

# Health Services (Further Amendment) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne



# LEGISLATIVE COUNCIL

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Read 1° 29 May 1990

*(Brought in by the Honourable C. J. Hogg)*

## A BILL

to amend the *Health Services Act 1988*, the *Dentists Act 1972*, the *Pharmacists Act 1974* and the *Retirement Villages Act 1986* and for other purposes.

### **Health Services (Further Amendment) Act 1990**

The Parliament of Victoria enacts as follows:

#### **Purpose**

1. The purposes of this Act are—

- 5
- (a) to make miscellaneous amendments to the *Health Services Act 1988*; and
  - (b) to make consequential amendments to the *Dentists Act 1972*, the *Pharmacists Act 1974* and the *Retirement Villages Act 1986*.

#### **Commencement**

10 2. (1) Sections 9 and 27 are deemed to have come into operation on 14 May 1989.

(2) The remainder of this Act comes into operation on the day on which this Act receives the Royal Assent.

**Principal Act**

No. 49/1988.  
Amended by  
Nos. 1/1989 and  
57/1989.

3. In this Act, the *Health Services Act* 1988 is called the Principal Act.

**Amendment of definitions**

4. In section 3 of the Principal Act— 5

(a) for the definition of “By-law” substitute—

‘ “By-law”—

(i) in relation to a health service establishment or registered funded agency that is a corporation with articles of association, means the corporation’s articles of association; and 10

(ii) in relation to any other health service establishment or registered funded agency, means a principal regulatory instrument made by the establishment or agency but does not include rules made under a principal regulatory instrument.”; and 15

(b) in the definition of “Supported residential service”, for “profit” substitute “fee or reward”.

**Exemptions**

5. (1) After section 11 (1) of the Principal Act insert— 20

“(1A) The Governor in Council, by Order published in the *Government Gazette*, may declare that any or all of the provisions of this Act specified in the Order do not apply to a specified health service establishment or class of establishment.”.

(2) In section 11 (2) of the Principal Act, for “sub-section (1)” substitute “this section”. 25

**Guidelines**

6. In section 12 of the Principal Act, after paragraph (a) insert—

“(aa) The adequacy of health services in any part of Victoria;”.

**By-laws**

7. In section 24 (1) of the Principal Act— 30

(a) in paragraph (c), for “or by-laws—” substitute “; or”; and

(b) after paragraph (c) insert—

“(d) make, amend or alter its by-laws—”.

**New section 31A inserted**

8. After section 31 of the Principal Act insert—

**Public hospitals do not represent Crown**

5 “31A. A public hospital does not represent, and shall not be taken to be part of, the Crown.”.

**By-laws of public hospitals**

9. After section 33 (2) of the Principal Act insert—

10 “(2A) The board of a public hospital has such powers as are necessary to enable it to carry out its functions, including the power to make, amend or revoke by-laws.”.

**Boards of management of community health centres**

10. (1) In section 46 (1) of the Principal Act, for paragraph (b) substitute—

15 “(b) if the by-laws of the centre so provide—  
(i) natural persons who, in accordance with the by-laws, are appointed by the board on the nomination of any municipal council in the area served by the centre and who are members or employees of the council; and  
20 (ii) natural persons who, in accordance with the by-laws, are appointed by the board of any public hospital or denominational hospital which serves the area served by the centre and who are members of the board, or employees, of the hospital.”.

25 (2) In section 47 (1) of the Principal Act, omit “and is eligible for re-election or re-appointment”.

(3) After section 47 (1) of the Principal Act insert—

30 “(1A) The term of office of a member of the board must be fixed so that, as nearly as possible, one third of the positions of elected members are or become vacant at each annual meeting of the centre.

(1B) Unless the by-laws of a community health centre otherwise provide, a member of the board is eligible for re-election or re-appointment.

(1C) If—

35 (a) the number of candidates for election to a board of a community health centre is less than the number of vacancies to be filled; or  
(b) a member of a board of a community health centre resigns during the member’s term of office and it appears

to the board that there is no person eligible and available for election to the board by virtue of the regulations— the board may appoint a person to be a member of the board if that person is not ineligible to be a member of the board by virtue of section 46 (2).”.

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(4) In section 51 (a) of the Principal Act, for “representatives” substitute “persons”.

**Approval of land or premises for health service establishment**

11. In section 70 (1) of the Principal Act, for paragraph (a) substitute—

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“(a) the use of particular land or premises as a specified kind of health service establishment; or”.

**Endorsement of certificates of approval in principle**

12. After section 74 (2) of the Principal Act insert—

“(3) The person who is the holder for the time being of a certificate of approval in principle must produce the certificate to the Chief General Manager for endorsement by the Chief General Manager of the particulars of—

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(a) the variation of the certificate or variation of any condition to which it is subject; or

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(b) the transfer of the certificate to that person.”.

**Design approval**

13. In section 76 (1) (b) of the Principal Act, after “used” insert “or proposed to be used”.

**Endorsement of certificates of design approval**

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14. (1) In section 81 (1) (a) of the Principal Act, after “certificate” insert “or any condition to which it is subject”.

