

Health Acts (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 12 April 1995

(Brought in by Mrs Tehan and Mr Gude)

A BILL

to amend the **Ambulance Services Act 1986**, **Health Act 1958** and the **Cemeteries Act 1958** and for other purposes.

Health Acts (Amendment) Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is—

- 5 (a) to make changes concerning the membership of the committees of management of ambulance services and the Ambulance Officers Training Centre; and

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

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- (b) to amend the **Cemeteries Act 1958** to provide for the incorporation of public cemetery trusts and other miscellaneous matters; and
- (c) to make various miscellaneous amendments to the **Health Act 1958** and to extend a statutory defence in that Act relating to blood and tissue donations to cases involving Hepatitis C in certain circumstances.

2. Commencement

- (1) This Act (other than sections 8, 9, 10, 11, 19 and 20) comes into operation on the day on which it receives the Royal Assent. 10
- (2) Sections 8, 9, 10, 11, 19 and 20 come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 July 1996, it comes into operation on that day. 15

PART 2—AMENDMENTS TO THE AMBULANCE SERVICES ACT 1986**3. Changes to the committees of ambulance services** 20

In section 17 of the **Ambulance Services Act 1986**—

- (a) in sub-section (1), for “eight and not more than twelve” **substitute** “4 and not more than 12”;
- (b) for sub-sections (2), (3), (4), (5) and (6) **substitute**— 25
- “(2) A committee member holds office for 3 years from the date of her or his appointment unless a shorter period is specified in her or his instrument of appointment.”; 30
- (c) in sub-section (7), **omit** “or re-elected”;

(d) in sub-section (10), **omit** “appointed under sub-section (2) (d) who is not eligible or available for reappointment”.

5 **4. Consequential changes concerning meetings of the committees**

In section 20 of the **Ambulance Services Act 1986**—

- 10 (a) in sub-section (1), **omit** the second sentence;
(b) in sub-section (2), for “five” **substitute** “3”;
(c) in sub-section (4), **omit** “who is not a person referred to in section 17 (2) (a) or (b)”.

5. Changes to the committee of the Ambulance Officers Training Centre

15 In section 27 of the **Ambulance Services Act 1986**—

- (a) in sub-section (1), for “eight and not more than twelve” **substitute** “4 and not more than 12”;
(b) for sub-sections (2), (3), (4) and (5) **substitute**—

20 “(2) A committee member holds office for 3 years from the date of her or his appointment unless a shorter period is specified in her or his instrument of appointment.”;

- 25 (c) in sub-section (6), **omit** “(6),”;
(d) in sub-section (7), **omit** “appointed under sub-section (2) (e) who is not eligible or available for reappointment”.

30 **6. Consequential changes concerning meetings of the committee**

In section 30 of the **Ambulance Services Act 1986**—

- (a) in sub-section (1), **omit** the second sentence;

- (b) in sub-section (2), for “five” **substitute** “3”;
 (c) in sub-section (4), **omit** “who is not a person referred to in section 27 (2) (a), (b), (c) or (d)”.

7. Transitional provision

A person who is a member of the committee of an ambulance service or the Ambulance Officers Training Centre on the day before this section comes into operation continues to hold office until he or she would have ceased to hold office under the **Ambulance Services Act 1986** in the form it was in on that day.

PART 3—AMENDMENTS TO THE CEMETERIES ACT 1958

8. Insertion of section 2B

After section 2A of the **Cemeteries Act 1958** insert—

“2B. References to trustees

- (1) A reference in this Act to the trustees of a public cemetery is to be read as a reference to the cemetery trust appointed to administer that cemetery, unless the contrary intention appears. 20
- (2) A reference in this Act to the beliefs or opinion of the trustees of a public cemetery is to be read as a reference to the beliefs or opinion of the cemetery trust appointed to administer that cemetery as determined by the members of the cemetery trust in accordance with this Act, unless the contrary intention appears. 25
- (3) A reference in this Act to a trustee of a public cemetery in an individual capacity is to be read as a reference to a member of the cemetery trust appointed to 30

administer that cemetery, unless the contrary intention appears.”.

