015?
14. Are the fines issued by a State officer pursuant to the Public Health and Well Being Act invalid absent a biosecurity control order pursuant to the Biosecurity Act 2015?

- 250 15. Is section 240 of the Public Health and Wellbeing Act Vic (2008) invalid as it expressly removes the ordinary protections inherent in the judicial process and thereby repugnant to Ch III of the Constitution?
16. Is the legislation, section 240 of the Public Health and Wellbeing Act Vic (2008) incompatible with the institutional integrity of the Supreme Court of Victoria and its Constitutional position as a potential repository of federal judicial power?
- 260 17. Is the Public Health and Wellbeing Act VIC(2008), either in its entirety or in part, or in its operation invalid because it impermissibly burdens the implied freedom of political communication contrary to the Commonwealth Constitution in particular, public protest?
18. Is there a Constitutionally supported freedom of association as an incident of the implied freedom of political communication?
19. What authority does the Commonwealth, the State or Victoria, any State, or any person have to prohibit (for example- hard border closure) restrict, require (for example -a permit) or burden travel, trade, commerce or intercourse among the States, whether by internal carriage, ocean navigation or by any other means including air travel, pursuant to s92 of the Constitution?
- 270 20. What authority do the States or Territories have to prohibit, restrict or burden any persons movements in relation to an infectious disease given does not exhibit any signs or symptoms, a healthy individual?
21. Is the Emergency Management Act VIC (2013) and or the Public Health and Wellbeing Act VIC (2008) invalid either in whole or in part or in its operation because it impermissibly infringes s92 of the Constitution?
- 280 22. Is there an implication in s92 that covers any and all forms of transport, including air travel, other than the two modes of travel expressly written in the Constitution?
23. Is a permit required to cross State borders for any of the aforementioned?
24. Can the provisions of the Constitution of Australia ever be overridden by State enactments of “States of Emergency” or extensions thereof which grant extensive powers to the State to take away human rights (and may not be supported by proper statistical or scientific data) and if so which provisions of the Constitution can be overridden and under what circumstances?
- 290 25. QUESTIONS OF FACT TO BE ADJUDICATED
26. These extremely important Questions of Fact posed in this matter affects over 25,000,000 Australians, a matter of Global importance, a matter that has brought Australia to a standstill since around March 2020, destroyed tens of thousands of businesses, created huge destruction in our Australian Economy, destroyed families, livelihoods, lives and much more. All based on an utterly FALSE Emergency

engendered by Corporate and Banking interests seeking Global Control and Slavery of the Human Race through the World's largest Pharmaceutical FEAR Campaign based on a non-existent 'virus' Sarscov2 which has never been scientifically isolated, a fake disease 'Covid19' that has never been scientifically defined apart from having 'Cold and Flu' symptoms, which thus, in fact, is a renaming of Influenza, And a totally fallacious false positive PCR test that cannot test for infectious diseases.

27. We also note that this false Emergency engendered by a Foreign Power, the World Health Organisation, has been used to overthrow the Australian Constitution and has in essence given 'carte blanc' to State Governments to institute huge unlawful invasion of basic Australian Human Rights and overthrow the Australian Constitution, which of course, is Treason.
28. The most important question of FACT we have is 'On what statistical and scientific basis does this false Emergency rest?'
29. And the answer is NONE, but highly inaccurate theoretical mathematical worst case computer models with no connection to physical reality whatsoever.
30. We await the FOI requests we have made to the Defendant to supply the statistical and scientific basis of this FALSE Emergency, which so far has not been forthcoming.
31. There is no statistical or scientific basis for an Emergency in Victoria or in fact any State of Australia.
32. Daniel Andrews is relying on the State of Emergency in Victoria for his extensive powers to put people in lockdown, to force them to wear masks (which have been proven scientifically to cause health issues), to close businesses and destroy people's livelihoods, close borders, arrest people, fine people and use other draconian measures against our Human and Constitutional Rights.
33. Despite consistently asking, the people of Victoria have never been given the scientific evidence, or the statistics (deaths) that warrant the decision to call a State of Emergency, or the extension of one.
34. Why do we need a State of Emergency when Statistics in Australia show that 99.9% of people under the age of 65 survive the virus, 99.5% of 70 year olds (without the complication of other co-morbidities) survive the virus. The age group at risk is the over 80's?
35. Why do we need a State of Emergency when John Ioannidis of Stanford University – one of the ten most cited scientists in the world has ranked the mortality rate of Covid19 caused by Sarscov2 in the range of that of influenza as early as March 2020? **He demonstrated that the worldwide panic at the end of January 2020 regarding an alleged high mortality rate associated with Sarscov2 infection was and is simply unfounded.** His paper confirms that the majority of people 65 and under survive the Corona Virus.
36. Why are decisions are being made based on no proper data?

37. Why is there a need for a State of Emergency when the Statistics show there have been a small number of deaths in Australia (Australian Bureau of Statistics 2020 deaths from Covid19 are 909). This is the lowest average death rate in Australia from upper respiratory infections in the past 5 years and apparently last year influenza deaths completely disappeared, Prior to Covid19, the Australian Bureau of Statistics show that nearly 3,000 people were dying annually from influenza?
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38. Why is no data given to people in Victoria about how many of the alleged Covid19 “cases” were properly diagnosed by a doctor apart from having a PCR test since now the WHO are saying the PCR test should not be used as the sole diagnostic tool but merely an aid?
39. Please provide the science for your allegation that asymptomatic cases can transmit the virus?
40. It has been alleged that there is an asymptomatic form of Covid19. Usually doctors cannot make a proper diagnosis unless a person is displaying symptoms. A study of nearly 10,000,000 people stated that out of the nearly 10 million people in the study, “300 asymptomatic cases” were found. Contact tracing was then carried out and of those 300, **no** cases of Covid19 were detected in any of them. “A total of 1,174 close contacts of the asymptomatic positive cases were traced, and they all tested negative for the Covid19.”
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41. Why are we not told that the vast majority of cases with Covid19 have survived?
42. Why is the State of Victoria using the PCR test as the **sole** diagnostic tool and running it at high amplifications, well over the recommended frequency?
43. The WHO has realized some of the problems with the PCR testing in that many false positives are produced and if the cycles of magnification are too high this test produces incorrect results. WHO has issued two notifications -- one on 14th December 2020 and one on 13th January 2021 providing a warning that caution needs to be exercised in using this test, as it is an **aid** to diagnosis and not the **sole** diagnostic tool. It is a known a fact that the PCR test is not able to diagnose whether you have an **infection** from any virus See: Version 1 - 7 December 2020 – Version 2 - 13 January 2021
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44. Why is the PCR test still being used as a basis that a person is infected with the Virus? Our own Therapeutic Goods Administration on their website (for Health Practitioners only) says “*The extent to which a positive PCR result correlates with the infectious state of an individual is still being determined*” “There is limited evidence available to assess the accuracy and clinical utility of available Covid19 tests”
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45. Why have very few of the purported deaths from Covid19 ever been given an autopsy to confirm that this is the actual cause of death and not some other comorbidity or accident?
46. The cause of death in most cases is merely an assumption by one person certifying the death.