(2) After section 81 (2) of the Principal Act insert—

“(3) The person who is the holder for the time being of a certificate of design approval must produce the certificate to the Chief General Manager for endorsement by the Chief General Manager of the particulars of—

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(a) the variation of the certificate or variation of any condition to which it is subject; or

(b) the transfer of the certificate to that person.”.

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**Application for renewal of registration**

15. (1) In section 88 (1) of the Principal Act, omit “at any time within the period of three months”.

(2) In section 88 (2) of the Principal Act, or for paragraph (b) substitute—

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“(b) must be accompanied—

(i) if the application is made at least three months before the expiration of the registration, by the prescribed fee; or

5 (ii) if the application is made within the period of three months before the expiration of the registration, by the prescribed fee and an additional fee of one half of the prescribed fee.”.

**Transfer of registration**

10 16. In section 92 (2) (c) (ii) of the Principal Act, for “proprietor” substitute “person who intends to become the proprietor of that establishment”.

**Persons who are no longer fit and proper proprietors**

15 17. (1) In section 99 of the Principal Act, after paragraph (b) insert—

“; or

(ba) in the case of a proprietor who is a natural person, has ceased to be a fit and proper person to carry on the hostel, home or service; or

20 (bb) in the case of a proprietor who is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the hostel, home or service has ceased to be or is not a fit and proper person to carry on or exercise control over the hostel, home or service—”.

25 (2) In section 102 (1) of the Principal Act, after paragraph (c) insert—

“; or

30 (ca) in the case of a proprietor who is a natural person, has ceased to be a fit and proper person to carry on the establishment; or

35 (cb) in the case of a proprietor who is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the establishment has ceased to be or is not a fit and proper person to carry on or exercise control over the establishment—”.

**Residential statements**

18. The Principal Act is amended as follows:

(a) In section 89 (f), omit “hostel, nursing home or”;

40 (b) In section 99 (d), for “service” substitute “hostel, home or service”;

(c) In section 106 (1)—

(i) omit “hostel, nursing home or”; and

- (ii) omit “hostel, home or”;
- (d) In section 106 (4), omit “hostel, nursing home or”;
- (e) In section 165—
  - (i) omit “nursing home, hostel or”; and
  - (ii) in paragraph (a), omit “home, hostel or”. 5

**Offence to enter into certain agreements**

19. After section 115 (2) of the Principal Act insert—

“(3) A person must not enter into an agreement or arrangement for the alteration or extension of premises proposed to be used as a health service establishment unless a design approval under this Part is in force in respect of that alteration or extension. 10

Penalty: 50 penalty units.”.

**Community visitors**

20. The Principal Act is amended as follows: 15

- (a) In section 117, omit “,hostel, nursing home” (wherever occurring);
- (b) In section 119, omit “,hostel, nursing home” (where twice occurring);
- (c) In section 120 (1)— 20
  - (i) omit “,hostel, nursing home”; and
  - (ii) omit “,hostel, home” (wherever occurring);
- (d) In section 120, for sub-section (2) substitute—
  - “(2) Sub-section (1) (d) does not authorise a visitor to inspect— 25
    - (a) a resident’s medical records unless the resident consents; or
    - (b) personnel records unless the member of staff consents.”;
- (e) In section 120 (3), for “hostel, home” substitute “designated public hospital”; 30
- (f) In section 120 (4)—
  - (i) for “hostel, home” substitute “designated public hospital”; and
  - (ii) in paragraph (a), for “(2)” substitute “(3)”; 35
- (g) In section 121, omit “, hostel, nursing home”;
- (h) In section 122, omit “hostel, nursing home”;
- (i) In section 123 (1), omit “,hostels, nursing homes”;
- (j) In section 124 (3) (b), after “residents of a” insert “designated public hospital or supported”. 40



Quality assurance

21. Section 139 of the Principal Act is amended as follows:

5 (a) In sub-section (1), for “or health service establishments” substitute “health service establishments or psychiatric services”;

(b) In sub-section (2)—

(i) in paragraph (a), for “or health service establishments” substitute “health service establishments or psychiatric services”; and

10 (ii) in paragraph (b), for “agencies or establishments” substitute “registered funded agencies, health service establishments or psychiatric services”;

(c) After sub-section (2) insert—

15 “(2A) In sub-sections (1) and (2), “**psychiatric service**” has the same meaning as in section 106 of the *Mental Health Act 1986*.”;

(d) In sub-section (3)—

(i) after “member” (where first occurring) insert “,officer or employee”; and

20 (ii) in paragraph (a), for “as such a member” substitute “by reason only of being such a member, officer or employee”; and

25 (iii) for “to perform the functions of such a member” substitute “for the performance of the functions of that committee, council or body or of the person as such a member, officer or employee”;

(e) In sub-section (4)—

(i) after “member” (where first occurring) insert “,officer or employee”; and

30 (ii) after “required” insert “by reason only of being such a member, officer or employee”; and

(iii) in paragraphs (a) and (b), for “as such a member” substitute “by reason only of being such a member, officer or employee”;

35 (f) In sub-section (5)—

(i) omit “other”; and

(ii) for “obtained by or in the possession” substitute “concerning the proceedings or prepared for the purposes”;

40 (g) After sub-section (5) insert—

(6) If there is an inconsistency between this section and a provision of any other Act or law, this section prevails to the extent of the inconsistency.”.