9. Substitution of sections 3–6

For sections 3, 4, 5 and 6 of the **Cemeteries Act 1958** substitute—

“3. Creation of incorporated cemeteries trusts

(1) The Governor in Council may make regulations—

- (a) creating a cemetery trust;
- (b) appointing a cemetery trust to administer any public cemetery (including any Crown land reserved either temporarily or permanently for cemetery purposes under section 4 of the **Crown Land (Reserves) Act 1978**);
- (c) cancelling any appointment made under paragraph (b);
- (d) changing the name of a cemetery trust;
- (e) abolishing any cemetery trust and transferring all its assets and liabilities to another cemetery trust or to another person or body (including the State of Victoria);
- (f) making provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the creation or abolition of a cemetery trust.

(2) A cemetery trust—

- (a) is a body corporate having perpetual succession;
- (b) is capable of acquiring, holding and disposing of property;

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- (c) is capable of suing and being sued;
 - (d) is to have a common seal;
 - (e) is capable of doing and suffering all acts and things that bodies corporate may by law do or suffer. 5
- (3) The common seal of a cemetery trust must not be used except as authorised by a resolution of the trust members.
 - (4) All courts and people acting judicially must take judicial notice of the common seal of a cemetery trust. 10
 - (5) An appointment under sub-section (1) (b) may be made by simply specifying in a list the names of the cemeteries a cemetery trust is to administer. 15
 - (6) If a cemetery trust is abolished under sub-section (1) (e)—
 - (a) the cemetery trust or person or body to which the abolished cemetery trust’s assets and liabilities are transferred becomes the successor in law to the abolished cemetery trust; and 20
 - (b) any reference to the abolished cemetery trust in any Act, subordinate instrument, certificate of title, agreement or other document as far as it relates to any period after the transfer is to be construed as a reference to the cemetery trust or person or body to which the abolished cemetery trust’s assets and liabilities were transferred, unless the contrary intention appears. 25 30 35
 - (7) Regulations made under this section—
 - (a) may include savings, transitional or consequential provisions to

facilitate the operation of this section;

5 (b) do not apply to The Trustees of the Necropolis, Spring Vale, except that the regulations may—

(i) appoint The Trustees of the Necropolis, Spring Vale to administer any public cemetery;

10 (ii) cancel any appointment made under sub-paragraph (i);

(iii) do anything necessary to give effect to sub-paragraphs (i) and (ii).

15 (8) If The Trustees of the Necropolis, Spring Vale is appointed to administer a public cemetery, a reference to a cemetery trust in this Part is to be taken as including a
20 reference to The Trustees of the Necropolis, Spring Vale, unless the contrary intention appears.

4. Appointment etc. of trust members

25 (1) Each cemetery trust is to have not less than 3 and not more than 12 members appointed by the Governor in Council.

(2) The Governor in Council—

(a) may appoint a person to be a member for any period of up to 5 years; and

30 (b) may re-appoint a member; and

(c) may at any time remove a member on the recommendation of the Minister.

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- (3) A member—
- (a) is to hold office on the terms and conditions determined by the Governor in Council; and
 - (b) is not, in respect of his or her office as a member, subject to the **Public Sector Management Act 1992**; and 5
 - (c) may resign from office by delivering a signed letter of resignation to the Governor in Council. 10
- (4) An act or decision of a cemetery trust is not invalid by reason only of vacancies in the membership of the cemetery trust or of defects in the appointment of members of the cemetery trust. 15

4A. *Savings provision concerning existing trustees*

- (1) This section applies if a cemetery trust is appointed to administer a public cemetery that was in existence immediately before section 9 of the **Health Acts (Amendment) Act 1995** came into operation and the regulations state that this section is to apply to the cemetery trust in respect of that cemetery. 20 25
- (2) The trustees of the cemetery become the initial members of the cemetery trust on the creation of the cemetery trust. 30
- (3) Despite section 4—
- (a) the cemetery trust is to operate with the initial number of initial members until— 35
 - (i) if there were less than 3 trustees immediately before

the cemetery trust was created,
the Governor in Council
appoints new members; or

5 (ii) if there were more than 12
trustees immediately before
the cemetery trust was created,
the number of initial members
falls to 12; and

10 (b) the initial members of the cemetery
trust are to continue in office until
they die, resign or are removed
from office by the Governor in
Council.

15 **5. Effect of appointment of a cemetery trust as
an administrator**

(1) On the appointment of a cemetery trust
to administer a public cemetery—

20 (a) it becomes the successor in law to
the cemetery trust or trustees who
were responsible for the
administration of the cemetery
immediately before the
appointment; and

25 (b) any reference to the former
cemetery trust or trustees in any
Act, subordinate instrument,
certificate of title, agreement or
other document as far as it relates to
any period after the appointment is
30 to be construed as a reference to the
appointed cemetery trust, unless the
contrary intention appears.