47. Why are more Courts around the world deciding that these draconian measures are unconstitutional or unconscionable?
- 380 48. E.g. the Austrian Constitutional Court declared in October, 2020 that Outlawing gatherings with more than 4 people (10 for clubs), requiring people to keep a minimum distance, Requiring people not to enter premises was unconstitutional and ceased from 31.12.2020 The District Court in Weimar in Germany had a similar view on the restrictions.
49. German judge Thorsten Schleif calls on citizens to defend themselves against corona fines, as they are hard to follow logically and often in contravention of existing law. A restriction on citizen's rights can only be executed with sufficient reason, especially since these measures can be continued indefinitely.
- 390 50. The Appeal Court in Lisbon has stated that a proper diagnosis by a doctor needs to be made that a person is infected. A PCR test (which can create a lot of false positive results) is not sufficient.
51. Why has the WHO never suggested that there should be lockdowns and arrests for non-compliance?
52. A very serious event (the State of Emergency) has taken place that allows people enormous power, which can and is being abused. People have had their human rights taken away. This situation demands that the State of Emergency is fully justified with statistics that show a high death rate and that if you catch the virus you are likely to die. Neither of these two things is true. Decisions are being made without any reliable data and causing damage to people's lives.
- 400 53. So to summarise our argument based on FACT:
54. There is no serious deadly infectious disease sweeping the Planet.
55. Covid19 is Influenza renamed.
56. The Sarscov2 'virus' is not real and cannot and has not been scientifically isolated.
57. The PCR test is demonstrably totally deficient of testing for any 'virus' or infectious disease.
58. The 'scientific' argument that Lockdowns have saved Australia is as meaningless as saying Lockdowns are responsible for our hearts beating.
59. A small group of extremely wealthy people and corporations seeking Global Control and Enslavery and vast profits have taken over the World Health Organisation.
- 410 60. This group of people is typically referred to as Big Pharma.
61. The World Health Organisation has infiltrated all 192 member countries' Governments including Australia, and overthrown our Constitution with a FALSE Emergency.
62. The Sarscov2 'virus' is a Psyop to create global panic and fear which has been magnified enormously by a controlled relentless multi-media global fear campaign and censorship.

63. The announcement of ‘new deadly’ strains of Covid19 is an unscientific attempt to create further fear and panic Worldwide.
64. There is no Worldwide Emergency.
- 420 65. The World and Australia can return to Normal.

Part IV: *[Any reasons why an order for costs should not be made in favour of the defendant in the event that the writ is refused.]*

66. The Plaintiff is an Australian Aged Pensioner.
- 430 67. The Court must be accessible to all Australians whether rich or poor. The potential threat of costs cannot be used by the Court to deter, in practical terms any member of the Australian public from bringing to the Court a matter especially where the Commonwealth or a State is a party.
68. The Commonwealth or State suffers no financial loss as a result of a Court hearing, and its Officers, Attorney’s General, are already paid to perform such duties as part of their employment. Furthermore, should the Commonwealth or State be unsuccessful in a matter neither their Officers or Attorney’s General suffer any personal financial loss themselves.
- 440 69. Therefore the parties to the proceedings are not subject to equal penalties and the private person is in an inferior position from the beginning. The analogy here that can be drawn is one of unconscionable conduct in a contract between two parties where one party is in a far superior position to the other and uses this position to coerce the weaker party not pursue the matter or submit to their will. (Commercial Bank of Australia v Amadio (1983) HCA).
70. What relevance does cost have in relation to the proper administration of justice by the Court? Surely if the Court accepts a matter it must believe there is merit to it and furthermore, not all decisions by the Court are unanimous, the Court often being
450 divided by opinion and cases decided by majority.
71. The subject matter we are bringing before the Court is unprecedented in that it affects all Australians and is not some private interest matter, and cannot be subject to costs. Justice must not just be seen to be done it must be done and the public confidence in the judicial system cannot be maintained if the system in practical terms is in accessible to them. (Grollo v Palmer (1995) HCA)
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460 Part V: *[A list of authorities on which the plaintiff relies, identifying the line at which the relevant passages appear.]*

Authority (see details in Annexure to Writ of Summons)

73. Breen v Williams(1996) HCA (line 20)
74. Wong V Commonwealth (2009) HCA (line 30)
75. Newcrest Mining (WA) Ltd v The Commonwealth (1997) HCA (line 118)

