

**Authorised Version No. 054**  
**Essential Services Act 1958**  
**No. 6244 of 1958**

Authorised Version incorporating amendments as at  
17 November 2011

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**Authorised Version No. 054**  
**Essential Services Act 1958**

**No. 6244 of 1958**

Authorised Version incorporating amendments as at  
17 November 2011

An Act to consolidate the Law making provision with respect to  
the Protection of the Community against the Interruption or  
Dislocation of Essential Services.

**BE IT ENACTED by the Queen's Most Excellent Majesty by  
and with the advice and consent of the Legislative Council  
and the Legislative Assembly of Victoria in this present  
Parliament assembled and by the authority of the same as  
follows (that is to say):**

**1 Short title and commencement**

This Act may be cited as the **Essential Services Act 1958**, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

**2 Repeal**

- (1) The Act mentioned in the Schedule to the extent thereby expressed to be repealed is hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
  - (a) all persons things and circumstances appointed or created by or under the repealed Act or existing or continuing under such Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Act had not been so repealed;

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- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation order declaration decision petition direction prohibition requisition revocation compensation appointment agreement arbitration ballot delegation liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under such Act before the commencement of this Act.

No. 5263 s. 2.

### **3 Definitions**

In this Act unless inconsistent with the context or subject-matter—

*essential service* means any of the following services, namely—

- (a) transport;
- (b) fuel;
- (c) light;
- (d) power;
- (e) water;
- (f) sewerage;
- (g) any service (whether of a type similar to the foregoing or not) specified from time to time by order of the Governor in Council published in the Government Gazette—

provided to the public by a passenger transport company within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**, a train operator or a tram operator as defined in section 3(1) of the **Rail Management Act 1996**, the State Electricity Commission of Victoria, Generation Victoria, National Electricity, VENCORP, a distribution company, a transmission company or a generation company within the meaning of the **Electricity Industry Act 2000**, the Melbourne and Metropolitan Board of Works, any Authority under the **Water Act 1989** any gas company within the meaning of the **Gas Industry Act 1994** or any other person or body specified (whether generally or specially and whether that person or body is a person or body representing the Crown or not) by Order in Council published in the Government Gazette in relation to such service; and includes any service provided operated controlled regulated or directed by

S. 3 def. of *essential service* amended by Nos 8353 s. 19, 8976 s. 11(a)(i)(ii), 9902 s. 2(1) (Sch. item 78), 9921 s. 255, 44/1989 s. 41 (Sch. 2 item 12), 81/1989 s. 3(Sch. item 13), 130/1993 s. 122(Sch. 4 item 3) (as amended by No. 53/1994 s. 23(3)(b)), 53/1994 s. 34(Sch. 1 item 1), 110/1994 s. 41(Sch. 1 item 2), 112/1994 s. 114(Sch. 5 item 4), 31/1995 s. 52(Sch. 1 item 5), 91/1997 s. 45, 104/1997 s. 45, 25/1998 s. 170, 30/2000 s. 35, 69/2000 s. 51, 6/2010 s. 203(1)(Sch. 6 item 19) (as amended by No. 45/2010 s. 22).

the Minister under this Act during a period of emergency;

**Minister** means the Minister (including the Premier of Victoria) for the time being designated by the Premier of Victoria as the Minister for any purpose under this Act;

S. 3 def. of *period of emergency* amended by No. 23/2002 s. 191(1)(a).

**period of emergency** means the time during which any proclamation of emergency made under this Act in relation to any essential service is in force;

S. 3 def. of *Victorian Electoral Commission* inserted by No. 23/2002 s. 191(1)(b).

**Victorian Electoral Commission** means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.

No. 5263 s. 3.

