

# Health Acts (Amendment) Bill

## EXPLANATORY MEMORANDUM

### Outline

This Bill makes miscellaneous amendments to various Acts within the portfolio of the Minister for Health. It amends the **Ambulance Services Act 1986**, the **Cemeteries Act 1958**, and the **Health Act 1958**.

### Clause Notes

#### PART 1—PRELIMINARY

*Clause 1* describes the purpose of the Bill.

*Clause 2* is the commencement provision.

#### PART 2—AMENDMENTS TO THE AMBULANCE SERVICES ACT 1986

*Clause 3* makes changes under section 17 of the **Ambulance Services Act 1986** to the composition of the membership of the committees of management by reducing the minimum number of members from 8 to 4. It also removes the statutory prescriptions on the groups from which members are to be drawn.

*Clause 4* makes consequential changes to section 20 of the **Ambulance Services Act** concerning meetings of the committees.

*Clause 5* amends the composition of the membership of the committee of the **Ambulance Officers Training Centre** in section 27 of the **Ambulance Services Act** in line with the changes made to the other committees.

*Clause 6* contains consequential changes to section 30 of the **Ambulance Services Act** concerning meetings of the committee of management of the **Ambulance Officers Training Centre**.

*Clause 7* is the transitional provision to provide that existing members of committees of ambulance services and the **Ambulance Officers Training Centre** continue to hold office on the original terms of their appointments.

#### PART 3—AMENDMENTS TO THE CEMETERIES ACT 1958

*Clause 8* inserts a new section 2B into the **Cemeteries Act 1958**.

The new section anticipates proposed new sections 3, 4, 4A, 5 and 6 to be substituted subsequently by the Bill which among other things, will provide for the incorporation of cemetery trusts.

To avoid the need for a large number of consequential amendments to the Act, proposed section 2B will require that references to trustees; the beliefs or opinions of trustees; and to individual trustees throughout the Act be read as being a references to a cemetery trust; the beliefs and opinions of a cemetery trust; and to a member of a cemetery trust, respectively.

*Clause 9* substitutes 5 new provisions for sections 3, 4, 5, and 6 of the **Cemeteries Act 1958**.

Proposed new section 3 enables cemetery trusts to be incorporated and abolished, their names changed, and other cemeteries transferred to their administration, by regulation.

About 550 cemetery trusts are to be incorporated under the new provisions and incorporation by regulation offers a number of advantages over other methods of incorporating a significant number of bodies which have been adopted in earlier legislation.

It will, for example, avoid the need to give the Executive Council power to amend an Act which is the way new public hospitals are incorporated under the **Health Services Act 1988**.

It will also ensure that members of the public have ready access to a list of incorporated cemeteries and the cemeteries for which they are responsible.

In addition, incorporation by regulation will make it easier to allocate the administration of cemeteries between trusts rather than having to appoint the same persons as trustees if a trust is to manage 2 or more cemeteries.

It should be noted that, except for the allocation of additional cemeteries to its administration, the power to make regulations will not extend to The Trustees of the Necropolis, Spring Vale. This exception is necessary because The Trustees of the Necropolis, Spring Vale was deemed to have been incorporated in 1901 by **The Necropolis, Spring Vale, Act 1903** and continues to be incorporated under the Cemeteries Act.

Proposed new section 4 requires that incorporated trusts have between 3 and 12 members. Members are to be appointed by the Governor in Council for not more than 5 years but will be eligible for reappointment.

Proposed new section 4A is a savings provision with respect to existing trusts.

The new section enables existing trusts which are incorporated under the legislation to continue to operate despite the fact that there may be less than 3 or more than 12 members, and continues the current trustees in office.

This provision will enable the membership of existing trusts to be brought into line with the requirements of proposed new section 4 over a period of time as vacancies occur.

Proposed new section 5 deals with the situation where one trust is appointed to manage more than one cemetery.

It is designed to put beyond doubt that, where a trust administers more than one cemetery, it can use the property, funds and income from one to develop, preserve or maintain any other cemetery it administers.

Proposed new section 6 enables the Governor in Council to appoint an administrator if a cemetery is, in the opinion of the Minister, being inefficiently or incompetently managed, or if such an appointment is necessary in the public interest.

*Clause 10* makes such amendments and repeals as are necessary to the **Cemeteries Act 1958** as a consequence of the proposed incorporation of cemetery trusts.

*Clause 11* substitutes a new section for section 14A of the **Cemeteries Act 1958**.

Section 14A guarantees the liability of any trustee acting in good faith and without wilful disregard of his or her duties.

It was inserted into the Cemeteries Act in 1991 as an interim measure pending the incorporation of cemetery trusts.

Section 14A becomes unnecessary as a result of incorporation. In lieu, the substituted provision will provide that any liability incurred by a member of a trust acting in good faith attaches to the trust.

*Clause 12* is a transitional provision related to the proposed repeal and substitution of section 14A.

Its effect is to continue to apply the existing provision to any liability incurred by a trustee before the commencement of the proposed new incorporation provisions.

*Clause 13* inserts a new sub-section (3) in section 21 of the **Cemeteries Act 1958**.

Among other things, section 21 requires that, after a coffin has been buried in a vault, the surrounding space must be filled up with “charcoal dry earth or other suitable material”.

The extension of the natural meaning of “vault” to include mausoleums which was made by the **Cemeteries (Amendment) Act 1980** has created an anomaly in the case of section 21.

