

Health (General Amendment) Bill (No. 2)

No.

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LEGISLATIVE ASSEMBLY

Read 1 9 March 1988

(Brought in by Mr Roper and Mr Fordham)

(No. 2)

A BILL

to make miscellaneous amendments to the *Health Act* 1958 and for other purposes.

Health (General Amendment) Act 1988

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to make miscellaneous amendments to the *Health Act* 1958.

Commencement.

2. (1) Section 21 comes into operation on a day to be proclaimed.
(2) Section 22 comes into operation on 1 January 1989.
(3) Section 26 comes into operation on a day to be proclaimed.
10 (4) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

Principal Act.

3. In this Act, the *Health Act* 1958 is called the Principal Act.

No. 6270.
Reprinted to N .
10262 and
amended by Nos.
16/1986,
60/1986,
119/1986,
121/1986,
124/1986,
127/1986,
9/1987, 16/1987,
24/1987 and
41/1987.

PART 2—AMENDMENT OF *HEALTH ACT 1958***Repeals.**

4. Sections 4 and 11 of the Principal Act are repealed.

New Parts IA and IB inserted.

5. After section 5 of the Principal Act insert—

5

“PART IA—OBJECTS AND FUNCTIONS”**Objects.**

“5A. The objects of this Act are—

- (a) to ensure equity in health; and
- (b) to help people live as full a life as possible no matter what their pre-existing level of health; and 10
- (c) to reduce the incidence of disease, disability, distress and symptoms of ill health; and
- (d) to reduce the incidence of untimely death.”

Functions of the Chief General Manager.

15

“5B. The functions of the Chief General Manager under this Act are as follows:

- (a) To promote independent research into—
 - (i) the nature, scale and causes of disease; and
 - (ii) the effectiveness of various interventions; and 20
 - (iii) the nature of the population most likely to benefit by the intervention—
 and to determine priorities accordingly;
- (b) To analyse the health impact of a broad range of current and proposed public policies, conveying this information in useful ways to policy-makers, the public and the media to promote informed debate; 25
- (c) To plan for changing social conditions, explore the possible consequences for people’s health and propose appropriate policy options; 30
- (d) To equip individuals and local communities to take responsibility for their own health;
- (e) To develop and enforce up-to-date public health standards and intervene if the health of the community is threatened;
- (f) To monitor the activities of, and to assist, other agencies which have an impact on public health and, if necessary, advocate on behalf of the Victorian public for the adoption and enforcement by those agencies of appropriate standards.” 35

“PART IB—HEALTH IMPACT STATEMENTS”**Inquiries.**

5 “5C. (1) A person may apply to the Chief General Manager to have a formal inquiry instituted into any activity or proposed activity which may constitute a danger to human health.

(2) The Chief General Manager may institute an inquiry if he or she is of the opinion that the activity does or will constitute a danger to human health.

10 (3) The Chief General Manager must advise the applicant of whether or not he or she has decided to institute an inquiry and the reasons for so deciding.”

Consultation and discussion.

15 “5D. (1) If the Chief General Manager decides to institute an inquiry, the Chief General Manager must—

(a) consult widely with members of the public; and

(b) cause a discussion paper to be prepared—

about the activity or proposed activity.

(2) The Chief General Manager must ensure that—

20 (a) the discussion paper canvasses as widely as possible all scientific, medical, sociological, economic and other relevant perspectives; and

(b) a reasonable time is set aside for public consultation.”

Chief General Manager may request information.

25 “5E. (1) The Chief General Manager may request any information pertaining to the inquiry from the chief administrator of any government department or any public authority.

(2) A chief administrator or public authority must comply with the Chief General Manager’s request for information.”

Health Impact Statements.

30 “5F. (1) After the consultation period has expired, the Chief General Manager must cause a Health Impact Statement to be prepared.

(2) The Health Impact Statement must—

(a) take into account all evidence presented about the activity or proposed activity; and

35 (b) assess the dangers (if any) of the activity or proposed activity to human health.

(3) If a Health Impact Statement recommends action by a government department, public authority or person, the Chief General

Manager must cause a copy of the Health Impact Statement to be forwarded to the chief administrator of that department or to that authority or person.

(4) A chief administrator, public authority or person must reply in writing to the Chief General Manager about the recommendation within 60 days. 5

(5) A reply under sub-section (4) must set out—

(a) what action is proposed to be taken to comply with the recommendation over what period of time; or

(b) if no action is proposed to be taken, the reasons why the recommendation will not be complied with. 10

(6) The Minister must cause a copy of—

(a) the Health Impact Statement; and

(b) any replies to the Health Impact Statement—

to be laid before each House of Parliament on or before the tenth sitting day after the expiration of the period of 60 days referred to in sub-section (4).” 15

Delegation by Chief General Manager.

6. In section 8A of the Principal Act—

(a) after “8A.” insert “(1)”; and 20

(b) for the expression beginning “delegate to” and ending with “in the public service” substitute “delegate to—

(a) any person or class of persons employed in the Department; or

(b) any other officer or class of officers in the public service; 25
or

(c) any public authority or the chief executive officer (however described) of any public authority; or

(d) any council or officer of a council—”; and

(c) at the end of the section insert— 30

“(2) Despite sub-section (1), any power or function delegated to a person under paragraph (c) of that sub-section may be delegated by that person to an officer or employee of that person, other than this power of delegation.”.

New section 9 inserted. 35

7. After section 8B of the Principal Act insert—

Data collection.

“9. The Chief General Manager must—

(a) establish a comprehensive information system which includes information on— 40

- (i) the causes, effects and nature of illness among Victorians and groups of Victorians; and
 (ii) the determinants of good health and ill health; and
 (iii) the utilisation of health services in Victoria; and
 5 (b) analyse and disseminate this information widely to members of the public.”.

New section 10 substituted.

8. For section 10 of the Principal Act substitute—

Confidentiality of information.

- 10 “10. A person who is appointed or employed for the purposes of this Act (other than an officer or employee of the public service or a person appointed or employed by a council) must not make any communication, directly or indirectly, to any other person not officially entitled to the communication upon any matter affecting the
 15 Department or the business or the officers or employees of the Department, without the express permission or authority of the Minister or the Chief General Manager.

Penalty: 50 penalty units.”.

Additional powers of Chief General Manager.

- 20 9. In section 25 (a) of the Principal Act, for “(a)” substitute—
 “(a) the Chief General Manager and”.

District health officers.

10. The Principal Act is amended as follows:
 (a) The heading preceding section 26 is repealed;
 25 (b) Sections 26 to 29 are repealed;
 (c) In section 39, paragraphs (a) and (b) are repealed.

New sections 29A and 29B inserted.

11. In Division 3 of Part II of the Principal Act, before section 30 insert—

30 **Functions of councils.**

“29A. The function of every council under this Act is to seek to prevent diseases, prolong life and promote public health through organised programs including the prevention and control of—

- (a) environmental health dangers; and
 35 (b) diseases; and

- (c) health problems of particularly vulnerable population groups—
- by—
- (d) isolating the special factors affecting the health of people within the municipal district; and 5
- (e) developing and enforcing up-to-date public health standards and intervening if the health of people within the municipal district is affected; and
- (f) monitoring the activities of and assisting other agencies whose work has an impact on public health and, if necessary, advocating on behalf of the people within the municipal district for adoption and enforcement by those agencies of appropriate standards; and 10
- (g) co-ordinating the immunisation of children living or being educated within the municipal district; and 15
- (h) ensuring that the municipal district is maintained in a clean and sanitary condition.”

Municipal public health plans.

