

# Health and Community Services (Further Amendment) Bill

No.

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# LEGISLATIVE ASSEMBLY

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Read 1° 27 October 1993

*(Brought in by Mrs Tehan and Mr Gude)*

## A BILL

to amend the **Children and Young Persons Act 1989**, the **Health (Fluoridation) Act 1973**, the **Health Services Act 1988**, the **Intellectually Disabled Persons' Services Act 1986**, the **Mental Health Act 1986** and the **Psychologists Registration Act 1987**, to repeal the **Dietitians Act 1981** and for other purposes.

### **Health and Community Services (Further Amendment) Act 1993**

The Parliament of Victoria enacts as follows:

#### PART 1—PRELIMINARY

##### 1. *Purposes*

The purposes of this Act are to—

- 5           (a) amend the **Children and Young Persons Act 1989** to make amendments concerning mandatory reporting of physical abuse of children

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

- consequential on changes made by other legislation; and
- (b) repeal the **Dietitians Act 1981** and make provision for the assets of the Dietitians Board of Victoria; and 5
- (c) amend the **Health (Fluoridation) Act 1982** concerning the persons authorised to carry out functions under that Act; and
- (d) amend the **Intellectually Disabled Persons' Services Act** to enable contracting out of certain services; and 10
- (e) make various amendments to the **Mental Health Act 1986**; and
- (f) amend the **Psychologists Registration Act 1987** to provide for staff to assist the Psychologists Registration Board; and 15
- (g) amend the **Health Services Act 1988** concerning the employment of certain Public Service staff employed in health and community service related areas. 20

## 2. *Commencement*

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation on a day to be proclaimed being a date not earlier than 1 July 1994. 25
- (3) If a provision of Part 3 does not come into operation before 31 December 1994, it comes into operation on 31 December 1994.

## PART 2—AMENDMENTS TO THE CHILDREN AND YOUNG PERSONS ACT 1989 30

### 3. *Mandatory reporting by teachers of child abuse*

In section 64 (1c) of the **Children and Young Persons Act 1989**, for paragraph (d) substitute—

“(d) a person registered as a teacher under Part III of the **Education Act 1958** or permitted to teach under that Part (including by virtue of section 44 (4) and (5) of that Act);

5 (da) a person appointed to an office in the teaching service under the **Teaching Service Act 1981** or employed under Division 4 of Part II of that Act;

(db) a person employed under section 15B (1) (a) (i) of the **Education Act 1958**.”.

10 **PART 3—REPEAL OF THE DIETITIANS ACT 1981**

**4. *Repeal of the Dietitians Act 1981 and related provisions***

No. 9676 as amended by Nos 9784, 10262, 110/1986 and 10/1991.

(1) The **Dietitians Act 1981** is repealed.

(2) In the Schedule to the **Health (Privileges) Act 1982** item 5 is repealed.

15 (3) In the **Health Registration Acts (Amendment) Act 1991**, Part 6 is repealed.

(4) In the Schedule to the **Supreme Court Act 1986**, the item relating to the **Dietitians Act 1981** is repealed.

20 (5) In the Schedule to the **Health Services (Conciliation and Review) Act 1987**, omit “Dietitians Board of Victoria”.

**5. *Abolition of Dietitians Board of Victoria***

(1) The Dietitians Board of Victoria is abolished.

25 (2) A person holding office as a member of the Dietitians Board of Victoria immediately before the commencement of this Part ceases to hold that office.

**6. *Transfer of assets and liabilities***

30 (1) All assets and rights vested in or held by the Dietitians Board of Victoria immediately before the commencement of this Part vest in the Minister.

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- (2) All liabilities of the Dietitians Board of Victoria existing immediately before the commencement of this Part become liabilities of the Minister.
- (3) The Minister is substituted as a party to any contract, lease or other arrangement and to any proceedings to which the Dietitians Board of Victoria was a party immediately before the commencement of this Part. 5
- (4) All records and documents of the Dietitians Board of Victoria become the property of the Minister.
- (5) Unless a contrary intention appears, a reference to the Dietitians Board of Victoria is deemed to be a reference to the Minister if the reference— 10
- (a) is in an Act, other than this Act, a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**, a judgement or order or any other document whatever; and 15
- (b) is in relation to a period occurring on or after the commencement of this Part.
- 7. Minister's powers over assets** 20
- (1) The Minister may, in his or her discretion—
- (a) assume control of assets and bank accounts of the Dietitians Board of Victoria; and
- (b) close bank accounts of the Dietitians Board of Victoria; and 25
- (c) liquidate the assets of the Dietitians Board of Victoria; and
- (d) determine appropriate measures be taken in relation to the preservation or disposal of records and registers of the Dietitians Board of Victoria. 30
- (2) The Minister may, by instrument, delegate any of the powers or duties set out in sub-section (1) other than this power of delegation.

