

# Miscellaneous Acts (Health and Justice) Amendment Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

*Clause 1* sets out the purpose of the Act.

*Clause 2* provides for the Act to come into operation on the day on which it receives the Royal Assent.

### PART 2—DENTISTS ACT 1972

*Clause 3* substitutes a new section 29 (6) in the Principal Act which provides that a dental therapist shall only be employed by a dental service under the direction and control of the Minister for Health, the Secretary to the Department of Health and Community Services or a registered funded agency or class of registered funded agencies authorised by the Minister. A dental therapist can only be employed in relation to the provision of dental services to children of pre-school age, primary school and secondary school children.

### PART 3—HEALTH SERVICES ACT 1988

#### Outline

This Bill enables the creation of a new type of health service—the multi purpose service, which is intended to deliver more flexible and efficient services in acute inpatient, aged residential and community care. Multi purpose services will operate in small isolated rural areas. Three multi purpose services will be formally created by the Bill. These are currently public hospitals which are already operating in practice with an interim structure as multi-purpose services. The Bill also makes miscellaneous amendments to the **Health Services Act 1988**.

#### Division 1—Preliminary

*Clause 4* defines the **Health Services Act 1988** as the Principal Act.

#### Division 2—Multi Purpose Services

*Clause 5* adds multi purpose service in the definition of “by-law” in the Principal Act, and inserts a definition of “multi purpose service” in the Principal Act. Multi purpose services are bodies referred to in section 115v (2) and are also created by declaration of the Governor in Council under Part 4A of the Act.

*Clause 6* inserts a new Part 4A in the Principal Act relating to multi purpose services. That Part covers the following sections:

## PART 4A—MULTI PURPOSE SERVICES

115A provides that the Governor in Council may, by Order published in the Government Gazette, declare a body that provides or proposes to provide services referred to in section 115C (2), to be a multi purpose service. Each multi purpose service is a body corporate and is capable of doing all things that a body corporate can do.

115B provides that a multi purpose service does not represent and is not part of the Crown.

115C (1) provides that the objects of a multi purpose service are as approved for the time being by the board of the multi purpose service.

(2) provides that the functions of a multi purpose service can include public hospital services, health services, aged care services and community care services.

115D provides that the powers that a multi purpose service has include all necessary powers needed to enable it to carry out its objects and do all things necessary as required or permitted by the Act and names some specific powers.

115E (1) sets up a board of management for each multi purpose service.

(2) states that the functions of the board are to oversee and manage the service and to ensure that the services provided by the service comply with the Act, objects of the service, its by-laws and any agreement entered into by the service.

(3) states that the board has powers necessary to carry out its functions including the power to make, amend and revoke by-laws.

(4) provides that the board shall have between 6–12 natural persons. For the first board the members will be nominated by the Minister. In any other case the board will be nominated by the Minister after consideration of names submitted by the board.

(5) provides that if the board make no submissions of names to the Minister under (4), the Minister may nominate board members.

(6) gives the Governor in Council power to appoint the board members.

(7) provides that the **Public Sector Management Act 1992** does not apply to board members.

115F provides terms and conditions for board members of a multi purpose service.

(1) provides that a board member holds office for up to 3 years as specified in the instrument of appointment and is eligible for reappointment.

(2) entitles a board member to expenses incurred in holding office.

(3) provides that if a board member is appointed to fill a vacancy arising otherwise than by expiry of a member's term, that person will hold office for the remainder of that member's term.

115G (1) provides that a member of a multi purpose service may resign by writing signed by that person and delivered to the Governor in Council.

(2) allows the Governor in Council to remove a board member of a multi purpose service on the recommendation of the Minister.

115H (1) lays a duty on the board to ensure that the CEO of the multi purpose service convenes an annual general meeting within a certain period in each year.

(2) sets out advertising requirements for the CEO in respect of the annual general meeting.

(3) prescribes financial and other reports to be presented at the annual general meeting.

115i allows the board of a multi purpose service discretion to determine its own procedure subject to Part 4A.

115j provides that membership of a board of a multi purpose service is not an office of profit which would prevent a member sitting or voting or being elected as an MP, or make that person liable to a penalty under the **Constitution Act 1975**.