Burials in mausoleum niches, unlike interments in vaults, are usually effected by inserting the coffin horizontally.

As a result, it is virtually impossible to pack the niche in which the coffin has been placed with filling material, except, perhaps, in the case of cathedral crypts.

With this in mind, proposed new section 21 (3) will omit the requirement for the space around a coffin buried in a mausoleum to be filled up after a burial.

*Clause 14* inserts a new paragraph (iv) in section 77 (1) (b) of the **Cemeteries Act 1958**.

Section 77, among other things, prohibits a cemetery officer from giving permission for a corpse to be cremated unless he or she has received either the various medical certificates prescribed in the Third Schedule to the Act, or the form prescribed under section 23 of the **Coroners Act 1985** or, where the deceased died in another State, an authority to cremate the corpse given under the hand of the Coroner or other person permitted in that State to authorise cremation.

When the Act was drafted, it was never envisaged that applications would be received by cemetery trusts for the cremation of the bodies of persons—

- (a) who died overseas of natural causes; or
- (b) which are to be exhumed (usually so that the ashes can be reburied overseas).

Proposed new paragraph (iv) is designed to address these situations by providing for a certificate authorising the cremation to be issued by the Chief General Manager of the Department of Health and Community Services.

#### **PART 4—AMENDMENTS TO THE HEALTH ACT 1958**

*Clause 15* in sub-clause (a) repeals definitions still contained in section 3 of the **Health Act 1958** which relate to provisions which have now been repealed. Sub-clause (b) modernises the reference to the Department of Health and Community Services and sub-clause (c) replaces the outdated term “health surveyor” with the term “environmental health officer”.

*Clause 16* provides that a consultative council under section 24 of the Health Act has the power to co-opt persons with special expertise to assist the council in a particular matter. A co-opted person is to be considered as a member of that council. Publication of documents, beyond an annual report, containing non-identifying information by consultative councils is now permitted.

*Clause 17* modernises the reference in sections 25 and 36A of the **Health Act 1958** to “health surveyor” by substituting “environmental health surveyors”. Under the **Local Government (Miscellaneous Amendments) Act 1993** health surveyors became environmental health officers.

*Clause 18* amends section 31 of the **Health Act 1958** to remove the requirement that the Chief General Manager must give permission for councils to share municipal health officers or to share environmental health officers.

*Clause 19* repeals Division 7 of Part IV of the **Health Act 1958** which relates to the use of waste water. This will enable environmental and public health concerns to be dealt with solely under the **Environment Protection Act 1970**.

*Clause 20* amends section 130 of the **Health Act 1958** relating to the collection of information about HIV. A person in charge of a prescribed place in which the testing of blood of humans for HIV is carried out must give any information prescribed by the regulations relating to each newly diagnosed person to the Chief General Manager. A copy of the record sent to the Chief General Manager of this information may be given by the Chief General Manager to any prescribed person, organisation or body engaged in research.

*Clause 21* extends the statutory defence available under Division 7 of Part VI of the Health Act to certain persons and bodies in respect of transmission of HIV to transmission of Hepatitis C.

*Clause 22* inserts a new section, section 132A, into the **Health Act 1958**. This section spells out that the statutory defence may apply only from 5 February 1990 onwards and the 2 types of test which are approved for the specified periods.

*Clause 23* makes changes to modernise the terminology of Part IX of the **Health Act 1958** that deals with notification of births. “Infant Welfare Centre” becomes “Maternal and Child Health Centre” and “matron” becomes “Director of Nursing”. The amendments to section 160 also now provide for notification of a birth to the Director-General of Community Services where the mother usually resides outside Victoria and that notification of a birth may also now be given by facsimile transmission.

*Clause 24* amends a number of definitions in section 162B of the **Health Act 1958** to give consistency. The definition of “hospital” is amended to be consistent with the definition provided in section 131 as amended by this Act. The definition of “private hospital” is repealed. The word “proprietor” is given the same meaning as it has in section 3 of the **Health Services Act 1988**.

*Clause 25* deletes the requirement under section 242 of the Health Act for the Chief General Manager to refer to the Food Standards Committee any objection by a manufacturer importer or selling agent to a prohibition by the Chief General Manager on the sale of a disinfectant, germicide, antiseptic, preservative or household insecticide.

*Clause 26* inserts two new sub-sections, sub-sections (1A) and (1B) into section 374 of the **Health Act 1958** to permit local councils in relation to premises to incorporate more than one registration under Part XII or Part XIX of the Health Act or under Part VI of the **Food Act 1984**.

*Clause 27* repeals certain provisions which are no longer relevant. These include the requirement under section 283 for prescribed fees to be paid for the copy of a certificate of the result of an analysis or under section 371 for the certified copy of an entry in the register. The power to make regulations in relation to cinematograph operators under section 390 (2) of the **Health Act 1958** is repealed.

*Clause 28* repeals Part 1B which comprises sections 5C, 5D, 5E and 5F of the **Health Act 1958**. These provisions were inserted into the Health Act by the **Health (General Amendment) Act 1988** and have never been proclaimed.

*Clause 29.* Sub-clause (1) repeals spent provisions and a schedule to the **Ambulance Services Act 1986**. Sub-section (2) repeals spent provisions and a schedule to the **Cemeteries Act 1958**. Sub-clause (3) repeals superfluous headings remaining from earlier repeals.