8. *Transfer of assets*

5 When the Minister is satisfied that all outstanding liabilities of the Dietitians Board of Victoria that have been transferred to the Minister have been satisfied and that there are no other accruing liabilities in relation to the Dietitians Board of Victoria, the Minister may transfer the remaining assets formerly held by that Board to the body, whether or not established in Victoria, which, in the opinion of the Minister, best represents the interests of dietitians in Victoria.

10 **PART 4—AMENDMENTS TO THE HEALTH (FLUORIDATION) ACT 1973**

9. *Section 4 substituted*

15 For section 4 of the **Health (Fluoridation) Act 1973** substitute—

No. 8506 as amended by Nos 9023, 9895, 10081, 10262, 12/1989 and 81/1989.

“4. *Protection from rights of action*

No person has any right of action against—

- 20 (a) a water supply authority; or  
(b) a member of a water supply authority; or  
(c) a person acting under the direction of a water supply authority; or  
25 (d) a person acting on behalf of a water supply authority under a contract made between that authority and the person—

30 in respect of anything done in regard to the fluoridation of a public water supply in accordance with the provisions of this Act.”

10. *Consequential amendments*

In the **Health (Fluoridation) Act 1973**—

- (a) in section 5 (2), after “the water supply authority”  
**insert** “or on behalf of a water supply authority  
under a contract made between that authority and  
the person”;
- (b) in section 9— 5
- (i) after “lands of any water supply authority”  
**insert** “or the lands of any person acting  
under the direction of, or on behalf of, a  
water supply authority under a contract made  
between that authority and the person”; and 10
- (ii) after “system of the authority” **insert** “or  
person acting under the direction of, or on  
behalf of, a water supply authority under a  
contract made between that authority and the  
person”. 15

### **11. Amendment of regulation making powers**

In section 11 of the **Health (Fluoridation) Act 1973**—

- (a) for paragraph (a) **substitute**—
- “(a) the duties of a water supply authority or a  
person acting under the direction of or on 20  
behalf of a water supply authority under a  
contract made between that authority and the  
person relating to the addition of fluoride to a  
public water supply including—
- (i) the imposition of requirements as to the 25  
taking of samples of water from the  
public water supply of the authority or  
the person acting under the direction of  
or on behalf of a water supply authority  
under a contract made between that 30  
authority and the person; and
- (ii) the testing and analysing of the samples  
by the authority, the person acting under  
the direction of or on behalf of a water  
supply authority under a contract made 35  
between that authority and the person  
and by other prescribed persons or  
bodies.”; and



(b) after paragraph (c) **insert**—

“(ca) the records to be kept by a person acting under the direction of or on behalf of a water supply authority under a contract made between that authority and the person;”.

**12. Supreme Court—limitation of jurisdiction**

After section 11 of the **Health (Fluoridation) Act 1973 insert**—

**“12. Supreme Court—limitation of jurisdiction**

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from entertaining an action of the kind referred to in section 4.”.

**PART 5—AMENDMENTS TO THE INTELLECTUALLY DISABLED PERSONS’ SERVICES ACT 1986**

**13. Power of Secretary to provide funds**

In section 22 (3) of the **Intellectually Disabled Persons’ Services Act 1986** after “provided to a” **insert** “person who has entered into a contract under section 22A or to a”.

No. 53/1986.  
Reprinted to  
No. 60/1989.  
Subsequently  
amended by  
Nos 62/1992  
and 68/1992.

**14. New section 22A inserted**

After section 22 of the **Intellectually Disabled Persons’ Services Act 1986 insert**—

**“22A. Contracts for provision of services**

- (1) The Secretary may enter into a contract with a person for the provision by that person of services of any type for intellectually disabled persons.
- (2) A contract under this section—

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- (a) remains in force for the period (not exceeding 3 years) specified in it; and
  - (b) may provide for termination of the contract by the Secretary if the Secretary is of the opinion that—
    - (i) any performance standards specified in the contract in relation to the provision of the services are not being met by the contracted service provider; or
    - (ii) the provision of the services is being inefficiently or incompetently managed; or
    - (iii) the contracted service provider has failed to provide an effective service in accordance with the principles specified in section 23 (3); or
    - (iv) the contracted service provider has breached or failed to comply with any provision in the contract; and
  - (c) may contain any other provisions that are not inconsistent with this Act.
- (3) The provisions of this Act that apply to a contracted service provider apply only with respect to services provided or to be provided by the contracted service provider under a contract under this section and with respect to premises used, or to be used, by the contracted service provider to provide those services and this Act must be construed accordingly.”.