“29B. (1) Every council must, in consultation with the Chief General Manager, prepare at three year intervals a municipal public health plan. 20

(2) A municipal public health plan must—

- (a) identify and assess actual and potential public health dangers affecting the municipal district; and
- (b) outline programs and strategies which the council intends to pursue to— 25
- (i) prevent or minimize those dangers; and
- (ii) enable people living in the municipal district to achieve maximum well-being; and
- (c) provide for periodic evaluation of programs and strategies. 30

(3) Every council must review its municipal public health plan annually and, if appropriate, amend the plan.”.

New section 36A substituted.

12. For section 36A of the Principal Act substitute—

Special powers of Chief General Manager. 35

“36A. If, in the Chief General Manager’s opinion, there is an emergency or sudden necessity, the Chief General Manager may do all or any of the following:

- (a) Order a council to perform any duties that the Chief General Manager directs; 40

- (b) Perform all or any of the functions of a council;
- (c) Order any officer of a council to carry out a particular function;
- (d) Order any medical officer of health or any health surveyor to perform any duties in another municipal district that the Chief General Manager directs.”.

New Part substituted for Part III.

13. For Part III of the Principal Act substitute—

“PART III—NUISANCES”

10 Definitions.

‘40. (1) In this Part—

“Nuisance” means—

- (a) any building, structure or land; and
- (b) any water or land covered by water; and
- (c) any refuse, animal, bird, vermin or other matter or thing; and
- (d) any noise or emission; and
- (e) any other state, condition or activity—

which is or is liable to be dangerous to health or offensive.

“Offensive” means noxious, annoying or injurious to personal comfort.

(2) In determining whether a state, condition or activity is a nuisance—

- (a) regard must not be had to the number of persons affected by the state, condition or activity; and
- (b) regard may be had to the degree of offensiveness of the state, condition or activity.’

Duty of councils.

“41. A council must remedy as far as is reasonably possible all nuisances in its municipal district.”

Offence of causing a nuisance.

“42. A person must not—

- (a) cause a nuisance; or
- (b) knowingly allow or suffer a nuisance to exist on or emanate from any land owned or occupied by or in the charge of that person.

Penalty: 100 penalty units.”

Notification of nuisance.

“43. (1) If a person believes that a nuisance exists, that person may notify the municipal council in whose municipal district the alleged nuisance occurs.

(2) The council must investigate any notice of a nuisance. 5

(3) If, upon investigation, a nuisance is found to exist, the council must—

- (a) take action to abate the nuisance; or
- (b) if the council is of the opinion that the matter is better settled privately, advise the person notifying the council of the nuisance of any available methods for settling the matter privately.” 10

Notice to abate a nuisance.

“44. (1) If the council is satisfied that a nuisance exists, it may serve a notice on the person who is causing the nuisance or, if that person cannot be found, on the owner or occupier of the land from which the nuisance emanates, requiring that person to abate it. 15

(2) A notice under sub-section (1)—

- (a) must specify the time within which the nuisance must be abated; and 20
- (b) may specify steps to be taken to prevent the recurrence of the nuisance and the time within which they are to be done.

(3) If—

- (a) the person on whom the notice is served does not comply with it; or 25
- (b) the nuisance, although removed, is, in the opinion of the council, likely to recur—

the council may cause a complaint to be made before a justice who may summon the person to appear before a magistrates’ court.

(4) If the court is satisfied that the nuisance exists or is likely to recur, the court must order that person to do either or both of the following: 30

- (a) Comply with the notice;
- (b) Carry out works to prevent the recurrence of the nuisance.

(5) The court may also— 35

- (a) impose a penalty of not more than 100 penalty units on the person on whom the order is made; and
- (b) give directions as to the payment of all or any of the costs and expenses.

(6) Before making any order the court may if it thinks fit adjourn the hearing or further hearing of the case until an inspection, 40

investigation or analysis in respect of the alleged nuisance has been made by some competent person.

5 (7) The court may issue a closing order prohibiting the use of a house for human occupation if a nuisance is proved to exist which, in the opinion of the court, renders the house unfit for human occupation.

(8) An order under sub-section (7) lasts until, in the judgment of the court, the house is fit for human occupation.

(9) If an order has been made under this section, the council may—

10 (a) enter the land to which the order relates and abate the nuisance and do whatever is necessary to execute the order; and

(b) recover the costs and expenses incurred by it from the person on whom the order is made.

(10) A person who—

15 (a) wilfully contravenes an order under sub-section (7); or

(b) fails to comply with any other order under this section (unless the person satisfies the court that he or she has used all diligence to comply with the order)—

20 is guilty of an offence and liable to a penalty of not more than 100 penalty units.”

Failure of council to investigate complaint.

25 “45. (1) If the council does not within a reasonable time of being notified of an alleged nuisance investigate the subject-matter of the notification, the person who notified the council may make a complaint to a magistrates’ court of the existence of the alleged nuisance.

(2) The magistrates’ court may summon the person alleged to be causing the nuisance before it and the court may proceed as if the complaint had been made by a council.

30 (3) If the court is satisfied that the person making a complaint under this section had reasonable grounds for doing so, the court may order the council to pay any costs and expenses incurred by that person.

35 (4) If the court is satisfied that a complaint under this section is vexatious or frivolous, it may order the person making the complaint to pay the costs and expenses incurred by the person who has answered the complaint.”

Nuisance caused by two or more persons.

“46. (1) If a nuisance appears to be—

(a) caused; or

(b) allowed or suffered to exist on or emanate from any land—

40 by two or more persons, proceedings may be instituted against any one of those persons and all or any two or more of those persons may be included in one proceeding.

- (2) Any one or more of those persons—
- (a) may be ordered to abate the nuisance so far as it appears to the court to be—
 - (i) caused; or
 - (ii) allowed or suffered to exist on or emanate from the land—
- 5
- by the person or persons; or
- (b) may be prohibited from continuing to cause the nuisance; or
 - (c) may be fined or otherwise punished even though the act or default of any one of the persons would not separately have caused a nuisance.
- 10
- (3) The costs and expenses may be distributed in a manner which appears to the court fair and reasonable.”
- Who may institute proceedings?** 15
- “47. Proceedings must not be instituted for an offence under section 42 unless they are instituted by the council in whose municipal district the nuisance wholly or partly occurs.”
- Power of councils to delegate functions under this Part.**
- “47A. A council may, by instrument, either generally or in a particular case, delegate to any one or more of its officers or employees any power or function of the council under this Part, other than this power of delegation.” 20
- Power of councils to investigate nuisances outside their municipal districts.** 25
- “47B. A council may investigate a nuisance which occurs outside its municipal district.”
- Nuisances on unoccupied land.**
- “47C. (1) Where any nuisance exists on or emanates from unoccupied land the owner of which is unknown to the council, the council may— 30
- (a) enter and take steps to abate the nuisance; and
 - (b) do all things necessary for that abatement—
- whether the land is wholly or partly in the municipal district of the council. 35
- (2) If a council is abating a nuisance under sub-section (1), another council is not competent to abate that nuisance.”

Regulations.

“47D. The Governor in Council may make regulations for or with respect to—

- (a) the prevention of and abatement of nuisances; and
- 5 (b) any other matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.”.

Waste management and consequential amendments.

14. (1) The Principal Act is amended as follows:

- 10 (a) Section 49A is repealed;
- (b) Sections 51, 52, 53 and 64 are repealed;
- (c) Division 2 of Part IV is repealed;
- (d) Sections 92 and 93 (m) and (n) are repealed.