115k protects board members of a multi purpose service from actions for damages relating to actions or omissions carried out in good faith, while performing functions or exercising powers conferred on the board. This provision provides the same protection afforded to public hospital board members and metropolitan board members under the Principal Act by extending that protection to board members of a multi purpose service.

115L ensures that a defect or irregularity in connection with appointment of multi purpose service board members or a vacancy on a board will not of itself make decisions of a multi purpose service board invalid.

115M allows the Secretary of the Health and Community Services Department to give directions to a multi purpose service in order to enable the State to comply with any agreement made between the State and the Commonwealth, or between the State and any other State. This will allow the State to ensure it is able to fulfil its own duties and functions.

115N prevents a multi purpose service from changing its name, objects or by-laws unless it has the approval of the Secretary of the Department of Health and Community Services.

115o (1) provides that a multi purpose service may enter into a service agreement in respect of each financial year with the Commonwealth and the State.

(2) provides that a service agreement under (1) must be in accordance with Part 4A and as agreed between the multi purpose service and the State and the Commonwealth.

(3) provides that the service agreement will be for 1 year or the term specified in the agreement.

- (4) allows a service agreement to specify matters including particulars of services to be provided; particulars of the organisation and management of the service; limits or controls on expenditure or entering into of contracts or agreements by the multi purpose service; provision of grants or subsidies or other assistance to the multi purpose service and other relevant matters.

115P allows a multi purpose service to enter into a health service agreement under section 26 of the Principal Act. That ability is in addition to the service agreement provided for in 115o.

115Q gives the Minister power to recommend the appointment of an administrator to, or the closure of, a multi purpose service if satisfied that the service is not being managed properly, or is failing to provide an efficient health service, or that the service is failing to comply with a service agreement or a health service agreement. The Minister will make the recommendation to the Governor in Council.

115R provides the process that must be carried out by the Minister and the multi purpose service if the Minister proposes under section 115Q that an administrator is to be appointed. Notice must be given to the service and the Minister must consider certain submissions, before deciding whether to recommend the appointment of an administrator. If the Minister makes the recommendation, the Governor in Council may appoint an administrator by notice published in the Government Gazette. An administrator appointed to the board of a multi purpose service will stand in the shoes of the board and have all the powers and duties of the board. On the appointment of the administrator the members of the board of the service cease to hold office. The appointment of the administrator can be revoked by the Governor in Council on the recommendation of the Minister. The revocation must occur not less than 28 days after the publication of the notice. If a notice is published the members of the board of the service are reappointed, and the board is re-established.

115s provides the process that must be carried out by the Minister and the multi purpose service if the Minister proposes under section 115Q that the service is to be closed. Certain reports must be prepared and considered before the Minister makes a recommendation and notice given of the decision to the service. Power is provided for the Governor in Council to close the service on the recommendation of the Minister by notice published in the Government Gazette and if an Order is made then the service will be closed in accordance with the Order and any directions in the Order. If the service is closed under this section the property and liabilities of the service are disposed of in accordance with the service agreement and otherwise the property and liabilities pass to the Crown.

- 115T (1) allows amalgamations of registered funded agencies and multi purpose services in some circumstances. The amalgamations are by the agreement of the agencies.
- (2) says that an agreement to amalgamate under (1) must be submitted to the Secretary of the Department of Health and Community Services.
  - (3) provides that the Secretary must be satisfied that the proposed amalgamation will result in the provision of better health services and is

in the public interest, and can if satisfied advise the Minister for Health to approve the agreement to amalgamate.

- (4) allows the Minister for Health to approve an amalgamation on the advice of the Secretary.

115u gives power to the Governor in Council on the recommendation of the Minister, made after receiving advice from the Secretary, to declare the amalgamation of certain registered funded agencies and/or multi purpose services and to declare what type of entity the amalgamated agency will be. The Order cancels the incorporation of the old agencies and creates a new body constituted as specified in the Order. Property and liabilities of the amalgamated bodies passes to the new amalgamated body on amalgamation.

115v contains transitional provisions relating to the 3 public hospitals currently operating as de facto multi purpose services which will formally become multi purpose services with these amendments.