**15. Registration of services**

In section 23 of the **Intellectually Disabled Persons' Services Act 1986**—

- (a) in sub-section (1) for “residential service or a non-residential service” **substitute** “registered service”;
- (b) in sub-section (2) for “residential service or a non-residential service” **substitute** “registered service”;
- (c) sub-sections (4) and (5) are **repealed**.

**16. Funding and services agreements**

In section 24 (2) (a) of the **Intellectually Disabled Persons' Services Act 1986** for “a period of 3 years from the date of its making” **substitute** “the period (not exceeding 3 years) specified in it”.

**17. Appointment of administrator**

In section 25 of the **Intellectually Disabled Persons' Services Act 1986**—

- (a) in sub-section (1)—
  - (i) for “registered residential service or a registered non-residential service” **substitute** “contracted service provider or a registered service”;
  - (ii) in paragraph (c) for “funding and services agreement” **substitute** “contract under section 22A or a funding and services agreement (as the case requires)”;
  - (iii) for “of the registered residential service or registered non-residential service” **substitute** “to take over the functions under this Act or under a contract or agreement under this Act of the contracted service provider or registered service”;
- (b) after sub-section (1) **insert**—

- “(1A) A contracted service provider or a registered service may request the Minister to have a fit and proper person appointed as administrator to take over its functions under this Act or under a contract or agreement under this Act and, in that event, the Governor in Council may, on the recommendation of the Minister made after complying with sub-section (3), by Order published in the Government Gazette appoint such a person as administrator to take over those functions.”; 5 10
- (c) in sub-section (2)—
- (i) in paragraph (a) for “registered residential service or registered non-residential service” **substitute** “contracted service provider or registered service for the purposes of its functions under this Act or under a contract or agreement under this Act”; 15
- (ii) in paragraph (b) before “has” **insert** “for the purposes of those functions”; 20
- (d) in sub-section (3) (a) for “registered residential service or registered non-residential service” (where twice occurring) **substitute** “contracted service provider or registered service”; 25
- (e) in sub-section (4) for “registered residential service or registered non-residential service” **substitute** “contracted service provider or registered service which has no functions other than functions under this Act or under a contract or agreement under this Act”; 30
- (f) in sub-section (5)—
- (i) in paragraph (a) after “body” **insert** “(if its members ceased to hold office)”; 35
- (ii) in paragraph (b) for “registered residential service or registered non-residential service” **substitute** “contracted service provider or registered service”; 35
- (g) in sub-section (6) **omit** “residential service or registered non-residential”; 35

(h) in sub-section (7)—

(i) **omit** “residential service or a registered non-residential”;

(ii) **omit** “residential service or registered non-residential” (where twice occurring);

(i) after sub-section (7) **insert**—

“(7A) If an administrator appointed under this section recommends that a contract under section 22A with a contracted service provider should be terminated, the Secretary may, after complying with sub-section (7B), terminate that contract with immediate effect.

(7B) The Secretary must not terminate a contract under section 22A on the recommendation of the administrator unless the Secretary—

(a) has given notice in writing to the contracted service provider specifying—

(i) the ground on which it is intended to terminate the contract; and

(ii) that the contracted service provider may object in writing to the Secretary within 14 days after service of the notice and may request to be represented at a hearing into the objection; and

(b) has considered any objection made under paragraph (a).”.

**18. New section 44A inserted**

After section 44 of the **Intellectually Disabled Persons’ Services Act 1986** insert—

**“44A. Fee payable by residents**

(1) Without limiting any other power provided by or under this or any other

Act, the designated officer of a contracted service provider that provides residential services or of a registered service that provides residential services may require a permanent or temporary resident to pay a reasonable fee (not exceeding the amount determined by the Secretary) in respect of the provision of food and the use of electricity, gas or oil during his or her period of residence. 5

(2) Without limiting any other power provided by or under this or any other Act, the Secretary may require a permanent or temporary resident in any premises operated by the Department and used to provide residential services to pay a reasonable fee in respect of the provision of food and the use of electricity, gas or oil during his or her period of residence. 15

(3) Sub-section (2) has no effect during any period when provision with respect to the matter dealt with by that sub-section is made by regulations made under section 78 (1) (g).” 20