15 (2) In section 3 of the Principal Act, the definitions of “Cowkeepers dairymen or purveyors of milk” and “Septic tank system” are repealed.

Protection of water supplies.

15. The Principal Act is amended as follows:

- 20 (a) In the heading to Division 6 of Part IV preceding section 79, for “Pollution of water” substitute “Protection of water supplies”;
- (b) In section 79 for “prevent the pollution of sources of water supply and of any water therein or therefrom” substitute “protect sources of water supply from contamination”;
- (c) In section 80 (1) for “polluted” substitute “contaminated”;
- 25 (d) In section 80 (3) after “Resources” insert “and the Minister administering the *Environment Protection Act 1970*”.

New section 81 substituted and sections 82 and 83 repealed.

16. For sections 81, 82 and 83 of the Principal Act substitute—

Regulations for protecting water supplies.

30 “81. (1) The Governor in Council may make regulations for or with respect to—

- (a) protecting water supply systems and catchments from contamination;
- (b) purifying water supplies;
- 35 (c) directing water supply authorities to provide and maintain effective purification of water within their water supply distribution systems;

- (d) approving chemicals to be used for the purification of water supplies and the handling of those chemicals;
 - (e) the training and certification of operators of purification systems for water supply systems;
 - (f) directing water supply authorities to sample their water supply systems and requiring those samples to be tested by an approved laboratory for analysis; 5
 - (g) approving laboratories to undertake analysis;
 - (h) requiring water supply authorities to pay approved laboratories for the testing of water samples; 10
 - (i) conducting health evaluations of water supplies;
 - (j) requiring the reporting of waterborne illnesses and the methods by which this is to be done;
 - (k) the inspection of water supply systems and catchments.
- (2) The regulations— 15
- (a) may impose a penalty of not more than 50 penalty units for any contravention of the regulations; and
 - (b) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Chief General Manager or the Director-General of Water Resources.”. 20

Use of waste water.

17. In section 84 of the Principal Act—
- (a) in sub-section (1), for the definition of “Sewerage authority” substitute— 25
 - “ “Sewerage authority” means any sewerage authority within the meaning of the *Sewerage Districts Act 1958*, any Water Board constituted under the *Water and Sewerage Authorities (Restructuring) Act 1983*, any council of a municipality with respect to which an Order made under section 38 of the *Water and Sewerage Authorities (Restructuring) Act 1983* is in force, the Melbourne and Metropolitan Board of Works, the Geelong Waterworks and Sewerage Trust and the Latrobe Valley Water and Sewerage Board.”; and 30
 - (b) in sub-section (7), omit “for the purposes of section 83”. 35

Special trades, dangerous trades and substances and radiation safety.

18. The Principal Act is amended as follows:
- (a) For the heading to Part V following section 93 substitute “PART V—RADIATION SAFETY”; 40
 - (b) Divisions 1 and 2 of Part V are repealed;

(c) In section 108AE (1) for “register that source with the Chief General Manager” substitute “apply to the Chief General Manager for registration of that apparatus or source”;

5 (d) In section 108AE (2) after “and” insert “at any time before or during the period of registration”;

(e) Division 3 of Part V is repealed;

(f) The Third Schedule is repealed.

Temporary registration of radiation apparatus.

19. After section 108AE (5) of the Principal Act insert—

10 “(5A) Despite sub-sections (3), (4) and (5), the Chief General Manager may register any radiation apparatus or sealed radio-active source temporarily on any condition including a condition that any requirement of sub-section (4) or (5) is complied with.”.

New section 108AEA inserted.

15 20. After section 108AE of the Principal Act insert—

Transfer of radiation apparatus.

20 “108AEA. The Chief General Manager may, at any time during the currency of registration of any radiation apparatus or sealed radio-active source, transfer the registration to another person subject to any conditions that the Chief General Manager thinks fit.”.

New Part substituted for Part VI.

21. (1) For Part VI of the Principal Act substitute—

“PART VI—MANAGEMENT AND CONTROL OF INFECTIOUS DISEASES

25 **Division 1—Preliminary”**

Definitions.

‘118. In this Part and Part VII—

30 “HIV” means the human immuno-deficiency virus which is a causative agent of the acquired immune deficiency syndrome and other related conditions.

“Infectious disease” means a disease or condition prescribed by the regulations to be an infectious disease.

35 “Isolation” means the segregation and the separation of persons who are infected or suspected of being infected from other persons.

“Prescribed infectious diseases” means the infectious diseases prescribed by the regulations for the purposes of Part VII 138.

“Primary school” means a registered school wholly or partly attended by children between five and eleven years of age.’

Interpretation.

“119. The following principles apply for the purposes of the application, operation and interpretation of this Part: 5

- (a) The spread of infectious diseases should be prevented or limited without imposing unnecessary restrictions on personal liberty and privacy;
- (b) A person at risk of contracting or being infected with an infectious disease must take all reasonable precautions to avoid contracting or being infected with the disease; 10
- (c) A person who suspects that he or she has an infectious disease must ascertain—
 - (i) whether he or she is infected; and
 - (ii) what precautions should be taken to prevent others being infected; 15
- (d) A person with an infectious disease must take necessary measures to ensure that others are not unknowingly placed at risk of becoming infected;
- (e) A person with an infectious disease or at risk of contracting or being infected with an infectious disease has a right— 20
 - (i) to be protected from unlawful discrimination; and
 - (ii) to have their privacy respected; and
 - (iii) to receive information about the medical and social consequences of the disease and any proposed treatment; and 25
 - (iv) to have access to available and appropriate treatment— so long as those rights do not infringe on the well-being of others.”

“Division 2—Offences” 30

Offence of infecting other persons.

“120. (1) A person must not knowingly or recklessly infect another person with an infectious disease.

Penalty: 200 penalty units.

(2) In any prosecution under this section it is a defence to prove that the person infected with the infectious disease knew of and 35

voluntarily accepted the risk of being infected with that infectious disease.”

“Division 3—Examining, Testing, Counselling and Isolation Orders”

Orders.

5 “121. (1) If the Chief General Manager reasonably believes that a person—

(a) has an infectious disease; and

10 (b) is likely to transmit that infectious disease to another person who does not voluntarily accept the risk of being infected with that infectious disease—

the Chief General Manager may make an order in writing, stating why he or she believes the person is infected with the infectious disease and why he or she believes it is likely to be transmitted, and requiring all or any of the following:

15 (c) That the person be examined and tested for that disease;

(d) That the person undergo counselling about that disease;

(e) That the person be isolated at the place and in the manner stated in the order.

(2) An order must—

20 (a) name the infectious disease; and

(b) identify the person believed to be infected; and

(c) if applicable, name the counsellor; and

(d) if applicable, state the period for which the person is to be isolated; and

25 (e) if applicable, state the type of examination, testing or counselling required.

(3) The Chief General Manager may make the order subject to conditions and may vary or revoke the order.

30 (4) An order lapses if the testing of the person identified in the order shows that that person is not infected with the infectious disease named in the order unless the Chief General Manager has reason to believe that, despite the result of the test, the person is infected with that infectious disease.

(5) The person who is identified in an order must comply with it.

35 Penalty: 50 penalty units.

(6) The Chief General Manager may authorise a medical officer of the Department to carry out an isolation order.

(7) If, to enforce the order, the medical officer finds that it is necessary to arrest the person who is the subject of the order, the

medical officer may obtain the assistance of any member of the police force to do so.

(8) For the purposes of arresting a person under sub-section (7) the medical officer may with any assistance that is required—

- (a) enter any premises; and 5
- (b) use any force that may reasonably be necessary.