*Clause 7* amends section 138 of the Principal Act and allows a multi purpose service to charge fees for health services provided by it. Fees can be prescribed by regulation under the Principal Act, or if none are prescribed, set by the multi purpose service, subject to the service agreement or health service agreement entered into by the multi purpose service.

*Clause 8* amends section 139 of the Principal Act and extends the quality assurance protection provided to other health care agencies to multi purpose services. That protection allows those services to pursue quality assurance programs and collect relevant information with protection from divulging information gained in certain circumstances.

*Clause 9* includes multi purpose services in the confidentiality provision in the Act which protects personal privacy of patients in health services in certain circumstances.

*Clause 10* inserts a new section 157D into the Principal Act restricting the bringing of actions or proceedings in the Supreme Court. That section extends protection already contained in the Principal Act for board members of other health care services.

*Clause 11* removes the 3 public hospitals from Schedule 1 which are to become multi purpose services with these amendments.

### **Division 3—Miscellaneous**

*Clause 12* amends the definition of “day procedure centre” in the Principal Act.

*Clause 13* inserts a new section 95A into the Principal Act. This section will allow for the cancellation of the registration of a health service establishment at the request of the proprietor.

*Clause 14* sub-section (1) amends section 70 (1) of the Principal Act. It will allow a person to apply to the Chief General Manager for approval in principle of premises proposed to be constructed for use as a health service establishment of a particular kind or for alterations or extensions to premises used or proposed to be used as a health service establishment.

*Sub-section (2)* amends section 70 (4) of the Principal Act. It extends the information that may be required from an applicant for approval in principle to include design sketches and construction drawings, plans or specifications.

*Sub-section (3)* amends section 71 (1) of the Principal Act. It establishes as a criteria for the granting of approval in principle that, where design sketches have been supplied, the design of the premises to be constructed or the alterations or extensions are satisfactory having regard to the type of health service establishment to be carried on in the premises. It also omits sub-section 71 (1) (b) and makes the consideration of the design of the premises to be relevant in the event of an application for variation of the registration of a health service establishment.

*Sub-section (4)* amends section 71 (2) of the Principal Act. It will provide that if construction drawings, plans or specifications have been supplied then, in determining whether to grant or to refuse to grant approval in principle, the Chief General Manager must consider whether the standard and style of construction work proposed is satisfactory.

*Sub-section (5)* omits paragraph (d) of section 73 of the Principal Act.

*Sub-section (6)* amends section 75 (2) of the Principal Act.

*Sub-section (7)* repeals Division 2 of Part 4 of the Principal Act.

*Clause 15* inserts a new section 76 into the Principal Act. This section will allow for the cancellation of an approval in principle certificate for a health service establishment at the request of the proprietor.

*Clause 16* amends section 83 of the Principal Act. It will establish as a criteria for registration whether all conditions to which the approval in principle is subject have been met.

*Clause 17* deletes references to design approval in section 93 (2) of the Principal Act.

*Clause 18* substitutes the words “approval in principle” for the words “design approval” in section 115 of the Principal Act.

*Clause 19* inserts a new section 147A into the Principal Act. This section will allow an authorised officer to apply to a magistrate for the issue of a search warrant in relation to particular premises if the authorised officer believes on reasonable grounds that an unregistered health service establishment is being carried on at those premises.

*Clause 20* is statute law revision of several minor errors in the Principal Act.

*Clause 21* is a transitional provision.

*Clause 22* provides a sunset clause to the amendments made to the Principal Act by this Bill. Unless amended prior to that date, these amendments will lapse with the sunset 4 years after the commencement of the amendments. However any multi purpose services created prior to that date will continue to exist and have all the powers and duties they have under these amendments, except for the power to amalgamate under sections 115T and 115U. Those powers are excluded because they would have the indirect effect if utilised of creating new multi purpose services after the sunset date.

## **Division 4—Royal Dental Hospital**

*Clause 23* repeals section 33 (9) of the **Health Services Act 1988**. This will remove the requirement that the number of dentists appointed to the board of the Royal Dental Hospital must not exceed one quarter of the number of the board.

## **PART 4—MAGISTRATES’ COURT ACT 1989**

*Clause 24* amends Schedule 4 of the **Magistrates’ Court Act 1989**, which sets out the indictable offences that may be tried and determined summarily under section 53 (1) of that Act. Schedule 4 is to include the new indictable offence under section 75 of the **Prostitution Control Act 1994** as amended by Part 5 of this Act.