**19. Consequential amendments**

The **Intellectually Disabled Persons’ Services Act 1986** is amended as follows:

(a) In section 3—

(i) after the definition of “community visitor” insert— 30 (

“**contracted service provider**” means a person with whom the Secretary has entered into a contract under section 22A for the provision of services for intellectually disabled persons;’; 35 (

5 (ii) in the definition of “designated officer” for “registered residential service or a registered non-residential service” **substitute** “contracted service provider or a registered service”;

(iii) after the definition of “medical practitioner” **insert—**

10 **“non-participating residential service”** means a contracted service provider or a registered service that is not a participating residential service;’;

(iv) for the definition of “participating registered residential service” **substitute—**

15 **“participating residential service”** means a contracted service provider or a registered service that provides residential services and that pays trust money received from, or on behalf of, eligible persons at the service into the Residents’ Trust Fund;’;

20 (v) after the definition of “registered residential service” **insert—**

25 **“registered service”** means a municipality or a non-government organisation which is registered under section 23 and provides to eligible persons residential services or non-residential services or both residential services and non-residential services;’;

30 (b) in section 9 (3) for paragraphs (b) and (c) **substitute—**

“(b) a registered service; or

(c) a contracted service provider; or”;

35 (c) in section 11 (2) for “residential service or a registered non-residential service” **substitute** “service or a contracted service provider”;

(d) in section 24 (1) **omit** “residential service or a registered non-residential”;

- (e) in section 24 (2) (b) and (4) (b) **omit** “residential service or registered non-residential”;
- (f) in section 26 (1) after “is not” **insert** “a contracted service provider or”;
- (g) in section 44 (2) for “residential service, registered non-residential service” **substitute** “service, contracted service provider”; 5
- (h) in section 45—
  - (i) in sub-section (1) **omit** “registered”;
  - (ii) in sub-section (2) (c) **omit** “registered”; 10
  - (iii) in sub-section (4) **omit** “registered”;
- (i) in section 47 **omit** “registered”;
- (j) in section 50 (1) **omit** “registered”;
- (k) in section 50A **omit** “registered”;
- (l) in section 50B— 15
  - (i) in sub-section (1) **omit** “registered” (where twice occurring);
  - (ii) in sub-section (3) **omit** “registered”;
  - (iii) in sub-section (4) **omit** “registered” (where twice occurring); 20
  - (iv) in sub-section (6) **omit** “registered”;
- (m) in section 50C (3) **omit** “registered”;
- (n) in section 50D (2) **omit** “registered”;
- (o) in section 50E (2) **omit** “registered”;
- (p) in section 50F— 25
  - (i) in sub-section (1) **omit** “registered”;
  - (ii) in sub-section (2) **omit** “registered”;
- (q) in section 50H—
  - (i) in sub-section (1) **omit** “registered”;
  - (ii) in sub-section (2) **omit** “registered”; 30
- (r) in section 50I (1) **omit** “registered”;
- (s) in section 54 for “or registered residential service” **substitute** “, contracted service provider that provides residential services or registered service that provides residential services”; 35



(t) in section 56—

5 (i) in sub-section (1) for “or registered residential service” **substitute** “, contracted service provider that provides residential services or registered service that provides residential services”;

10 (ii) in sub-section (3) for “or registered residential service” **substitute** “, contracted service provider that provides residential services or registered service that provides residential services”;

(u) in section 57—

15 (i) in sub-section (1) for “or registered residential service” **substitute** “, contracted service provider or registered service”;

(ii) in sub-section (2) for “or registered residential service” **substitute** “, contracted service provider or registered service”;

20 (iii) in sub-section (3) for “or registered residential service” (where twice occurring) **substitute** “, contracted service provider or registered service”;

25 (v) in section 58 (1) for “or registered residential service” **substitute** “, contracted service provider that provides residential services or registered service that provides residential services”;

30 (w) in section 63 (1) for “or registered residential service” **substitute** “, contracted service provider that provides residential services or registered service that provides residential services”;

(x) in section 64 for “or registered residential service” **substitute** “, contracted service provider that provides residential services or registered service that provides residential services”;

35 (y) in section 68 (1), (2), (3), (4), (5) and (6) for “registered residential service, registered non-residential service” **substitute** “contracted service provider, registered service”.

**20. Transitional provision**

The **Intellectually Disabled Persons' Services Act 1986** as amended by this Part applies to any municipality or non-government organisation registered under section 23 before the commencement of this Part as a residential service or a non-residential service as if it were registered under that section as a registered service.