(9) The medical officer who has arrested a person under sub-section (7) must take that person to the place stated in the order.

(10) A person who acts in reliance on an authorisation of the Chief General Manager under sub-section (6) is not liable to any civil or criminal action for so acting, whether or not there was any defect in the authorisation.” 10

Appeals against isolation orders.

“122. (1) A person who is isolated under an order made under section 121 may appeal to the Supreme Court against that order. 15

(2) An order against which an appeal has been lodged remains in force despite the lodging of the appeal.

(3) The Court must hear and determine an appeal against an order urgently.

(4) When determining an appeal, the Court must consider the following matters: 20

- (a) The method by which the disease is transmitted;
- (b) The seriousness of the risk of other people being infected;
- (c) The past behaviour and likely conduct of the person identified in the order; 25
- (d) The extent of the restriction imposed on the person identified in the order.

(5) Upon determining an appeal against an order, the Supreme Court may make an order in substitution for the order made by the Chief General Manager and, in doing so, has all the powers that the Chief General Manager has to fix the terms and conditions of the order.” 30

“Division 4—Emergency Powers”

Power of Governor in Council to proclaim emergency.

“123. (1) The Governor in Council may proclaim an emergency for the purpose of stopping, limiting or preventing the spread of an infectious disease. 35

(2) A proclamation—

(a) must state the area to which it applies; and

(b) lasts for the period, not exceeding two weeks, that is stated in the proclamation; and

5 (c) may be renewed for a period not exceeding two weeks.

(3) A proclamation may be revoked—

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

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

10 (4) If the Parliament is not sitting at the time the proclamation is published and if the Speaker of the Legislative Assembly or the President of the Legislative Council receives a petition—

(a) objecting to the proclamation and requesting that the Parliament be summoned; and

15 (b) signed by at least—

(i) 20 members of the Legislative Assembly; or

(ii) 30 members of the Parliament—

the Parliament must be summoned to meet as soon as possible.”

Orders of the Chief General Manager in emergencies.

20 “124. (1) If the Governor in Council has made a proclamation under section 123, the Chief General Manager may make an order which may include all or any of the following provisions:

(a) That persons of a specified class may be prevented from entering or leaving the proclaimed area;

25 (b) That persons of a specified class may be arrested without warrant and detained in the proclaimed area;

(c) That land, buildings or things in the proclaimed area may be seized—

30 (i) to be used in connection with stopping, limiting or preventing the spread of infectious diseases; or

(ii) to be disinfected; or

(iii) to be damaged or destroyed if the land, building or thing is contributing to the spread of infection;

35 (d) Any other provisions required to ensure that the order is carried into effect.

(2) If the Chief General Manager has seized any land, building or thing under sub-section (1), he or she must take all reasonable steps to immediately notify the owner and occupier of that seizure.

40 (3) Any land, building or thing seized under an order must if possible and when no longer required for the purposes for which it was seized be returned to the possession of the person from whom it was seized.”

Compensation for seizure of land, building or thing.

“125. (1) Any person affected by a seizure of any land, building or thing is entitled to compensation for that seizure unless the need for that seizure arose from some action or fault on the part of that person.

(2) An application for compensation must be made to the Chief General Manager in the prescribed form. 5

(3) The Chief General Manager must determine the amount of compensation.

(4) The amount of compensation payable in respect of any land or building destroyed or damaged must be determined in accordance with the *Land Acquisition and Compensation Act* 1986 as if— 10

(a) the Chief General Manager had acquired the building compulsorily; and

(b) the date of acquisition were the day on which notice was given to the owner or occupier under section 124 (2). 15

(5) The amount of compensation (other than compensation payable under sub-section (4)) payable in respect of a seizure is that amount which represents the loss suffered by the person as the result of the seizure.

(6) A person may apply to the Administrative Appeals Tribunal for a review of a decision of the Chief General Manager.” 20

“Division 5—Autopsies”**Autopsies.**

“126. (1) The Chief General Manager may require a medical practitioner who has the prescribed qualifications or experience in pathology to carry out an autopsy on a body if— 25

(a) the Chief General Manager reasonably believes that an infectious disease caused or contributed to the person’s death; and

(b) the Coroner does not have jurisdiction over the body. 30

(2) For the purposes of carrying out an autopsy under this section, the Chief General Manager may order the person who has possession of the body to give possession of that body to the medical practitioner.”

“Division 6—Special Provisions Relating to the Human Immuno-deficiency Virus” 35**Information to be given to a person requesting a test for HIV.**

“127. (1) A medical practitioner must not carry out or authorise the carrying out of a test for HIV on a person who requests it unless the medical practitioner has given or is satisfied that a person of a prescribed class has given information about the medical and social consequences 40

of being tested and of the possible results of the test to the person who requests it.

(2) If a person has requested a test for HIV and the results of the test are positive—

- 5 (a) the person must not be advised of the results of the test except by and in the presence of a medical practitioner or person of a prescribed class; and
- 10 (b) the medical practitioner or person of a prescribed class must, at the same time as he or she advises that person of the results of the test, give the person information about the medical and social consequences of being infected with the virus and guidelines on ways to prevent the transmission of the virus to others.

Penalty: 10 penalty units.”

15 **Privacy.**

“128. A person who, in the course of providing a service, acquires information that a person has been or is required to be tested for HIV or is infected with HIV, must take all reasonable steps to develop and implement systems to protect the privacy of that person.

20 Penalty: 50 penalty units.”

Closure of court or tribunal.

“129. (1) If, in a matter before a court or tribunal, evidence is proposed to be given of any matter relating to HIV, the court or tribunal may—

- 25 (a) order that the whole or any part of the proceedings be heard in closed court; or
- (b) order that only persons specified by it may be present during the whole or any part of the proceedings; or
- 30 (c) make an order prohibiting the publication of a report of the whole or any part of the proceedings or of any information derived from the proceedings.

(2) If an order has been made under this section, the court or tribunal must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the court or tribunal is being held.

(3) The court or tribunal may make an order under sub-section (1) if it is of the opinion that it is necessary to do so because of the social or economic consequences to a person if the information is disclosed.

40 (4) A person must not contravene an order made and posted under this section.

Penalty applying to this sub-section: 50 penalty units.”

Information to be provided about the incidence of HIV.

“130. (1) The Chief General Manager must keep records of the information given to the Chief General Manager under this section and retain those records for the prescribed period.

(2) A person in charge of a prescribed place in which the testing of the blood of humans for HIV is carried out must keep or ensure that a written record is kept with the prescribed particulars for each prescribed period containing as far as is possible the following information: 5

- (a) The number of tests carried out on human blood for HIV;
- (b) The number of persons in respect of whom tests have been carried out who fall into each particular prescribed category of behaviour; 10
- (c) The number of persons newly diagnosed as being infected with HIV who fall into each particular prescribed category of behaviour; 15
- (d) The age, sex and particular prescribed category of behaviour of each newly diagnosed person;
- (e) The date the specimen was taken from a newly diagnosed person.

(3) The person in charge of a prescribed place must send a copy of the record required to be kept under sub-section (2) to the Chief General Manager at the end of each prescribed period. 20

Penalty: 10 penalty units.

(4) When a medical practitioner requests that a test for HIV be carried out on a specimen of human blood, the medical practitioner must, as far as he or she is able, give the information which the person in charge of a prescribed place asks for to enable that person to keep the records required by sub-section (2). 25

Penalty: 10 penalty units.

(5) A medical practitioner must not give information to a person in charge of a prescribed place under sub-section (4) which would identify the person whose blood is tested. 30

Penalty: 10 penalty units.