#### 4 Proclamation of emergency where essential service is likely to be interrupted

S. 4(1) substituted by No. 9028 s. 2.

- (1) Where at any time it appears to the Governor in Council that any action has been taken or is likely to be taken or has been threatened to be taken by any person or body of persons whereby any essential service is or is likely to be interrupted, dislocated or materially diminished and—
  - (a) the opportunity of persons (other than those by whom the action has been taken or is likely to be taken or has been threatened to be taken) to be gainfully employed in their usual occupations; or
  - (b) the health or safety of the public or any section of the public; or

- (c) the maintenance of peace and good order in Victoria is prejudiced or threatened or is likely to be prejudiced or threatened—

the Governor in Council may by proclamation published in the Government Gazette (in this Act referred to as "a proclamation of emergency") declare that a state of emergency exists in relation to that essential service.

- (2) Any such proclamation in relation to any essential service may be limited therein as to time place and circumstance.

- (2A) Any such proclamation in relation to any essential service may provide that any particular provision of this Act shall not apply to or in relation to that essential service during the period of emergency.

S. 4(2A)  
inserted by  
No. 8976  
s. 11(b).

- (3) No such proclamation shall be in force for more than one month, without prejudice to the issue of another proclamation of emergency before at or after the end of that period.

- (4) Any such proclamation may be revoked—

(a) by a proclamation of the Governor in Council published in the Government Gazette; or

(b) by a resolution passed by either House of the Parliament.

S. 4(4)(b)  
amended by  
No. 8976  
s. 11(c).

- (5) If—

(a) at the time of the publication in the Government Gazette of any proclamation of emergency Parliament is not sitting; and

(b) a petition signed by not less than twenty members of the Legislative Assembly or by not less than thirty members of Parliament all or any of whom are members of the

Legislative Council objecting to such proclamation and requesting that Parliament should be summoned is addressed to the Speaker of the Legislative Assembly or the President of the Legislative Council—

Parliament shall be summoned to meet as soon as practicable thereafter.

No. 5263 s. 4.

## **5 Powers of Minister during period of emergency**

- (1) The Minister may provide operate control regulate and direct any essential service (whether by way of continuation or modification of, or substitution for, any essential service theretofore provided) during a period of emergency.
- (2) The Minister may employ at not less than award rates such persons in such numbers and upon such terms as appear to him to be necessary for the carrying into effect of the powers referred to in the last preceding subsection.
- (3) Without limiting the generality of the foregoing provisions of this section the Minister may—
  - (a) direct what services shall be maintained and upon what terms and conditions they shall operate;
  - (b) direct persons and bodies to operate and maintain services to the extent and upon the terms specified in the direction;
  - (c) direct at what times and places and upon what terms and conditions and in what manner services may be used or availed of;
  - (d) prohibit the operation or use of services except, if so specified in the prohibition, with the consent of the Minister;



- (e) requisition the use of property of any kind which is used or may be used for or in connexion with the operation or maintenance of any essential service;
- (f) provide for or control, by direction prohibition or requisition, the operation use disposal distribution storage repair upkeep and maintenance of any property or commodity used or which may be used for or in connexion with any essential service;
- (g) provide, by direction prohibition or requisition, for any matter or thing incidental to the carrying into effect of the powers referred to in this section.

## **6 Compliance with directions etc. of Minister**

No. 5263 s. 5.

- (1) Every body and every person to which or to whom any direction prohibition or requisition is addressed or directed under this Act shall comply with such direction prohibition or requisition.
- (2) Such a direction prohibition or requisition may be addressed or directed to bodies and persons generally or particularly, in writing or verbally, by publication or advertisement or by any other means or in any other manner which appear or appears to the Minister to be practicable appropriate or expedient in the circumstances.

## **7 Delegation of powers and functions by Minister**

No. 5263 s. 6.

- (1) The Minister may in relation to any matter or class of matters or in relation to any part of Victoria by writing under his hand delegate all or any of his powers and functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters or part of Victoria specified in the instrument of delegation.

- (2) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Minister.

No. 5263 s. 7.