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**PART 6—AMENDMENTS TO THE MENTAL HEALTH ACT 1986**

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No. 59/1986.  
Reprinted to  
No. 32/1990  
and  
subsequently  
amended by  
Nos 49/1991,  
68/1992,  
69/1992 and  
42/1993.

**21. Licensing of premises**

In section 74 (1) of the **Mental Health Act 1986**, omit “a psychiatric in-patient service or any”.

**22. Transitional provision**

After section 74 (3) of the **Mental Health Act 1986**, insert—

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“(4) Premises which immediately before the commencement of this sub-section were a psychiatric in-patient service are deemed to be licensed under section 75 in respect of all forms of electroconvulsive therapy for 3 years from the commencement of this sub-section and that licence may be amended or revoked accordingly.”.

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**23. Withdrawal of patient's money**

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In section 91 (1) of the **Mental Health Act 1986**, for paragraph (b), substitute—

“(b) may be withdrawn on behalf of the patient if—

(i) the senior officer of the service believes on reasonable grounds that the withdrawal of

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the money is necessary for the benefit, use or enjoyment of the patient; and

- 5 (ii) the senior officer or a person employed in or by the psychiatric in-patient service and designated for that purpose by the senior officer has discussed the proposal to withdraw the money with the patient and the patient does not object.”.

**24. Statute law revision**

10 In the **Mental Health Act 1986**—

- (a) in section 143, sub-sections (1) and (2) are **repealed**; and  
(b) Schedule 6 is **repealed**.

15 **PART 7—AMENDMENTS TO THE PSYCHOLOGISTS  
REGISTRATION ACT 1987**

**25. Registrar and Board’s staff**

No. 60/1987.

For section 10 of the **Psychologists Registration Act 1987** substitute—

**“10. Registrar and staff of the Board**

20 The Board may employ a Registrar of the Board and such other staff as it thinks fit.”.

**26. Consequential amendment of section 42**

25 In section 42 (3) of the **Psychologists Registration Act 1987**, after “members” insert “and staff”.

**PART 8—AMENDMENTS TO THE HEALTH SERVICES ACT 1988**

No. 49/1988.  
Reprinted to  
No. 53/1990  
and  
Government  
Gazette  
20.2.1991 and  
subsequently  
amended by  
Nos 2/1992  
and 42/1993  
and G.G.  
4.9.1991  
p. 2478,  
18.12.91  
p. 3541,  
22.1.1992  
p. 212,  
17.6.1992  
p. 1504,  
22.7.1992  
p. 1900,  
5.8.1992  
pp. 2082, 2085,  
7.10.1992  
p. 2998,  
17.6.1993  
p. 1560,  
26.8.1993  
p. 2406 and  
9.9.1993  
p. 2512.

**27. New Division 2A inserted**

After Division 2 of Part 7 of the **Health Services Act 1988** insert—

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**“Division 2A—Conditions of certain public service staff**

**138A. Definition**

In this Division **“Public Service Determinations”** means the Public Service Determinations 1985 as in force under the **Public Service Act 1974** immediately before its repeal.

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**138B. Remuneration and allowances**

(1) On and from the commencement of this section, the terms and conditions applying to a person whose remuneration is determined by reference to Schedule 5 of the Public Service Determinations and set out in regulation 4.5 (2) of the Public Service Regulations 1985 and determinations 2.9 and 5.10 of the Public Service Determinations cease to form part of an individual employment agreement referred to in clause 22 (4) of Schedule 6 of the **Public Sector Management Act 1992**.

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(2) Nothing in sub-section (1) affects—

(a) any rights accrued under the terms and conditions set out in regulation 4.5 (2) of the Public Service Regulations 1985 or determinations 2.9 and 5.10 of the Public Service Determinations immediately before

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the commencement of this section;  
or

(b) an election made under  
determination 5.10 (2) of the Public  
Service Determinations before the  
commencement of this section or  
any rights accruing as a result of  
that election.

(3) This section has effect despite anything  
to the contrary in the **Public Sector  
Management Act 1992**.

**138C. *No compensation payable***

No compensation is payable to any  
person because of a term or condition  
ceasing to form part of an individual  
employment agreement pursuant to  
section 138B (1).”.

**28. *New section 157AA inserted***

After section 157 of the **Health Services Act 1988**  
insert—

**“157AA. *Supreme Court—limitation of jurisdiction***

It is the intention of this section to alter  
or vary section 85 of the **Constitution  
Act 1975** to the extent necessary to  
prevent the Supreme Court from  
entertaining an action for compensation  
in circumstances where section 138C  
provides that no compensation is  
payable.”.