76. Al-Kateb v Godwin (2004) HCA (line 119)
77. Roach v Electoral Commissioner (2007) HCA (line 121)
- 470 78. Ha v New South Wales (1997) HCA (line 194)
79. General Practitioners Society v The Commonwealth (1980) HCA (line 160)
80. British Medical Association v The Commonwealth (1949) HCA (line 43, 75, 221, 237)
81. Rogers v Whitaker (1992) HCA (line 254)
82. Sidaway v. Governors of Bethlem Royal Hospital (1985) HL (line 262, 478)
83. Gover v. South Australia (1985) HCA (line 264, 385)
84. Whitehouse v. Jordan (1981) HL (line 268, 280)
85. Maynard v. West Midlands Regional Health Authority (1984) HCA (line 269, 284)
86. Hills v. Potter (1984) USCA (line 269)
- 480 87. Blyth v. Bloomsbury Health Authority (1993) UK (line 270)
88. Gold v. Haringey Health Authority (1987) HCA (line 271)
89. Mutual Life Ltd. v. Evatt (1971) AC (line 273)
90. Saif Ali v. Sydney Mitchell and Co. (1980) AC (line 274)
91. Hunter v. Hanley (1955) SLT (line 278),
92. Canterbury v. Spence (1972) US (line 302, 430)
93. Reibl v. Hughes (1980) SCC (line 370, 436, 443)
94. Cook v. Cook (1986) HCA (line 329)
95. Papatonakis v. Australian Telecommunications Commission (1985) HCA (line 330),
96. Weber v. Land Agents Board (1986) HCA (line 331)
- 490 97. Lewis v. Tressider Andrews Associates Pty. Ltd. (1987) HCA (line 332)
98. Florida Hotels Pty. Ltd. v. Mayo (1965) HCA (line 335)
99. Albrighton v. Royal Prince Alfred Hospital (1980) HCA (line 338, 343)
100. E v. Australian Red Cross (1991) HCA (line 339, 345, 387)
101. Battersby v. Tottman (1985) HCA (line 344, 384)
102. Ellis v. Wallsend District Hospital (1988) NSWSC (line 385)
103. Chatterton v. Gerson (1981) UK (line 407, 443)
104. F v. R. by King C.J. (1983) (line 349, 350, 398, 447)
105. Bolam v Friern Hospital Management Committee (1957) (line 498)
106. Kable v DPP (1996) HCA (line 530)
- 500 107. South Australia v Totani (2010) HCA (line 592, 620)
108. Kirk v Industrial Court (2010) NSW (line 599)
109. Comcare v Banerji (2019) HCA (line 649, 687)
110. Australian Capital Television v Commonwealth (1992) HCA (line 739)
111. Victoria v. The Commonwealth (1996) HCA (line 771)
112. Brown v Tasmania (2017) HCA (line 803)
113. Lange v Australian Broadcasting Corporation (1997) HCA (line 960)
114. McCloy v New South Wales (2015) HCA (line 807)
115. Wragg v State of New South Wales (1953) HCA (line 829)
116. Levy v Victoria (1997) HCA (line 944, 952)
- 510 117. Gratwick v Johnson (1945) HCA (line 981, 1117, 1184, 1245)
118. Cole v Whitfield (1988) HCA (line 1146)
119. Miller v TCN Channel 9 (1986) HCA (line 1210, 1226)
120. The Commercial Bank v Amadio (1983) HCA (line 1368),
121. Clive Frederick Palmer v The State Of Western Australia No B52 of (2020) HCA, (line 176)
122. James v The Commonwealth (1935) HCA (line 994, 1016, 1026, , 1076)
123. Andrews v Howell (1941) HCA (line 994)
124. R. v Yizzard; Ex parte Hill (line 1012, 1100)
- 520 125. Gilpin Ltd. v Commissioners for Road Transport and Tramways (1935) HCA (line 1013)

126. Bessell v Dayman (1935) HCA (line 1014)
127. Duncan v Vizzard (1935) HCA (line 1014)
128. Riverina Transport Pty. Ltd. V Victoria (1937) HCA (line 1014, 1037, 1101)
129. W. & A. McArthur Ltd. v. Queensland (1920) HCA (line 1021)
130. James v Cowan (1930) HCA (line 1043, 1094)
131. Willard v Rawson (1933) HCA (line 1107)
132. Cf. Jehovahs Witnesses Case (line 1131)
133. Cole v Whitfield (1988) HCA (line 1146)
134. Bank of N.S.W. v The Commonwealth (the Banking Case) (1948) HCA (line 1151)
- 530 135. Duncan v Queensland (1916) HCA (line 1199)
136. Freightlines & Construction Holding Ltd v. New South Wales (1967) HCA (line 1200)
137. Miller v TCN Channel Nine (1986) HCA (line 1210, 1226)
138. Uebergang v. Australian Wheat Board (1980) HCA (line 1244)
139. The Commonwealth v Bank of N.S.W. (1949) HCA (line 1259)
140. Australian National Airways Pty. Ltd. v The Commonwealth (1945) HCA (line 1267)
141. North Eastern Dairy Co. Ltd. v Dairy Industry Authority of N.S.W. (1975) HCA (line 1277)
142. Perre v Pollitt (1976) HCA (line 1278)
- 540 143. Australian Coarse Grains Pool Pty. Ltd. v Barley Marketing Board (No.2) (1985) HCA (line 1279)
144. Beal v Marrickville Margarine Pty. Ltd. (1966) HCA (line 1284)
145. Grannall v Marrickville Margarine Pty. Ltd. (1955) HCA (line 1285)
146. Reg. v Anderson; Ex parte Ipec-Air Pty. Ltd. (1965) HCA (line 1291)
147. Ansett Transport Industries (Operations) Pty. Ltd. v. The Commonwealth (1977) HCA (line 1292)
148. Bartter's Farms Pty. Ltd. v Todd (1978) HCA (line 1295)
149. Damjanovic & Sons Pty. Ltd. v The Commonwealth (1968) HCA (line 1295)
150. R. v Poole; Ex parte Henry (No.2) (1939) HCA (line 1364)
- 550 151. [80 Grollo v Palmer \(1995\) HCA \(line 1379\)](#)

Part VI: *[The particular constitutional provisions, statutes and statutory provisions applicable to the questions the subject of the application set out verbatim.]*

THE AUSTRALIAN CONSTITUTION.

JUDICIARY ACT 1903 - SECT 78B - Notice to Attorneys-General

560 (1) Where a cause pending in a federal court including the High Court or in a court of a State or Territory involves a matter arising under the Constitution or involving its interpretation, it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause, specifying the nature of the matter has been given to the Attorneys-General of the Commonwealth and of the States, and a reasonable time has elapsed since the giving of the notice for consideration by the Attorneys-General, of the question of intervention in the proceedings or removal of the cause to the High Court.