## **8 Application and operation of directions etc.**

- (1) Any direction prohibition or requisition under this Act—
- (a) may be made so as to apply to or have operation throughout the whole or any part of Victoria;
  - (b) may subject to this Act be made so as to operate for any period or periods or for any time or times or for any occasion or occasions specified therein;
  - (c) may be of general operation or of specially limited operation according to time place circumstances conditions or restrictions;
  - (d) may be revoked by the Minister or by a resolution passed by either House of the Parliament; and
  - (e) shall have effect as if enacted in this Act.
- (2) The expiry or revocation of any direction prohibition or requisition under this Act shall not be deemed to have affected the previous operation thereof or the validity of any action taken thereunder or any penalty or punishment incurred in respect of any contravention of or failure to comply therewith or any proceeding or remedy in respect of any such penalty or punishment.

S. 8(1)(d)  
amended by  
No. 8976  
s. 11(d).

**9 Compensation to persons and bodies complying with directions etc.**

No. 5263 s. 8.

- (1) Any person or body of persons who or which as the result of compliance with any direction prohibition or requisition addressed or directed under this Act to him or it or while complying with or being engaged in the carrying into effect of any such direction prohibition or requisition suffers loss damage or injury shall be entitled to compensation under this Act.
- (2) Every claim for compensation under this Act shall be made in a form and within a time approved by the Governor in Council.
- (3) In default of agreement as to the amount of compensation between the Minister and the claimant the Minister shall direct that the matter be referred to arbitration before a sole arbitrator who shall, where the claim is for an amount greater than \$1000, be a County Court judge nominated by the Governor in Council and in any other case be a magistrate so nominated.
- (4) Save as aforesaid the provisions of the **Commercial Arbitration Act 2011** shall apply with respect to such arbitration and the Minister's direction shall be deemed to be the submission under the said Act and the Minister and the claimant shall be deemed to be the parties thereto.

S. 9(3)  
amended by  
Nos 16/1986  
s. 30, 50/2011  
s. 46(Sch.  
item 6.1).

S. 9(4)  
amended by  
No. 50/2011  
s. 46(Sch.  
item 6.2).

**10 Power to prohibit opening of specified places etc.**

No. 5263 s. 9.

During any period of emergency the Governor in Council may by Order published in the Government Gazette prohibit the opening of places of public amusement or entertainment specified therein during the hours and within the areas specified therein and may in like manner revoke or amend any such Order.

**s. 11**

No. 5263 s. 10.

**11 Penalty for taking part in strike without approval  
by secret ballot**

S. 11(1)  
amended by  
Nos 75/1988  
s. 4(3)(Sch.  
item 2),  
23/2002  
s. 191(2).

(1) If a strike or similar interruption occurs in any essential service, unless at a secret ballot held by the Victorian Electoral Commission before the strike or interruption commences and in accordance with the regulations under this section a majority of persons entitled to vote is declared to have voted in favour of such strike or interruption, every person who and the trustees of any trade union which or any officer of which instigates or takes part in such strike or interruption shall be liable—

(a) in the case of an officer or the trustees of a trade union to a penalty of not more than \$2000;

(b) in the case of any other person to a penalty of not more than \$100.

S. 11(2)  
amended by  
No. 6886 s. 3  
(as amended  
by No. 6961  
s. 2).

(2) The Governor in Council may make regulations for or with respect to—

(i) the taking of secret ballots for the purposes of this and the next succeeding section, including the preparation of rolls of persons entitled to vote thereat, the preparation and distribution of ballot papers, the method of voting, the conduct of the ballot, the counting of votes and the declaration of the results; and

(ii) any other matter necessary or expedient to be prescribed for the purposes of this or the next succeeding section.

S. 11(2)(b)  
repealed by  
No. 6886 s. 3.

\* \* \* \* \*

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**12 Secret ballots as to continuation of certain strikes etc.**

No. 5263 s. 11.