(6) The Chief General Manager and person in charge of a prescribed place must ensure that information is not kept which will identify any person whose blood is tested. 35

Penalty: 10 penalty units.

(7) A medical practitioner must, when requested in writing by the Chief General Manager, give to the Chief General Manager information (other than particulars by which a patient may be identified) as to the age, sex and category of risk behaviour of any patient of that medical practitioner who has been newly diagnosed as being infected with HIV. 40

Penalty applying to this sub-section: 10 penalty units.”

“Division 7—Blood and Tissue Donations”**Definitions.**

‘131. In this Division—

“**Approved**” means approved by the Chief General Manager.

5 “**Donor**” means—

(a) in the case of blood, a person who gives blood at premises or a vehicle of the Society or at a hospital; or

(b) in the case of tissue, a person, whether living or dead, from whom the tissue is taken.

10 “**Hospital**” means—

(a) a scheduled hospital within the meaning of the *Hospitals and Charities Act* 1958; or

(b) a private hospital registered with the Chief General Manager under Division 3 of Part X of the *Health Act* 1958.

15

“**Society**” means the Society incorporated by Royal Charter under the name of Australian Red Cross Society.

“**Tissue**” has the same meaning as in section 3 (1) of the *Human Tissue Act* 1982.’

20 **Blood donations.**

“132. (1) This section applies to an action brought by or on behalf of—

(a) a person who claims—

25

(i) to have been infected with HIV because he or she was given, or in any way dealt with, blood supplied by the Society or a hospital or a blood product derived from blood so supplied; or

30

(ii) to have been infected with HIV by another person who was given, or in any way dealt with, any such blood or blood product; or

(b) a dependant of a person who died as a result of having been infected with HIV as mentioned in paragraph (a).

35

(2) In an action to which this section applies brought against a person specified in column 1 of an item in the Table to this section it is a defence to prove the facts or matters specified in column 2 of that Table unless any of the facts or circumstances mentioned in column 3 of that Table apply.

TABLE

Item	Column 1 Person against whom action brought	Column 2 Defences	Column 3 Exception to defences
1	The Society, a hospital or an employee, agent or voluntary worker of the Society or a hospital.	<p>The Society or hospital—</p> <p>(a) before taking the blood from a donor obtained a statement from the donor in the prescribed form; and</p> <p>(b) before supplying the blood or a blood product—</p> <p>(i) caused a sample; or</p> <p>(ii) in the case of a blood product, caused a sample of each unit of blood from which the product was derived—</p> <p>to be tested in an approved manner for the presence of HIV; and</p> <p>(c) obtained a negative result from that test or each of those tests.</p>	<p>After the Society or hospital supplied blood, the Society or hospital had reasonable grounds for believing that the blood was likely to contain HIV and did not take all reasonable steps—</p> <p>(a) to find out whether the blood, or a blood product derived from that blood had been given to a person; and</p> <p>(b) to ensure that any remaining part of the blood, or a blood product derived from that blood, is not given to any person.</p>
2	A hospital or another body at whose premises blood supplied by the Society or a hospital or a blood product derived from blood supplied by the Society or a hospital is administered to a person.	<p>Either—</p> <p>(a) when the blood or blood product was administered, there was attached to the container in which the blood or blood product was contained a certificate purporting to have been issued at the laboratory at which a sample of the blood was tested stating—</p> <p>(i) in the case of blood— that a sample of the blood; and</p> <p>(ii) in the case of a blood product— that a sample of each unit of blood from which the blood product was derived—</p> <p>was tested in an approved manner for the presence of HIV and that the result of the test was negative; or</p> <p>(b) the Society or hospital by which the blood or blood product was supplied—</p>	<p>If, at any time up to and including the time at which the blood or blood product was administered, the hospital or other body at whose premises the blood or blood product was administered—</p> <p>(a) had been informed that the blood or blood product was likely to contain HIV; and</p> <p>(b) did not take reasonable steps to ensure that the blood or blood product was not administered to any person.</p>

TABLE—continued

Item	Column 1 Person against whom action brought	Column 2 Defences	Column 3 Exception to defences
		<ul style="list-style-type: none"> (i) before taking the blood from a donor obtained a statement from the donor in the prescribed form; and (ii) before supplying the blood or a blood product— <ul style="list-style-type: none"> (A) caused a sample; or (B) in the case of a blood product, caused a sample of each unit of blood from which the product was derived— <ul style="list-style-type: none"> to be tested in an approved manner for the presence of HIV; and (iii) obtained a negative result from that test or each of those tests; or (c) if the blood or blood product was likely to deteriorate rapidly and was required to be administered urgently, that blood from the donor had been tested within the preceding six months in an approved manner for the presence of HIV and the result of that test was negative. 	
3	<p>A medical practitioner or a person acting on behalf of a medical practitioner who administered to a person blood supplied by the Society or a hospital or a blood product derived from blood so supplied.</p>	<p>The defences set out in column 2 of item 2.</p>	<p>If, at any time up to and including the time at which the blood or blood product was administered, the medical practitioner or other person—</p> <ul style="list-style-type: none"> (a) had been informed that the blood or blood product was likely to contain HIV; and (b) did not take reasonable steps to ensure that the blood or blood product was not administered to any person.”

Tissue.

“133. (1) This section applies to an action brought by or on behalf of—

- (a) a person who claims—
 - (i) to have been infected with HIV because he or she received tissue (other than semen) taken from a person or the body of a dead person; or 5
 - (ii) to have been infected with HIV by another person who received such tissue; or
- (b) a person who claims— 10
 - (i) to have been infected with HIV as a result of the carrying out in relation to the person of artificial insemination or a fertilization procedure within the meaning of the *Infertility (Medical Procedures) Act 1984*; or
 - (ii) to have been infected with HIV by another person in relation to whom such a relevant procedure was carried out; or 15
- (c) a dependant of a person who died as a result of having been infected with HIV as mentioned in paragraph (a) or (b).

(2) In an action to which this section applies brought against a person specified in column 1 of the Table to this section it is a defence to prove the facts or matters specified in column 2 of that Table unless any of the facts or circumstances mentioned in column 3 of that Table apply. 20

TABLE

<i>Column 1</i> <i>Person against whom</i> <i>action brought</i>	<i>Column 2</i> <i>Defences</i>	<i>Column 3</i> <i>Exception to defences</i>
A hospital, medical practitioner or a person dealing with tissue.	Either— (a) in the case of tissue (other than semen) taken from a living person— (i) the donor completed a statement in the prescribed form before the tissue was taken; and (ii) a sample of the donor's blood was tested in an approved manner for the presence of HIV; and (iii) the result of the test was negative; or (b) in the case of tissue (other than semen) taken from the body of a dead person— (i) a sample of the blood of the dead person was tested in an approved manner for the presence of HIV; and	

TABLE—continued

<i>Column 1</i> <i>Person against whom</i> <i>action brought</i>	<i>Column 2</i> <i>Defences</i>	<i>Column 3</i> <i>Exception to defences</i>
	(ii) the result of the test was negative; and	The hospital or other person had reasonable grounds for believing that the tissue or semen was likely to contain HIV and did not take reasonable steps to ensure that the tissue or semen was not used in a way that might infect a person with HIV.
	(iii) the medical practitioner who transplanted the tissue made or caused to be made reasonable enquiries about the behaviour of the dead person to find out whether that person was at a high risk of being infected with HIV; or	
	(c) in the case of the use of semen in the carrying out of artificial insemination or a fertilization procedure—	
	(i) before the semen was provided by a donor, the donor completed a statement in the prescribed form; and	
	(ii) at the time of the donation and, upon the expiry of the prescribed period after that time, a sample of the donor's blood was tested in an approved manner for the presence of HIV; and	
	(iii) the result of the test was negative; and	
	(iv) the semen was not used until after the prescribed quarantine period. "	

Evidentiary.