(2) For the purposes of subsection (1), a court in which a cause referred to in that subsection is pending:

570 (a) may adjourn the proceedings in the cause for such time as it thinks necessary and may make such order as to costs in relation to such an adjournment as it thinks fit;

(b) may direct a party to give notice in accordance with that subsection;
and

(c) may continue to hear evidence and argument concerning matters severable from any matter arising under the Constitution or involving its interpretation.

(3) For the purposes of subsection (1), a notice in respect of a cause:

580 (a) shall be taken to have been given to an Attorney-General if steps have been taken that, in the opinion of the court, could reasonably be expected to cause the matters to be notified to be brought to the attention of that Attorney-General; and

(b) is not required to be given to the Attorney-General of the Commonwealth if he or she or the Commonwealth is a party to the cause and is not required to be given to the Attorney-General of a State if he or she or the State is a party to the cause.

(4) The Attorney-General may authorize the payment by the Commonwealth to a party of an amount in respect of costs arising out of the adjournment of a cause by reason of this section.

590 (5) Nothing in subsection (1) prevents a court from proceeding without delay to hear and determine proceedings, so far as they relate to the grant of urgent relief of an interlocutory nature, where the court thinks it necessary in the interests of justice to do so.

Constitution is binding upon every State Court

Clause 5. Operation of the Constitution and laws

600 This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Furthermore, section 106 of the Constitution, only allows the continuation of state constitutions, subject to the Constitution. Section 106 of the Constitution states:
s 106. Saving of Constitutions:

610 The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Supporting High Court case law for Clause 5 and s106 –

Attorney General QLD V Commonwealth 1915 HCA

Justice Isaacs stated: “In the Constitution itself, we find sec.106 declaring that the State Constitution is to be “subject to this Constitution”; that is. State powers are to give way to the requirements of the Federal Constitution. If they are repugnant to that Constitution, then they pro tanto cease to exist.

620 If there still exists a State power of legislation, it may be exerted, but with the consequence expressed in sec. 109 that wherever it is found to be inconsistent with a law of the Commonwealth it is pro tanto invalid. I draw attention to the word invalid. And then, in covering sec. V. of the Constitution Act itself, that Act (which includes the Constitution), and all Commonwealth laws made under it, are to be binding on the Courts, Judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State. In other words,

there is no law possible which a State may pass which can affect the validity and binding force of a Commonwealth law supported by the Constitution”.

109. Inconsistency of laws

630 When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Relevant Acts:

1. Public health and Wellbeing Act (2008) Victoria
2. Biosecurity Act 2015 (Cth)

1. **Public health and Wellbeing Act (2008) Victoria**

Part 3 Administration –

640 Division 2—The Chief Health Officer

20 **Chief Health Officer**

(1) Subject to the Public Administration Act 2004, there is to be appointed by the Secretary as the Chief Health Officer a person who is a registered medical practitioner.

(2) Subject to the general direction and control of the Secretary, the Chief Health Officer has the powers, duties, functions and immunities that are conferred or imposed on the Chief Health Officer by or under this or any other Act.

650 (3) For the purposes of this Act, the Chief Health Officer has and may exercise all the powers conferred on an authorised officer by this Act.

(4) The Secretary must issue an identity card to the Chief Health Officer.

(5) The identity card issued to the Chief Health Officer under this section must:
(a) contain a photograph of the Chief Health Officer; and
(b) contain the signature of the Chief Health Officer; and
(c) be signed by the Secretary.

(6) Part 9 applies to the Chief Health Officer when exercising the powers of an authorised officer under this Act.

660 21 **Functions and powers of the Chief Health Officer**

The functions and powers of the Chief Health Officer are—

(a) to develop and implement strategies to promote and protect public health and wellbeing;

(b) to provide advice to the Minister or the Secretary on matters relating to public health and wellbeing;

(c) to publish on a biennial basis and make available in an accessible manner to members of the public a comprehensive report on public health and wellbeing in Victoria;

670 (d) to perform any other functions or exercise any powers specified under this Act or any other Act or under any regulations made under this or any other Act.

22 **Power of delegation**

(1) The Chief Health Officer by instrument may delegate to a registered medical practitioner—

(a) who is an executive within the meaning of section 4(1) of the Public Administration Act 2004; or

(b) who is a prescribed senior officer—

- 680 any power, duty or function of the Chief Health Officer other than this power of delegation.
- (2) A delegation under subsection (1) may be made—
- (a) in relation to a person or class of persons specified in the instrument of delegation; or
 - (b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

690 The entire act, is written around the Chief Health Officer (CHO) a registered medical practitioner which purports to give him/her authority to enforce their medical opinion (civilly conscript) onto the population as a whole, and to delegate this alleged power onto other authorised persons. Such powers are Constitutionally invalid because of section 51(xxiiiA) and section 69 in concert with section 52(ii) Quarantine. By way of a Federal Act the Biosecurity Act 2015, quarantine powers only apply to an individual with signs or symptoms of a listed disease. Section 109 of the Constitution invalidates the Public Health and Wellbeing Act as a State Act being inconsistent with a Federal Act (Biosecurity Act 2015).

700 Under the Biosecurity Act, quarantine restrictions such as home detention which restricts a person's movements can only be effected by the issuing of a Biosecurity control order. Therefore any prosecutor defending fines issued by VICTORIA POLICE must produce such a control order in proceedings before the Magistrates court. A failure to produce such a control order deprives the court of jurisdiction and withdraws standing from the prosecutor. The court must therefore dismiss the matter for lack of jurisdiction.

Part 8 Management and control of infectious diseases, micro-organisms and medical conditions.

Division 2—Examination and testing orders and public health orders

710 115 **Registered medical practitioner must provide results**

A registered medical practitioner who conducts an examination or test on a person in accordance with an examination and testing order must as soon as is reasonably practicable provide written results of the examination or test to—

- (a) the Chief Health Officer; and
- (b) the person on whom the examination or test was conducted.