- (1) Where a strike or similar interruption in any essential service has occurred whether before or after the commencement of this Act but before the commencement of subsection (1) of the last preceding section and continues after the commencement of the said subsection (1) the Governor in Council may direct a secret ballot to be held by the Victorian Electoral Commission in accordance with the regulations made under the last preceding section.
- (2) Unless at such ballot a majority of persons entitled to vote is declared to have voted in favour of the continuation of such strike or interruption, every person who and the trustees of any trade union which or any officer of which after the declaration of the result of the ballot continues to take part in or instigates the continuation of such strike or interruption shall be liable—
- (a) in the case of an officer or the trustees of a trade union to a penalty of not more than \$2000;
- (b) in the case of any other person to a penalty of not more than \$100.

S. 12(1)  
amended by  
Nos 75/1988  
s. 4(3)(Sch.  
item 2),  
23/2002  
s. 191(2).

**13 Lock-outs in essential services illegal**

No. 5263 s. 12.

Any person or body of persons who or which causes any employ es in any essential service to be locked out shall be guilty of an offence against this Act and shall be liable to a penalty of not more than \$2000.

No. 5263 s. 13.

#### **14 Offence to intimidate etc. employees in essential services**

Any person who, during any period of emergency, by force threats intimidation or offensive action of any kind (against whomsoever directed) interferes with molests or annoys any other person in the course of or in relation to the performance by such other person of any duty in respect of any essential service shall be guilty of an offence against this Act.

No. 5263 s. 14.

#### **15 Offences and penalty**

- (1) Any person or body who or which contravenes or fails to comply with any direction prohibition or requisition or any Order in Council or regulation under this Act shall be guilty of an offence against this Act.
- (2) Every person or body who or which aids abets incites counsels or procures or is in any way directly or indirectly knowingly concerned in the commission of any offence against this Act shall be deemed to have committed that offence and shall be punishable accordingly.
- (3) Every person or body who or which is guilty of an offence against this Act shall where no other penalty is expressly provided be liable to a penalty of not more than \$1000 or to imprisonment for a term of not more than six months.

S. 15(3)  
amended by  
No. 8976  
s. 11(e).

No. 5263 s. 15.

#### **16 Appropriation**

Any sums required to be paid or provided for the purposes of this Act shall be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly).

S. 16  
amended by  
No. 9902  
s. 2(1)(Sch.  
item 79).

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**SCHEDULE**

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
5263	<b>Essential Services Act 1948</b>	The whole.

**Section 2.**

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## ENDNOTES

### 1. General Information

The **Essential Services Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959; Government Gazette 18 March 1959 page 892.



## 2. Table of Amendments

This Version incorporates amendments made to the **Essential Services Act 1958** by Acts and subordinate instruments.

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### **Subordinate Legislation Act 1962, No. 6886/1962** (as amended by No. 6961/1962)

*Assent Date:* 8.5.62  
*Commencement Date:* 1.8.62: Government Gazette 4.7.62 p. 2314  
*Current State:* All of Act in operation

### **Railways (Amendment) Act 1972, No. 8353/1972**

*Assent Date:* 13.12.72  
*Commencement Date:* 8.5.73: Government Gazette 2.5.73 p. 946  
*Current State:* All of Act in operation

### **Fuel Emergency Act 1977, No. 8976/1977**

*Assent Date:* 3.5.77  
*Commencement Date:* 3.5.77  
*Current State:* All of Act in operation

### **Essential Services (Right to Work) Act 1977, No. 9028/1977**

*Assent Date:* 5.10.77  
*Commencement Date:* 5.10.77  
*Current State:* All of Act in operation

### **Statute Law Revision Act 1983, No. 9902/1983**

*Assent Date:* 15.6.83  
*Commencement Date:* 15.6.83: subject to s. 2(2)  
*Current State:* All of Act in operation

### **Transport Act 1983, No. 9921/1983**

*Assent Date:* 23.6.83  
*Commencement Date:* S. 255 on 1.7.83: s. 1(2)(c)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