**Confidentiality**

22. In section 141 (2) (c), for “or permitted” substitute “, permitted or required”.

**Amendment of regulation-making powers**

23. Section 158 of the Principal Act is amended as follows: 5
- (a) In sub-section (1), for paragraph (d) substitute—
- “(d) requirements to be complied with for safety, cleanliness and hygiene and the standards of care in health service establishments;”;
- (b) In sub-section (1), for paragraph (g) substitute— 10
- “(g) requirements for staffing of health service establishments, including but not limited to appointments, numbers, qualifications, rostering and staffing arrangements;”;
- (c) In sub-section (1) (i), after “(i)” insert “requirements for”; 15
- (d) In sub-section (1) (k), for “and supported residential services” substitute ‘, private hospitals and supported residential services, including prohibiting or regulating the use of the words “nursing home”, “hostel”, “private hospital” and “supported residential service”’; 20
- (e) In sub-section (1) (m), after “requirements for” insert “the provision of and”;
- (f) In sub-section (2), after paragraph (b) insert—
- “(ba) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Chief General Manager, a municipal council or public authority or an officer of such a council or authority; and 25
- (bb) may prescribe fees payable for accommodation in, or health care or any other service provided by a public hospital, denominational hospital, prescribed nursing home or prescribed hostel in terms of being a percentage of the pension and rental allowance under any Commonwealth law as payable from time to time; and”.

**New section 159A inserted 35**

24. After section 159 of the Principal Act insert—

**Saving of hospital by-laws**

“159A. (1) Despite the repeal of the *Hospitals and Charities Act* 1958, any by-law made under section 62 of that Act and existing as at 14 May 1989 continues in force as if it were a by-law under this Act and may be amended or revoked accordingly. 40

(2) A by-law purporting to have been made on or after 14 May 1989 by the board of a public hospital is deemed to be and always to have been as valid as if, when it was made, section 33 (2A) had been in operation.”.

5 **Transitional provisions—private hospitals**

25. In section 160 (3) of the Principal Act—

(a) in paragraph (b), for “or centre” substitute “,centre or service”; and

10 (b) in paragraph (e), for “or centre” substitute “,centre or service”.

**Transitional provisions—nursing homes and hostels**

26. Section 161 of the Principal Act is amended as follows:

(a) In sub-section (1), for “this Act” (where secondly occurring) substitute “this section”;

15 (b) In sub-section (2), for “this Act” (where secondly occurring) substitute “this section”;

(c) In sub-section (3)—

20 (i) in paragraph (a), for “Act” (where first occurring) substitute “section”; and

(ii) in paragraph (c), for “this Act” substitute “this section”.

**Transitional provisions—community health centres**

27. (1) In section 168 of the Principal Act, for “deemed to be a community health centre within the meaning of this Act” substitute “deemed to be an agency registered under Division 2 of Part 3”.

25 (2) In section 171 (5) of the Principal Act—

(a) omit “of the board”; and

(b) in paragraph (a), after “members” insert “of the board”; and

30 (c) in paragraph (b), for “an equal number of members retire” substitute “one third of the positions of elected members are or become vacant”.

**Amendment of *Dentists Act 1972***

28. In section 36 (4) of the *Dentists Act 1972*, for paragraph (iii) substitute—

35 “(iii) A public hospital, a denominational hospital or a community health centre within the meaning of the *Health Services Act 1988*.”.

No. 8287.  
Reprinted to No.  
9863 and  
subsequently  
amended by Nos.  
10244,  
16/1986,  
59/1986,  
110/1986,  
119/1986,  
12/1989  
and 57/1989.

**Amendments of *Pharmacists Act 1974***

No. 8593.  
Reprinted to No.  
9784 and  
subsequently  
amended by Nos.  
10244, 10262,  
110/1986,  
119/1986,  
49/1988 and  
57/1989.

**29.** The *Pharmacists Act 1974* is amended as follows:

- (a) In section 21 (4), for “hospital” substitute “registered funded agency within the meaning of the *Health Services Act 1988*”;
- (b) In section 24 (2), for “an institution within the meaning of the *Hospitals and Charities Act 1958*” substitute “a registered funded agency within the meaning of the *Health Services Act 1988*”.

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**Amendment of *Retirement Villages Act 1986***

No. 126/1986 as  
amended by Nos.  
53/1988 and 18/  
1989.

**30.** In section 5 of the *Retirement Villages Act 1986*, sub-section (1) is repealed.

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