Note: See section 227.

116 **Person must comply with an examination and testing order**

720 A person to whom an examination and testing order applies must comply with the examination and testing order.

Penalty: 60 penalty units.

119 **Registered medical practitioner must provide information requested by the Chief Health Officer**

A registered medical practitioner who receives a request in writing from the Chief Health Officer for information in relation to a person for the purpose of deciding whether to make, revoke, vary or extend a public health order must as soon as is reasonably practicable provide the requested information in writing to the Chief Health Officer.

730 Note: See section 227.

120 Person must comply with a public health order

A person to whom a public health order applies must comply with the public health order.

Penalty: 120 penalty units.

121 Application for review by Chief Health Officer

(1) A person subject to a public health order may at any time while the order is in force apply to the Chief Health Officer for a review of the order.

740 (2) An application for a review of a public health order must be in writing or in any other form approved by the Chief Health Officer.

(3) Within the period of 7 days after receiving the application for review, the Chief Health Officer must review the public health order and may—

(a) revoke the order; or

(b) vary the order; or

(c) confirm the order.

122 Application for review by VCAT

A person subject to a public health order may at any time while the order is in force apply to VCAT for a review of the decision to make the order.

750 Note - A person who is entitled to apply to VCAT for review of a decision may, within 28 days after the day on which the decision is made, request the decision-maker to give the person a written statement of reasons for the decision.

123 Enforcement of orders

(1) Subject to this section, an authorised officer who is a registered medical practitioner may enforce an examination and testing order or a public health order.

760 (2) A requirement in an examination and testing order or a public health order that a person undergo any examination, test, pharmacological treatment or prophylaxis cannot be enforced by the use of force.

S.123 (3) amended by No. 37/2014 s. 10(Sch. item 136.2).

For the purposes of this section, an authorised officer may request the assistance of a police officer.

S. 123 (4) amended by No. 37/2014 s. 10(Sch. item 136.2).

(4) A police officer may use reasonable force to detain the person subject to an examination and testing order or a public health order and take that person to—

(a) a place where an examination and test is to be carried out; or

(b) the place where the person is required to be under the order.

770 (5) For the purposes of this section if it appears to the authorised officer that it is necessary to do so to enforce an examination and testing order or a public health order, the authorised officer may apply to the Magistrates' Court for a warrant to arrest the person who is subject to the order.

S. 123 (6) amended by No. 6/2018 s. 68(Sch. 2 item 103.1).

(6) If the Magistrates' Court is satisfied by evidence on oath or by affirmation or by affidavit of the matter specified in subsection (5), the Magistrates' Court may order that a warrant to arrest be issued against the person subject to the examination and testing order or public health order.

780 (7) A warrant issued for the purpose of subsection (6) may specify any conditions to which the warrant is subject.

(8) A person who is arrested or detained under this section must be informed at the time of the arrest or detention of the reason why the person is being arrested or detained.

Note: Section 183 provides that it is an offence to hinder or obstruct an authorised officer.

124 **No action lies against registered health practitioner**

No action lies against a registered health practitioner who in good faith and with reasonable care—

- 790 (a) conducts a test, examination or assessment in accordance with this Division; or
(b) provides counselling, pharmacological treatment or prophylaxis authorised by this Division.

142 **No action lies against registered medical practitioner**

No action lies against a registered medical practitioner who in good faith and with reasonable care—

- 800 (a) takes a sample of blood or urine from a person in accordance with this Division; or
(b) conducts a test in accordance with this Division; or
(c) provides information about test results or counseling authorised by this Division.

Division 6—Reporting requirements

143 **Annual report to include information about orders**

- 810 (1) The Chief Health Officer must include information about—
(a) the number of orders made by the Chief Health Officer under each of section 113, 117 and 134;
(b) the reasons for the making of those orders—
during the financial year in the relevant annual report of operations under Part 7 of the Financial Management Act 1994.
(2) The information included in the annual report under subsection (1) must not include any information that identifies, or is likely to lead to the identification of, any person.

Division 7—Immunisation

S. 143A (Heading) amended by No. 4/2018 s. 19(1).

820 S. 143A inserted by No. 55/2015 s. 5, amended by No. 4/2018 s. 19(2) (ILA s. 39B(1)).

143A Application of sections 143B, 143C, 143D and 143E

- (1) Sections 143B, 143C and 143D apply in relation to any child that is to attend an early childhood service.

S. 143A(2) inserted by No. 4/2018 s. 19(2).

- (2) Section 143E applies in relation to any child that attends an early childhood service.

S. 143B inserted by No. 55/2015 s. 5, substituted by No. 4/2018 s. 20.

143B Obligation of person in charge of early childhood service -

830 The person in charge of an early childhood service must ensure that the enrolment of a child at the early childhood service is not confirmed unless the parent of the child has provided to the early childhood service an immunisation status certificate which indicates, in relation to a date not more than 2 months immediately before the date on which the child first attends the early childhood service, that the child is age appropriately immunised.

S. **143D Secretary's guidelines in relation to exemption**

(1) For the purposes of section 143C(1)(g), the Secretary may make guidelines specifying the circumstances that may apply in relation to a child.

(2) The guidelines made under subsection (1)—

- 840 (a) must be published in the Government Gazette; and
- (b) come into operation on the date they are published; and
- (c) may be revoked by the Secretary.

S. 143E inserted by No. 4/2018 s. 21.

143E Periodic production of immunisation status certificate

(1) The parent of a child who attends an early childhood service must provide to the person in charge of the early childhood service an immunisation status certificate indicating that the child is age appropriately immunised—

- (a) within 2 months after the child attains a prescribed age; or
- (b) at intervals not exceeding the prescribed period.

850 (2) The person in charge of an early childhood centre must take reasonable steps to ensure that a parent of a child who attends the early childhood service provides an immunisation status certificate in accordance with subsection (1).