"134. In an action to which section 132 or 133 applies, a certificate purporting to have been issued at the laboratory at which a sample of blood was tested stating—

- 5 (a) that the sample was tested in an approved manner; and

(b) that the results of the test were as stated in the certificate—
is proof of the matters so stated and of the facts on which they are
based.”

Liability of donors.

“135. (1) No civil or criminal proceedings, other than proceedings 5
under section 136, lie against a donor of blood or tissue by reason only
of a person having been infected with HIV by the administration to the
person of blood given by, or of a blood product derived wholly or
partly from blood given by, the donor or by the transplanting of tissue 10
or the use of semen or ova given by the donor.

(2) Sub-section (1) does not apply in relation to a donor who has
been found guilty of an offence against section 136.”

False statements.

“136. A donor must not, in a statement referred to in this Division,
make a statement that is false in a material particular. 15

Penalty: 50 penalty units or imprisonment for two years.”

“Division 8—Regulations”

Regulations.

“137. (1) The Governor in Council may make regulations for or
with respect to all or any of the following matters: 20

- (a) Prescribing those diseases and conditions which are
infectious diseases for the purposes of this Act;
- (b) Prescribing infectious diseases for the purposes of Part VII;
- (c) Diagnosing infectious diseases;
- (d) The procedures to be taken to stop, limit or prevent the 25
spread of any infectious disease including—
 - (i) the examination, testing, counselling, isolation,
quarantine or immunisation of persons; and
 - (ii) the evacuation or disinfection of buildings, places or
things; and 30
 - (iii) the disposal of infective materials and the destruction
or control of animals who spread infectious diseases;
and
 - (iv) any other procedures;
- (e) The tracing of persons having contact with persons infected 35
with infectious diseases;
- (f) The closing of schools or the regulation or restriction of
school attendance because of an infectious disease;

- (g) In the case of premises where infectious diseases may be spread which are premises on which a business is conducted or to which the public has access—
- 5 (i) requirements to be observed by the proprietor of the business or person in charge of the premises including requirements as to—
- (A) registration and cleanliness of the premises; and
- (B) the provision at the premises of information about infectious diseases; and
- 10 (C) the general safeguarding of the health of persons likely to be using the premises; and
- (ii) power to inspect the premises;
- (h) The investigating of outbreaks of infectious diseases including the power to enter premises and search for and seize goods without a warrant to do so;
- 15 (i) The preparation, keeping and use of pathogenic micro-organisms or other material capable of causing disease in humans;
- (j) The reporting or notification of infective conditions or diseases by specified persons or classes of persons to the Chief General Manager and the giving of information to other persons or the collection and analysis of information about infectious diseases;
- 20 (k) The classes of persons who may give information required to be given under this Part;
- (l) Offences for contravening the regulations including offences for failing to act in accordance with directions given by persons authorised by the regulations to give directions;
- 25 (m) Forms for the purposes of the Act;
- 30 (n) Any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
- 35 (b) may differ according to differences in time, place or circumstances; and
- (c) may impose any discretionary authority or duty on or leave any matter to be approved or determined by a specified person or body or a specified class of persons or bodies; and
- 40 (d) may impose penalties not exceeding 100 penalty units for a contravention of the regulations.”.
- (2) In section 3 of the Principal Act—

- (a) after the definition of "Act relating to local government" insert—
 ' "Administrative Appeals Tribunal" means the
 Administrative Appeals Tribunal established under the
 Administrative Appeals Tribunal Act 1984.'; and 5
- (b) the definition of "Infected" is repealed; and
- (c) the definition of "Infectious disease" is repealed; and
- (d) the definition of "Isolation" is repealed; and
- (e) the definition of "Notifiable infectious disease" is repealed;
 and 10
- (f) in the definition of "Offensive", after "Offensive" insert "
 except in Part III,".
- (3) Part IXA. of the Principal Act is repealed.

New Part VII substituted.

22. For Part VII of the Principal Act substitute— 15

"PART VII—IMMUNISATION"

Immunisation history to be produced upon enrolment at primary school.

- "138. (1) A person in charge of a primary school must, before a
 child attends that school for the first time, require the parent or guardian
 of the child to produce, in respect of each prescribed infectious disease— 20
- (a) an immunisation certificate stating that the child—
- (i) has been immunised against that disease; or
- (ii) has not been immunised against that disease because
 the person completing the certificate reasonably
 believed that the child might suffer an adverse reaction
 to the immunisation; or 25
- (b) a statutory declaration which states that the parent or
 guardian has a conscientious objection to immunisation
 against that disease; or 30
- (c) the parent or guardian's written undertaking to have the
 child immunised against that disease within six months
 after the making of the undertaking; or
- (d) a statutory declaration that the parent or guardian believes
 the child has been immunised against that disease but cannot
 produce the certificate. 35
- (2) A parent or guardian who gives an undertaking under
 sub-section (1) (c) must carry out that undertaking.
- Penalty: 10 penalty units.
- (3) An immunisation certificate— 40

(a) must be in the prescribed form; and

(b) must be completed by a medical practitioner or a person authorised to do so by a council.

5 (4) An immunisation certificate is conclusive proof of the facts stated in it."

Outbreaks of prescribed infectious diseases in primary schools.

"139. A person in charge of a primary school may direct that a child enrolled at the school not attend the school if he or she believes the child is not immunised against a prescribed infectious disease and—

10 (a) the person in charge of the school reasonably believes that there is an outbreak of that disease at that school; or

15 (b) a medical officer of health has advised the person in charge of the school that he or she reasonably believes there is an outbreak of that disease in the community in which the school is situated."

Repeal of transitional provision.

23. Section 162CA of the Principal Act is repealed.

Repeal of Subdivision 2 of Division 1 and Division 2 of Part X.

24. In Part X. of the Principal Act—

20 (a) in Division 1, Subdivision 2 is repealed; and

(b) Division 2 is repealed.

Repeal of Division 2 of Part XI.

25. Division 2, other than section 207, of Part XI. of the Principal Act is repealed.

25 **New Division 1 of Part XII substituted, Divisions 2, 3 and 4 repealed and consequential and savings provisions.**

26. (1) For the headings to Part XII and Division 1 preceding section 209 of the Principal Act substitute—

"PART XII—ACCOMMODATION

30 **Division 1—Registration".**

(2) For Divisions 1, 2 and 3 of Part XII of the Principal Act substitute—

Definitions.

'209. In this Division—

35 **"Prescribed accommodation" means—**

(a) any area of land which people are frequently, intermittently or seasonally permitted to use for

camping on payment of consideration to the proprietor of the land; or

- (b) any vessel, vehicle, house, tent, caravan, building or other structure used as a place of abode, whether temporary or permanent, fixed or mobile, where a person or persons can live on payment of consideration to the proprietor and which is prescribed or is of a class prescribed to be subject to this Division. 5

“Proprietor” means the owner of a business of providing prescribed accommodation.’ 10

Registration.

“210. (1) The proprietor of prescribed accommodation must register that accommodation with the council.

Offences.

“211. A proprietor of prescribed accommodation who does not register that accommodation is guilty of an offence and liable to a penalty of not more than 50 penalty units.” 15

Access by authorised officers.