## **PART 5—PROSTITUTION CONTROL ACT 1994**

### **Background**

The proposed amendments contained in this Bill are designed to increase the effectiveness and efficiency of the **Prostitution Control Act 1994** and further this Act’s objects.

Amendment is required at this stage to ensure that the Prostitution Control Board is able to licence brothels and escort agencies within a reasonable time span, and to remedy certain oversights and unintended consequences of the **Prostitution Control Act 1994**.

The proposed amendments in this Bill do not constitute a policy change in relation to the Government’s controls over prostitution in Victoria.

### **Clause notes**

*Clause 25* states that the Principal Act referred to in this Part is the **Prostitution Control Act 1994**.

*Clause 26* inserts a new section 14A in the Principal Act that makes it an offence for a child over the age of 18 months to be in a brothel.

*Clause 27* amends sub-sections 19 (2) and 20 (2), the sections that create offences relating to a prostitute working while being infected with a prescribed sexually transmitted disease (STD). This amendment provides that it is a defence to a charge under sections 19 and 20 where it can be proved that the prostitute was undergoing—

- (i) regular blood tests, at least once every three (3) months, for HIV and other prescribed STDs (if any) for which blood tests are appropriate; and
- (ii) regular swab tests, on at least a monthly basis for any other prescribed STD.

*Clause 28* extends the application of the exemption from licensing in section 23 available to small, one or two person owner-operated brothels. The exemption is extended to other small, one or two person owner-operated prostitution service providers such as the private escort workers and other one or two person owner-operated businesses providing both a brothel and escort service.

*Clause 29* amends section 25 of the Principal Act to allow—

- (a) a quorum decision by three (3) members of the Board to determine applications for the grant or renewal of a licence where no objection is lodged in respect of the application; and
- (b) greater flexibility in the choice of Board members.

*Clause 30* amends sections 33 and 50 of the Principal Act to require all licence applicants and managers for whom approval is sought to consent to having his or her fingerprints taken by the Board or Police.

*Clause 31* amends section 49 of the Principal Act so that it only applies to brothels since the requirements of section 49 do not reflect the day-to-day operation of escort agencies.

*Clause 32* amends section 62 of the Principal Act to give an inspector or above rank of the police the power to enter, without a warrant, the premises of a suspected illegal small owner-operated business. This power of entry does not extend to parts of a premises used solely as a residence.

*Clause 33* provides for the refund of fees payable pursuant to the Principal Act or the regulations made pursuant to the Principal Act.

*Clause 34* amends sub-section 72 (b) of the Principal Act to clarify that persons intending to rely on the section 23 exemption from licensing in respect of the operation of a small, owner-operated brothel must first obtain a valid planning permit.

*Clause 35* corrects an unintended omission of the word “except” in sub-section 73 (c) of the Principal Act.

*Clause 36* amends section 75 of the Principal Act to—

- (i) upgrade the offence of holding more than one interest in a brothel to an indictable offence, carrying an upgraded penalty of 600 penalty units or 5 years imprisonment, or both;
- (ii) amend sub-section 75 (1) to clarify it is the intention of section 75 to prevent the holding of an interest in more than one brothel planning permit for a currently operating brothel;
- (iii) amend sub-section 75 (2) to clarify that the brothel planning permit granted attaches to the land and not to the person to whom the permit was granted;
- (iv) amend sub-section 75 (3) to clarify that Banks, Building Societies and Credit Unions acting as mortgagees do not have an interest in the brothel planning permit for the purposes of the offence under section 75.

*Clause 37* amends section 87 to provide certain exceptions to the obligation to keep secret the information police obtain in relation to performing their functions under the Act. The amendments set out the instances where the police can divulge information to a court or to certain prescribed authorities or persons or in circumstances certified by the Minister to be in the public interest.

*Clause 38* inserts a new section 88A into the Principal Act that provides for the destruction of fingerprint samples once they are no longer required.



*Clause 39* amends section 90 (2) of the Principal Act to enable the regulations to provide for the imposition of a penalty of up to 40 penalty units for contravention of the regulations made pursuant to the Principal Act.