(3) A parent of a child attending an early childhood service is not required to comply with subsection (1) if—

- (a) section 143C(1) applies in relation to the child; and
- (b) the relevant immunisation status certificate is to be provided during the 16 week period referred to in section 143C(2).

145 Immunisation status certificates to be produced before attendance at primary school

860 The parent of a child must give an immunisation status certificate in respect of each vaccine-preventable disease to the person in charge of each primary school that the child is to attend.

199 Chief Health Officer may authorise exercise of certain powers

(1) This section applies if—

- 870 (a) a state of emergency exists under section 198; and
- (b) the Chief Health Officer believes that it is necessary to grant an authorisation under this section to eliminate or reduce a serious risk to public health.

(2) If this section applies, the Chief Health Officer may, for the purpose of eliminating or reducing the serious risk to public health, authorise—

- (a) authorised officers appointed by the Secretary to exercise any of the public health risk powers and emergency powers; and
- (b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or Councils to exercise any of the public health risk powers and emergency powers.

(3) The Chief Health Officer may at any time revoke or vary an authorisation given under this section.

880

200 Emergency powers

(1) The emergency powers are—

- (a) subject to this section, detain any person or group of persons in the emergency area for the period reasonably necessary to eliminate or reduce a serious risk to public health;
- (b) restrict the movement of any person or group of persons within the emergency area;

- 890 (c) prevent any person or group of persons from entering the emergency area; Authorised by the Chief Parliamentary Counsel Part 10—
Protection and enforcement provisions Public Health and Wellbeing Act 2008 No. 46 of 2008
192
- (d) give any other direction that the authorized officer considers is reasonably necessary to protect public health.
- (2) Unless subsection (3) applies, before any person is subject to detention under subsection (1)(a), an authorised officer must briefly explain the reason why it is necessary to detain the person.
- (3) If in the particular circumstances in which the power to detain the person is to be exercised, it is not practicable to briefly explain the reason why it is necessary to
900 detain the person before the power is exercised, the authorised officer must do so as soon as is practicable.
- (4) Before exercising any emergency powers under this section, an authorised officer must, unless it is not practicable to do so, warn the person that a refusal or failure to comply without a reasonable excuse, is an offence.
- (5) An authorised officer must facilitate any reasonable request for communication made by a person subject to detention under subsection (1)(a).
- (6) An authorised officer must at least once every 24 hours during the period that a person is subject to detention under subsection (1)(a) review whether the continued
910 detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health.
- (7) An authorised officer must as soon as is reasonably practicable give written notice to the Chief Health Officer—
- (a) that a person has been made subject to detention under subsection (1)(a);
- (b) that following a review under subsection (6) a person is to continue to be subject to detention under subsection (1)(a).
- Authorised by the Chief Parliamentary Counsel
Part 10—Protection and enforcement provisions
Public Health and Wellbeing Act 2008
920 No. 46 of 2008
193
- (8) A notice under subsection (7) must include—
- (a) the name of the person being detained; and
- (b) a brief statement as to the reason why the person is being, or continues to be, subject to detention under subsection (1)(a).
- (9) The Chief Health Officer must as soon as is reasonably practicable advise the Minister of any notice received under subsection (7).

203 **Compliance with direction or other requirement**

- 930 (1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.
Penalty: In the case of a natural person, 120 penalty units;
In the case of a body corporate, 600 penalty units.
- (2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement.

2 Biosecurity Act 2015 (Cth)

- 940 A law of the Commonwealth has made in relation to human quarantine is the Biosecurity

Act 2015 (Cth), whose main method of managing risks to human health is by imposing a human biosecurity order on an individual, who may have a listed human disease or signs or symptoms of, and not the population as a whole.

By way of operation of section 109 of the Constitution, where an inconsistency arises between the law of a State (Public Health and Wellbeing Act VIC 2008) and a law of the Commonwealth (Biosecurity Act 2015), the latter shall prevail to the extent of the inconsistency.

950 Biosecurity Act 2015 (Cth)
No. 61, 2015

An Act relating to diseases and pests that may cause harm to human, animal or plant health or the environment, and for related purposes

3 Simplified outline of this Act

Chapter 2 deals with managing risks to human health. That Chapter only deals with diseases (listed human diseases) that are listed in a legislative instrument.

960 The main method of managing risks to human health is by imposing a human biosecurity control order on an individual who may have a listed human disease. However, Chapter 2 also includes requirements in relation to persons entering or leaving Australian territory, and rules relating to managing deceased individuals.

Chapter 8 provides for the Governor-General to declare biosecurity emergencies and human biosecurity emergencies. Part 1 gives the Agriculture Minister special powers to deal with biosecurity emergencies and provides for certain powers to be delegated to national response agencies. Part 1 also includes other modifications of the Act that apply during biosecurity emergencies.

970 **Part 2** gives the Health Minister special powers to deal with human biosecurity emergencies, including by giving effect to recommendations of the World Health Organization.

4 Objects of this Act

The objects of this Act are the following:

- 980 (a) to provide for managing the following:
- (i) biosecurity risks;
 - (ii) the risk of contagion of a listed human disease;
 - (iii) the risk of listed human diseases entering Australian territory or a part of Australian territory, or emerging, establishing themselves or spreading in Australian territory or a part of Australian territory;
 - (iv) risks related to ballast water;
 - (v) biosecurity emergencies and human biosecurity emergencies;
- (b) to give effect to Australia's international rights and obligations, including under the International Health Regulations, the SPS Agreement and the Biodiversity Convention.

990 Note: The expression biosecurity risk referred to in subparagraph (a)
(i) has different meanings depending on whether it is for the purposes of Chapter 6 (managing biosecurity risks):

monitoring, control and response) or another part of this Act (see sections 9 and 310).

Act binds the Crown

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be:

- 1000
- (a) prosecuted for an offence; or
 - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
 - (c) given an infringement notice under Part 5 of the Regulatory Powers Act.

Disease means:

- 1010
- (a) the signs or symptoms of an illness or infection caused by a disease agent; or
 - (b) a collection of signs or symptoms that is clinically defined, for which the causal agent is unknown; or
 - (c) a disease agent that has the potential to cause, either directly or indirectly, an illness or infection. disease agent includes, but is not limited to, a microorganism, an infectious agent and a parasite.