### **Courts Amendment Act 1986, No. 16/1986**

*Assent Date:* 22.4.86  
*Commencement Date:* S. 30 on 1.7.86: Government Gazette 25.6.86 p. 2180  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

### **The Constitution Act Amendment (Electoral Reform) Act 1988, No. 75/1988**

*Assent Date:* 15.12.88  
*Commencement Date:* 1.1.89: s. 2  
*Current State:* All of Act in operation

### **Transport (Amendment) Act 1989, No. 44/1989**

*Assent Date:* 6.6.89  
*Commencement Date:* S. 41(Sch. 2 item 12) on 1.7.89: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

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**Water (Consequential Amendments) Act 1989, No. 81/1989**

*Assent Date:* 5.12.89  
*Commencement Date:* 1.11.90: Government Gazette 15.8.90 p. 2473  
*Current State:* All of Act in operation

**Electricity Industry Act 1993, No. 130/1993** (as amended by No. 53/1994)

*Assent Date:* 14.12.93  
*Commencement Date:* S. 122(Sch. 4 item 3) on 3.1.94: Special Gazette (No. 97) 23.12.93 p. 1  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

**Electricity Industry (Amendment) Act 1994, No. 53/1994** (as amended by No. 110/1994)

*Assent Date:* 15.6.94  
*Commencement Date:* S. 34 on 3.10.94: Special Gazette (No. 64) 27.9.94 p. 1; Sch. 1 item 1 on 3.10.94: s. 2(4A)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

**Electricity Industry (Further Amendment) Act 1994, No. 110/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* S. 41(Sch. 1 item 2) on 20.12.94: Special Gazette (No. 100) 20.12.94 p. 1  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

**Gas Industry Act 1994, No. 112/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* S. 114(Sch. 5 item 4) on 20.12.94: Special Gazette (No. 100) 20.12.94 p. 1  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

**Gas and Fuel Corporation (Repeal) Act 1995, No. 31/1995**

*Assent Date:* 6.6.95  
*Commencement Date:* S. 52(Sch. 1 item 5) on 21.6.95: Special Gazette (No. 49) 14.6.95 p. 1  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

**Gas Industry (Further Amendment) Act 1997, No. 91/1997**

*Assent Date:* 9.12.97  
*Commencement Date:* S. 45 on 11.12.97: Special Gazette (No. 155) 9.12.97 p. 1  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

**Rail Corporations (Amendment) Act 1997, No. 104/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* S. 45 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1  
*Current State:* This information relates only to the provision/s amending the **Essential Services Act 1958**

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**Electricity Safety Act 1998, No. 25/1998**

*Assent Date:* 12.5.98  
*Commencement Date:* S. 170 on 1.7.98:  
*Current State:* This information relates only to the provision/s  
amending the **Essential Services Act 1958**

**Transport (Amendment) Act 2000, No. 30/2000**

*Assent Date:* 30.5.00  
*Commencement Date:* 31.5.00: s. 2  
*Current State:* All of Act in operation

**Electricity Industry Legislation (Miscellaneous Amendments) Act 2000,  
No. 69/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 51 on 1.1.01: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Essential Services Act 1958**

**Electoral Act 2002, No. 23/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* S. 191 on 1.9.02: Government Gazette 29.8.02 p. 2333  
*Current State:* This information relates only to the provision/s  
amending the **Essential Services Act 1958**

**Transport Integration Act 2010, No. 6/2010** (as amended by No. 45/2010)

*Assent Date:* 2.3.10  
*Commencement Date:* S. 203(1)(Sch. 6 item 19) on 1.7.10: Special Gazette  
(No. 256) 30.6.10 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Essential Services Act 1958**

**Commercial Arbitration Act 2011, No. 50/2011**

*Assent Date:* 18.10.11  
*Commencement Date:* S. 46(Sch. item 6) on 17.11.11: Special Gazette  
(No. 369) 15.11.11 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Essential Services Act 1958**

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### **3. Explanatory Details**

No entries at date of publication.