

Health and Community Services (Further Amendment) Bill

EXPLANATORY MEMORANDUM

Outline

The aim of this Bill is to amend a number of Acts in the Health and Community Services portfolio to resolve legal or administrative problems which have arisen in connection with their administration or to facilitate the provision of services to the community.

Clause Notes

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Bill.

Clause 2 is the commencement provision.

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

Clause 3 amends section 64 (1c) of the Children and Young Persons Act as a consequence of changes made by the **Education Acts (Teachers) Act 1993**.

Section 64 (1c) lists those persons who will be obliged to notify the Department of Health and Community Services if they believe on reasonable grounds that a child is in need of protection because of sexual abuse or physical injury. Included in the list are persons registered or provisionally registered as teachers under the **Education Act 1958**.

This description is no longer accurate because, as a result of the Education Acts (Teachers) Act, State school teachers will either be employed or hold office under the **Teaching Service Act 1981** or be employed by a school council under the **Education Act 1958**.

The proposed amendments to section 64 (1c) of the Children and Young Persons Act reflect the way state school teachers will be employed or appointed.

PART 3—REPEAL OF THE DIETITIANS ACT 1981

Clause 4 repeals the **Dietitians Act 1981** and unrepealed amending legislation.

Clause 5 abolishes the Dietitians Board of Victoria and provides that a member of the Board ceases to hold office.

Clause 6 transfers the assets and liabilities of the Board to the Minister and substitutes the Minister to any agreement, contract, lease or other arrangement or proceedings to which the Board was a party.

Clause 7 enables the Minister to assume control of, and to liquidate, the assets and bank accounts of the Board and to delegate any of his or her powers.

Clause 8 enables any assets of the Board which remain after liabilities have been satisfied to be transferred to the body which best represents dietitians in Victoria.

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

Clause 9 substitutes a new section for section 4 of the **Health (Fluoridation) Act 1973**.

Section 4 currently provides that—

No person shall have any right or action against any water supply authority or any member of such authority in respect of anything done in regard to the fluoridation of a public water supply in accordance with the provisions of this Act.

The proposed new section will extend the current protection to encompass a person acting under the direction of a water supply authority or acting on behalf of a water supply authority under an agreement between the authority and that person.

Clause 10 makes a consequential amendment to section 5 (2) of the Act. This provision prohibits a person adding fluoride to a public water supply except by, and in accordance with the direction of, a water supply authority. The proposed amendment will add to this exemption the addition of fluoride under an agreement with an authority.

The clause also makes a consequential change to section 9 under which a person authorised by the Secretary to the Department of Health and Community Services is empowered to examine equipment used for adding fluoride, to take samples of substances being used and samples of the water.

Clause 11 makes consequential changes to the regulation making powers of the Act.

Clause 12 inserts a new section after section 11 of the Act.

The intention of the new section is to prevent the Supreme Court entertaining an action of the kind referred to in section 4.

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

Clause 13 amends section 22 (3) of the Act to allow funds to be provided to contracted service providers for the purpose of providing services to intellectually disabled persons.

Clause 14 inserts a new section 22A into the Act. The new section will allow the Secretary to the Department of Health and Community Services to enter into contracts with persons (which include incorporate bodies) for the provision of services for intellectually disabled persons. Agreements can be up to three years and can be terminated in certain circumstances by the Secretary. The other provisions of the Act are to apply to contracted service providers only with respect to the services covered by the agreement and the rest of the Act is to be construed accordingly.

Clause 15 amends section 23 of the Act to remove the prohibition on registered services providing both residential and non residential services.

Clause 16 amends section 24 (2) (a) of the Act to allow funding and service agreements to be entered into for periods of up to three years rather than requiring that all such agreements are to be for three years.

Clause 17 amends section 25 of the Act to enable an administrator to be appointed with respect to contract service providers. As a result of the amendment, registered agencies will also be able to ask for an administrator to be appointed which they have not been previously able to do.

Clause 18 inserts a new section 44A into the Act to enable service providers to recover the costs of food and fuel from residents.

Clause 19 makes various consequential amendments to the Act.

Clause 20 is a transitional provision.

PART 6—AMENDMENTS TO THE MENTAL HEALTH ACT 1986

Clause 21 amends section 74 of the Act to require all psychiatric in-patient services to be licensed for the purposes of providing electroconvulsive therapy.

Clause 22 is a transitional provision. The clause inserts a new sub-section in section 74 to provide that all existing psychiatric in-patient services are deemed to be licensed for a period of three years under section 75 for the purposes of providing electroconvulsive therapy.

Clause 23 amends section 91 of the Act to allow a delegate of the senior officer of a psychiatric in-patient service (rather than only the senior officer himself or herself as at present) to discuss with a patient a proposal to withdraw funds from the Patients Trust Account for the benefit, use or enjoyment of the patient.

Clause 24 repeals several spent provisions in the Act.

PART 7—AMENDMENTS TO THE PSYCHOLOGISTS REGISTRATION ACT 1987

Clause 25 substitutes a new section for section 10 of the Act. The effect of the new section is to remove the requirement that the staff of the Psychologists Registration Board of Victoria must be public servants. This will allow the Board to appoint its own staff.

Clause 26 makes a consequential amendment to section 42 of the Act to empower the Board to pay staff out of its general fund.

PART 8—AMENDMENTS TO THE HEALTH SERVICES ACT 1988

Clause 27 adds a new Division 2A to Part 7 of the **Health Services Act 1988**. New sections 138A and 138B will ensure that the terms and conditions specified by regulation 4.5 (2) and Determinations 2.9 and 5.10 made under the former **Public Service Act 1974** will no longer form part of individual employment agreements for staff covered by Schedule 5 to those Determinations, who are staff in the Health and Community Services area.

Clause 28 inserts a new section 157^{AA} into the **Health Services Act 1988**. The new provision alters or varies 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 proposed in clause 27 provides that no compensation is payable.