90 Undergoing an examination

An individual may be required by a human biosecurity control order to undergo, at a specified medical facility, a specified kind of examination relating to determining the presence in the individual of:

- 1020
- (a) the listed human disease specified in the order; and
 - (b) any other listed human disease.

Note: For the manner in which this biosecurity measure must be carried out, see section 94.

91 Requiring body samples for diagnosis

(1) This section applies if an individual has undergone an examination under section 90.

(2) The individual may be required by a human biosecurity control order to provide, at a specified medical facility, specified body samples for the purpose of determining the presence in the individual of:

- 1030
- (a) the listed human disease specified in the order; and
 - (b) any other listed human disease.

Note: For the manner in which this biosecurity measure must be carried out, see section 94.

Requirements for samples

(3) The regulations must prescribe requirements for taking, storing, transporting, labelling and using body samples provided under subsection (2).

Note: The regulations may prescribe offences and civil penalties in relation to a failure to comply with a prescribed requirement (see subsection 645(2)).

Giving samples to the World Health Organization

1040

(4) The Health Minister may, at the request of the World Health Organization, give all or part of a sample provided under subsection (2) to the Organization for the purposes of detecting, assessing or responding to a listed human disease.

92 Receiving a vaccination or treatment

An individual may be required by a human biosecurity control order to receive, at a specified medical facility:

- 1050 (a) a specified vaccination; or
(b) a specified form of treatment;
in order to manage the listed human disease specified in the order,
and any other listed human disease.

93 Receiving medication

(1) An individual may be required by a human biosecurity control order to receive specified medication in order to manage the listed human disease specified in the order, and any other listed human disease.

Note: For the manner in which this biosecurity measure must be carried out, see section 94.

- 1060 (2) The order must specify:
(a) how much medication is to be taken; and
(b) how long the medication is to be taken for.

94 Appropriate medical or other standards to be applied

A biosecurity measure set out in section 90 (examination), 91 (body samples), 92 (vaccination or treatment) or 93 (medication) must be carried out in a manner consistent with either or both of the following (as the case requires):

- (a) appropriate medical standards;
(b) appropriate other relevant professional standards.

1070 95 No use of force to require compliance with certain biosecurity measures

Force must not be used against an individual to require the individual to comply with a biosecurity measure imposed under any of sections 85 to 93.

Note: Force may be used in preventing an individual leaving Australian territory in contravention of a traveller movement measure (see section 101) or in detaining a person who fails to comply with an isolation measure (see section 104).

96 Traveller movement measure

- 1080 (1) An individual may, for a specified period of no more than 28 days, be required by a human biosecurity control order not to leave Australian territory on an outgoing passenger aircraft or vessel.

Note: For provisions relating to traveller movement measures, see Subdivision C.

Traveller movement measure ceasing to be in force before human biosecurity control order

(2) If a traveller movement measure ceases to be in force, subsection (1) does not prevent another traveller movement measure from being included in the same human biosecurity control order.

When traveller movement measure ceases to be in force

- 1090 (3) A traveller movement measure ceases to be in force at the earliest of the following times:
(a) at the end of the period specified under subsection (1);
(b) the time when the human biosecurity control order ceases to be in force;
(c) the time when the order is varied to remove the measure;
(d) the time when the order is revoked.

97 Isolation measure

(1) An individual may be required by a human biosecurity control order to remain isolated at a specified medical facility.

1100 Note 1: A non-Australian citizen who is required to remain isolated is entitled to consular assistance under section 102.

Note 2: A person who does not comply with an isolation measure that the person is required to comply with may be detained under Subdivision B of Division 4.

- (2) An isolation measure included in a human biosecurity control order under subsection (1) may be made conditional on a person refusing to consent to another biosecurity measure included in the human biosecurity control order. Authorised Version No. 61, 2015 Biosecurity Act 2015 463

Division 2—Human biosecurity emergency powers

1110 474 Health Minister to exercise human biosecurity emergency powers personally
A power of the Health Minister under this Part may only be exercised by the Health Minister personally.

475 Governor-General may declare that a human biosecurity emergency exists

(1) The Governor-General may declare that a human biosecurity emergency exists if the Health Minister is satisfied that:

- 1120 (a) a listed human disease is posing a severe and immediate threat, or is causing harm, to human health on a nationally significant scale; and
(b) the declaration is necessary to prevent or control:
(i) the entry of the listed human disease into Australian territory or a part of Australian territory; or
(ii) the emergence, establishment or spread of the listed human disease in Australian territory or a part of Australian territory.

Note 1: The declaration is a human biosecurity emergency declaration (see section 9).

Note 2: For revocation, see subsections 33(3) and (3AA) of the Acts Interpretation Act 1901.

1130 Note 3: A human biosecurity emergency declaration may be varied under section 476. Subsection 33(3) of the Acts Interpretation Act 1901 does not apply in relation to variation of a human biosecurity emergency declaration.

- (2) A human biosecurity emergency declaration is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the declaration.

Requirements for human biosecurity emergency declaration

(3) A human biosecurity emergency declaration must specify: Authorised Version C2015A00061

Chapter 8 Biosecurity emergencies and human biosecurity emergencies

1140

Part 2 Human biosecurity emergencies

Division 2 Human biosecurity emergency powers Section 476

464 Biosecurity Act 2015 No. 61, 2015

- (a) the listed human disease to which the declaration relates; and
(b) the nature of the human biosecurity emergency and the conditions that gave rise to it;
and
(c) the period during which the declaration is in force.

1150 Note 1: The listed human disease specified under paragraph (3)(a) is the declaration listed human disease (see section 9).

Note 2: The period specified under paragraph (3)(c) is the human biosecurity emergency period (see section 9).

(4) A human biosecurity emergency period:

(a) must not be longer than the period that the Health Minister considers necessary to prevent or control:

(i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or

1160

(ii) the emergence, establishment or spread of the declaration listed human disease in Australian

territory or a part of Australian territory; and

(b) in any case, must not be longer than 3 months.