“212. A proprietor of prescribed accommodation must at all times when required by an authorised officer give the authorised officer free access to the prescribed accommodation or any part of the prescribed accommodation. 20

Penalty: 50 penalty units.”

Regulations.

“213. The Governor in Council may make regulations for or with respect to— 25

- (a) prescribing accommodation or classes of accommodation to which this Division applies;
- (b) classifying prescribed accommodation;
- (c) requiring the registration of different classes of prescribed accommodation; 30
- (d) specifying the number of people who can live in prescribed accommodation;
- (e) requiring a register of people who live in prescribed accommodation; 35
- (f) providing for the inspection of prescribed accommodation;
- (g) providing for hygiene, sanitation and cleanliness of prescribed accommodation;
- (h) requiring a proper supply of water for prescribed accommodation; 40

(i) the provision of suitable facilities for cooking, washing and bathing for prescribed accommodation;

(j) specifying interior finishes of prescribed accommodation;

(k) regulating the safety of prescribed accommodation;

5 (l) providing for the maintenance of prescribed accommodation;

(m) regulating the advertising of prescribed accommodation;

10 (n) providing for the exemption of prescribed accommodation or classes of prescribed accommodation from all or any of the regulations.”.

(3) In section 3 of the Principal Act the definitions of “Boarding-house” and “Common lodging-house” are repealed.

(4) Division 4 of Part XII of the Principal Act is repealed.

15 (5) In section 228 (1) (b) of the Principal Act, for “boarding-houses, common lodging-houses” substitute “, prescribed accommodation within the meaning of section 209”.

(6) After section 366A of the Principal Act insert—

Premises.

20 ‘366B. In this Part “premises” includes prescribed accommodation within the meaning of section 209.’.

25 (7) Any registration of an apartment-house, boarding-house, common lodging-house or camping area which was in operation immediately before the commencement of this section continues in operation for the unexpired period of the registration subject to the Principal Act as amended by this section.

Adulteration of drugs etc.

27. In section 240 (f) of the Principal Act, for “it contains methyl alcohol or (not having paid Customs or excise duty)” substitute “if Customs or excise duty has not been paid,”.

30 **Food for domestic animals.**

28. Part XIVA of the Principal Act is repealed.

New section 366C inserted.

29. Before section 367 of the Principal Act insert—

Registration of premises.

35 “366C. (1) A person conducting a business of—

(a) hairdressing; or

(b) a beauty parlour or other similar business; or

- (c) tattooing, ear piercing, acupuncture or any other process involving the penetration of the skin in a living human being—

must register with the council any premises upon which that person conducts that business. 5

(2) A person is exempt from complying with sub-section (1) if that person conducts a business which is prescribed by the regulations as an exempt business.”.

Registrations.

30. (1) In section 368 of the Principal Act, for sub-section (1) substitute— 10

“(1) A registration continues in force—

(a) until 31 December next following the date of registration; or

(b) if the Chief General Manager or council so specifies, for the period of 12 months from the date of registration. 15

(1A) The Chief General Manager or council may grant temporary registration for a period of less than 12 months.”.

(2) At the end of section 370 of the Principal Act insert “and may transfer the registration subject to any terms and conditions that the Chief General Manager or the council (as the case may be) thinks fit”. 20

(3) Section 373 of the Principal Act is repealed.

New regulation-making powers inserted.

31. In section 376 of the Principal Act, after paragraph (c) insert—

“(ca) cleanliness of registered premises; 25

(cb) powers to inspect registered premises;

(cc) generally safeguarding the health of persons likely to be using those premises.”.

Regulations and proclamations.

32. (1) In section 390 of the Principal Act, after sub-section (2B) insert— 30

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

(a) prescribing diseases the occurrence or existence of which must be notified to the Chief General Manager; 35

(b) the notification to the Chief General Manager by medical practitioners of the occurrence or existence of any prescribed disease;

- (c) the particulars to be furnished by medical practitioners when making notifications of any prescribed disease;
- (d) the fees payable to medical practitioners in respect of notifications of any prescribed disease; and
- 5 (e) generally any matter or thing necessary or expedient to be prescribed with respect to the notification of prescribed diseases.”.

(2) Sections 390 (3) and 391 (3) of the Principal Act are repealed.

New section 399A inserted.

10 33. After section 399 of the Principal Act insert—

Identity cards.

“399A. (1) The Chief General Manager must issue an identity card to any person authorised by the Chief General Manager for the purposes of this Act.

15 (2) A council must issue an identity card to any person authorised by the council for the purposes of this Act.

(3) An identity card issued to a person—

- (a) must contain a photograph of the person; and
- (b) must contain the signature of the person; and
- 20 (c) must be signed by the Chief General Manager or a person designated by the council for that purpose (as the case may be).

(4) A person authorised for the purposes of this Act—

- (a) must carry an identity card whenever the person is exercising his or her functions under this Act; and
- 25 (b) must show the identity card upon being requested to do so.

Penalty applying to this sub-section: 2 penalty units.”.

Amendment of section 414.

30 34. In section 414 (1) (b) of the Principal Act, after “exists” insert “or from which a nuisance emanates”.

Repeal of section 415.

35. Section 415 of the Principal Act is repealed.

Penalties.

36. In section 422 of the Principal Act—

- 35 (a) omit the expression beginning “Provided that” and ending at the end of the section; and

(b) in sub-section (2) (b) for “50 penalty units” substitute “100 penalty units”.

Nuisance.

37. Section 430 of the Principal Act is repealed.

Evidence.

38. In section 439 (1) of the Principal Act, after “purporting—” insert—

“(a) to be issued or written by or under the direction of the Chief General Manager; or ”.

Repeals.

39. Sections 442A, 446 and 449 and Division 5 of Part XX of the Principal Act are repealed.

PART 3—AMENDMENT OF OTHER ACTS

Amendment of *Equal Opportunity Act 1984*.

40. The *Equal Opportunity Act 1984* is amended as follows:

(a) In section 4 (1), in the definition of “Impairment”—

(i) after paragraph (a) insert—

“(aa) the presence in the body of organisms causing disease;”;

(ii) for the expression commencing “and includes” and ending at the end of the definition, substitute—

“and includes—

(e) in relation to a person with a past or present impairment, an impairment which presently exists or existed in the past but has now ceased to exist;

(f) an impairment which is imputed to a person.”;

(b) In section 39, after paragraph (d) insert—

“(da) discrimination on the ground of impairment where the discrimination is reasonably necessary to protect public health;”.

New Part LXB inserted into *Environment Protection Act 1970* and consequential and savings provisions.

41. (1) After Part IXA of the *Environment Protection Act 1970* insert—

No. 10095 as amended by Nos. 10247 and 46/1987.

No. 8056. Reprinted to No. 10160 and amended by Nos. 10261, 10262, 15/1986, 127/1986, 9/1987, 22/1987 and 45/1987.

“PART IXB—SEPTIC TANK SYSTEMS”

Definitions.

‘53J. (1) In this Part—

“Municipal council” means council of a municipality.

5 “Municipality” includes municipality within the meaning of the *Local Government Act 1958* and also the city of Melbourne and the city of Geelong.

“Municipal Fund” includes, in the case of Melbourne and Geelong, the town fund.

10 “Septic tank system” means a system for the bacterial, biological, chemical or physical treatment of sewage, and includes all tanks, beds, sewers, drains, pipes, fittings, appliances and land used in connection with the system.

15 “Sewage” means any waste containing human excreta or domestic waste water.

(2) This Part does not apply to any septic tank system designed to discharge more than 5000 litres of sewage a day.’

Declaration of area by municipal council.

“53K. A municipal council—

20 (a) may declare; or

(b) if required by the Authority, must declare—

25 that, within any specified part of the municipality, all septic tank systems proposed to be installed for the purpose of treating waterborne wastes, where discharge of effluent from premises is proposed, must be of a type that treats all sewage.”

Permit required.

“53L. A person must not construct, instal or alter a septic tank system unless the person holds a permit issued under this Part.

Penalty: 100 penalty units.”

30 **Application for a permit.**

“53M. (1) A person may apply to a municipal council for a permit under this Part.

(2) An application for a permit must be—

35 (a) made in accordance with a form and in a manner approved by the municipal council; and

(b) forwarded with the fee which the municipal council by resolution determines, which fee must not exceed the maximum fee (if any) prescribed in the regulations; and

(c) accompanied by—

- (i) plans, specifications and particulars of the proposed septic tank system; and
- (ii) a full description of the proposed means for treating the effluent.

5

(3) A municipal council may require an applicant to supply any further information in connection with the application which the municipal council considers necessary.

(4) The municipal council is not to deal with an application which does not comply with sub-sections (2) and (3) and must advise the applicant accordingly.

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(5) Unless sub-section (4) applies, the municipal council must—

- (a) approve the plans and specifications and the means for the treatment and disposal of the effluent and issue a permit; or
- (b) issue a permit subject to any modifications, conditions, limitations or restrictions that the municipal council considers appropriate; or
- (c) refuse to issue a permit—

15

within the period of 42 days after receiving—

- (d) the application for a permit; or
- (e) the further information (if any) required under sub-section (3)—

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whichever is the later.

(6) The municipal council may refuse to issue a permit if the municipal council considers that—

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- (a) the site of the proposed septic tank system is unsuitable; or
- (b) the area available for the treatment or disposal of the effluent is not sufficient.

(7) The municipal council must refuse to issue a permit if the proposed septic tank system—

30

- (a) is not of a type approved by the Authority for the purposes of this Part; or
- (b) is contrary to any State environment protection policy; or
- (c) does not treat all sewage and is located in a specified part of the municipality declared under section 53K.

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(8) A municipal council may delegate to one or more of its officers any of its powers under this section other than this power of delegation.

(9) The refusal by an officer of a municipal council to issue a permit is of no effect until it is ratified by the municipal council.”

Maintenance of septic tank systems.

“53N. An occupier of premises on which a septic tank is located must maintain it in accordance with the requirements specified in the permit issued by the municipal council for that septic tank system.

5 Penalty: 10 penalty units.”

Annual return.

“53O. (1) The municipal council must, in respect of each financial year, lodge with the Authority an annual return in the month of July each year containing the following particulars:

- 10 (a) The number of permits issued for septic tank systems;
 (b) The number of septic tank systems disconnected;
 (c) The number of septic tank systems inspected;
 (d) The number of septic tank systems which have been in use within the municipality during the financial year.

15 (2) A municipal council is exempted from complying with sub-section (1) if during the financial year—

- (a) the council has not issued any permits for septic tank systems; and
 20 (b) there have been no septic tank systems disconnected, inspected or in use in the municipality.”

(2) The *Environment Protection Act* 1970 is amended as follows:

(a) In section 4 (1), for the definition of “Permit”, substitute—
 ‘ “Permit” means—

- 25 (a) a permit to transport prescribed waste or prescribed industrial waste issued under Part IXA; and
 (b) a permit to construct, instal or alter a septic tank system issued under Part IXB.;

(b) In section 36A (1) after paragraph (b) insert—

“; or

- 30 (c) in the case of a permit under Part IXB—
 (i) the refusal of a municipal council to issue a permit; or
 (ii) any terms or conditions subject to which the permit is issued—”;

35 (c) In section 59—

- (i) after “59.” insert “(1)”; and
 (ii) at the end of the section insert—

40 “(2) Proceedings for an offence against Part IXB may be taken by a person authorised by a municipal council for that purpose.

(3) A statement in writing given by a municipal council and signed by a person designated by the municipal council for that purpose to the effect that a specified person has been authorised by the municipal council to take proceedings for offences against Part IXB is admissible in evidence and, in the absence of evidence to the contrary, is proof of that statement.”;

(d) In section 69—

(i) in sub-section (1), for “(1) All fees” substitute “(1) Subject to sub-section (3), all fees”; and

(ii) after sub-section (2) insert—

“(3) All fees payable under Part IXB and all penalties for offences against Part IXB, when recovered, must be paid to the Municipal Fund.”;

(e) In section 71 (1)—

(i) in paragraph (lc), after “transfer” insert—

“of a permit for the vehicular transport of waste”; and

(ii) after paragraph (ld) insert—

“(le) prescribing maximum fees for the issue of permits for septic tank systems for different premises or class of premises, which fees may vary according to the extent and nature of—

(i) the septic tank system; and

(ii) the premises.”.

(3) An approval to instal a septic tank system given under section 65 of the *Health Act* 1958 as in force immediately before the commencement of this section is deemed to be a permit issued under the *Environment Protection Act* 1970 as amended by this Act.

Amendment of *Building Control Act* 1981.

42. In the Schedule to the *Building Control Act* 1981 items 12, 14, 15, 16, 17, 18, 20, 21 and 22 are repealed.

No. 9720.
Reprinted to No.
10091 and
amended by Nos.
10190, 10216,
10239, 10262,
16/1986,
90/1986,
110/1986,
24/1987, 44/1987
and 45/1987.

Amendment of *Groundwater Act* 1969.

43. The *Groundwater Act* 1969 is amended as follows:

(a) In section 24 (1), omit “the approval of the Chief General Manager of the Department of Health under section 82 of the *Health Act* 1958 or, where such approval is not required,”;

No. 7849.
Reprinted to No.
16/1986 and
amended by Nos.
86/1986,
113/1986,
121/1986,
16/1987 and
41/1987.

(b) In section 39 (1) (b), omit “notwithstanding anything contained in section 82 of the *Health Act 1958*,”;

5 (c) In section 44 (1), omit “unless such disposal has been approved by the Chief General Manager of the Department of Health under section 82 of the *Health Act 1958* or, where such approval is not required,”;

(d) In section 45 (1), omit “, in respect of the disposal of any matter which does not require the approval of the Chief General Manager of the Department of Health,”.

10 **Amendment of *Health (Amendment) Act 1978*.**

44. Section 17 of the *Health (Amendment) Act 1978* is repealed.

No. 9244 as amended by No. 9863.

Amendment of *Health (Amendment) Act 1985*.

45. Section 12 of the *Health (Amendment) Act 1985* is repealed.

No. 10262.

Amendment of *Health (Amendment) Act 1987*.

15 46. The *Health (Amendment) Act 1987* is amended as follows:

No. 72/1987.

(a) Section 4 is repealed;

(b) In section 9 (a), for proposed section 368 (2A) to be inserted in the *Health Act 1958*, substitute—

20 “(2A) If any fee is prescribed in the regulations, a fee determined by a council under sub-section (2) must not exceed that fee.”.

Amendment of *Liquor Control Act 1987*.

47. In section 182 (6) of the *Liquor Control Act 1987*, paragraph (k) is repealed.

No. 97/1987.

25 **Repeal of *Venereal Diseases Act 1958*.**

48. The *Venereal Diseases Act 1958* is repealed.

No. 6408. Reprinted to No. 9576 and amended by Nos. 9945, 16/1986 and 110/1986. No. 124/1986.

Amendment of *Prostitution Regulation Act 1986*.

49. Section 71 of the *Prostitution Regulation Act 1986* is repealed.