Note: A human biosecurity emergency period may be extended under section 476.

476 Governor-General may extend a human biosecurity emergency period

(1) The Governor-General may vary a human biosecurity emergency declaration to extend the human biosecurity emergency period for a period of up to 3 months if the Health Minister is satisfied that:

1170

(a) the declaration listed human disease is continuing to pose a severe and immediate threat, or is continuing to cause harm, to human health on a nationally significant scale;

and

(b) the extension is necessary to prevent or control:

(i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or

(ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of

Australian territory.

1180

478 Health Minister may give directions during human biosecurity emergency period

(1) During a human biosecurity emergency period, the Health Minister may give any direction, to any person, that the Health Minister is satisfied is necessary:

(a) to prevent or control:

(i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or

(ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of

Australian territory; or

1190

(b) to prevent or control the spread of the declaration listed human disease to another country; or

(c) if a recommendation has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations in relation to the declaration listed human disease—to give effect to the recommendation.

Note 1: A person who fails to comply with a direction given under this subsection may commit an offence (see section 479).

Note 2: See also section 572 (general provisions relating to directions).

1200

(2) Without limiting subsection (1), the directions that the Health Minister may give under that subsection include the following:

(a) a direction to a person who is in a position to close premises, or prevent access to premises, to do so;

- (b) a direction for the purposes of giving effect to or enforcing a requirement determined under section 477;
- (c) if a recommendation has been made as referred to in paragraph (1) (c)—a direction for the purposes of giving effect to the recommendation.

(3) Before giving a direction under subsection (1), the Health Minister must be satisfied of all of the following:

- 1210
- (a) that the direction is likely to be effective in, or to contribute to, achieving the purpose for which it is to be given;
 - (b) that the direction is appropriate and adapted to achieve the purpose for which it is to be given; Authorised Version C2015A00061

Chapter 8 Biosecurity emergencies and human biosecurity emergencies

Part 2 Human biosecurity emergencies

Division 2 Human biosecurity emergency powers

Section 479

1220 468 Biosecurity Act 2015 No. 61, 2015

- (c) that the direction is no more restrictive or intrusive than is required in the circumstances;
- (d) if the direction is to apply during a period—that the period is only as long as is necessary.

(4) A direction may be given under subsection (1) despite any provision of any other Australian law.

(5) A direction must not be given under subsection (1) to an officer or employee of a State, Territory or State or Territory body unless the direction is in accordance with an agreement between the Commonwealth and the State, Territory or body.

1230 (6) A direction given under subsection (1) must not require an individual to be subject to a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2.

Note: Subdivision B of Division 3 of Part 3 of Chapter 2 sets out the biosecurity measures that may be included in a human biosecurity control order.

When direction ceases to have effect

(7) A direction given under subsection (1) ceases to have effect at the end of the human biosecurity emergency period, unless it is revoked earlier.

479 Person must comply with emergency requirements and directions

- 1240
- (1) A person must comply with a requirement determined under subsection 477(1) that applies to the person.
 - (2) A person must comply with a direction given under subsection 478(1) that applies to the person.

Fault-based offences

(3) A person commits an offence if:

- (a) a requirement determined under subsection 477(1) applies to the person; and
- (c) the conduct contravenes the requirement.

1250 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person commits an offence if:

- (a) a direction given under subsection 478(1) applies to the person; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the direction.

Penalty for contravention of this subsection: Imprisonment for 5 years or 300 penalty units, or both. b) the person engages in conduct; and

480 Simplified outline of this Part

1260 Biosecurity enforcement officers may enter premises under a warrant or with consent of the occupier and exercise monitoring powers there under Part 2 of the Regulatory Powers Act, for the purposes of determining:

- (a) whether this Act has been, or is being, complied with; or
- (b) whether information given in compliance or purported compliance with this Act is correct.

A biosecurity enforcement officer may be assisted by other persons in exercising powers under that Part. That Part contains the rules for obtaining a monitoring warrant, and the powers and obligations of biosecurity enforcement officers in entering premises under a monitoring warrant or with consent. Authorised Version

1270 576 Internal review of reviewable decisions

Application for review

(1) A relevant person for a reviewable decision may apply to the Director of Biosecurity for review of the decision, unless the decision was made by the Director of Biosecurity or the Director of Human Biosecurity personally.

Note: For review of a decision made personally, see section 578.

(2) An application for review must:

- (a) be in writing; and
- (b) set out the reasons for the application; and
- (c) be made within:

1280 (i) 30 days after the day the reviewable decision first came to the notice of the applicant; or

(ii) if the Director of Biosecurity allows a longer period (whether before or after the end of the 30-day period referred to in subparagraph (i))—that longer period.

Note: Under section 577, the Director of Biosecurity may require further information in relation to an application.

Chapter 11 Miscellaneous Part 1 Review of decisions Division 2 Review of decisions Section 576 Notice of decision

1290 (6) After a decision is made under this section, the person who made the decision must give the applicant a written notice containing:

- (a) the terms of the decision; and
- (b) the reasons for the decision; and
- (c) notice of the person's right to have the decision reviewed by the Administrative Appeals Tribunal.

However, a failure to comply with this subsection does not affect the validity of the decision.

578 Review by the Administrative Appeals Tribunal

1300 (1) An application may be made to the Administrative Appeals Tribunal for review of: (a) a reviewable decision made by the Director of Biosecurity or the Director of Human Biosecurity personally; or (b) a decision of the Director of Biosecurity, or internal reviewer, under section 576 that relates to a reviewable decision.

Note: For AAT review of a direction of the Director of Human Biosecurity to comply with an isolation or traveller movement measure, see section 76.

(2) An application under subsection (1) may be made only by, or on behalf of, the relevant person for the reviewable decision referred to in paragraph (1)(a) or (b).

(3) Subsection (2) has effect despite subsection 27(1) of the Administrative Appeals

Tribunal Act 1975.

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Dated 8th July 2021

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Solihin Millin (self represented)

To: The other party
The State of Victoria

*[Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and
the Northern Territory]*