(2) If a cemetery trust is responsible for
administering more than one public
cemetery—

35 (a) it may administer all the cemeteries
as if they were one cemetery; and

- (b) it may use the property, funds and income of any cemetery it is administering to develop, preserve or maintain any other cemetery that it is administering.

5

6. *Appointment of an administrator*

- (1) On the recommendation of the Minister, the Governor in Council may appoint an administrator to manage a public cemetery by Order published in the Government Gazette. 10
- (2) The Minister may only make such a recommendation if, in his or her opinion, a public cemetery is being inefficiently or incompetently managed, or the appointment is necessary to protect the interests of the public. 15
- (3) On the appointment of an administrator—
- (a) the members of the cemetery trust of the public cemetery cease to hold office; and 20
- (b) the administrator acquires all the functions, powers, immunities and duties of the members of the cemetery trust. 25
- (4) The Governor in Council may, by Order published in the Government Gazette, replace an administrator—
- (a) with another administrator; or 30
- (b) by declaring that the administration is to end and by appointing members to the cemetery trust in accordance with section 4.
- (5) If the Governor in Council makes such an Order, the administrator who is being replaced ceases to hold office on the date 35

the Order is published, or, if a later date is specified in the Order, on that later date.”.

10. Consequential amendments concerning cemetery trusts

In the **Cemeteries Act 1958**—

- (a) in sections 12 and 13, for “trustees of any such cemetery” **substitute** “members of a cemetery trust”;
- (b) in section 14, for “said trustees” **substitute** “members of a cemetery trust”;
- (c) in section 34—
 - (i) for “The trustees of every cemetery” **substitute** “Each cemetery trust”;
 - (ii) for “such trustees” **substitute** “the members of the cemetery trust”;
- (d) sections 64 (1) and (2), 85C, 87 and 87A are **repealed**.

11. Substitution of section 14A

For section 14A of the **Cemeteries Act 1958** **substitute**—

“14A. Trust member’s indemnity

- (1) A member of a cemetery trust is not personally liable for anything he or she does, or omits to do, in good faith—
 - (a) in carrying out a function or power under this Act; or
 - (b) in the reasonable belief that the act or omission was in the carrying out of a function or power under this Act.
- (2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a cemetery trust member, attaches instead to the cemetery trust.”.

12. Transitional provision relating to the substitution of section 14A

(1) Section 14A of the **Cemeteries Act 1958** as in force immediately before the date section 11 comes into operation continues to apply to any liability of the trustees of a public cemetery which arose before that date as if it had not been repealed and replaced and the Consolidated Fund is to the necessary extent appropriated accordingly to discharge any such liability. 5 10

(2) Any liability of the trustees of a public cemetery that arises on or after the date section 11 comes into operation and that would have been guaranteed under section 14A of the **Cemeteries Act 1958** as in force immediately before that date had that section not been repealed and replaced is a liability of the cemetery trust of that cemetery. 15

13. Space surrounding the coffin in a mausoleum need not be packed

After section 21 (2) of the **Cemeteries Act 1958** insert— 20

“(3) Despite sub-section (2), in the case of a coffin placed in a mausoleum, it is not necessary for the space surrounding the coffin to be filled up with any material.”. 25

14. Change concerning cremation documentation

After section 77 (1) (b) (iii) of the **Cemeteries Act 1958** insert—

“; or

(iv) authorising the cremation signed by the Chief General Manager.”. 30

PART 4—AMENDMENTS TO THE HEALTH ACT 1958

15. *Changes to definitions*

In section 3 of the **Health Act 1958**—

- 5 (a) the definitions of “abattoir” or
“slaughter-house”, “cellar” or
“underground room”, “cesspool”, “drain”,
“metropolitan council”, “night-soil”,
“offensive matter”, “piggery”, “private
10 abattoir”, “public abattoir”, “public
conveyance”, “refuse” and “rubbish”
“sanitary convenience”, “sewer” and
“suitable sanitary convenience” are repealed;
- (b) in the definition of “**Department**”, after “of
Health” insert “and Community Services”;
- 15 (c) in the definition of “**officer**”, for “health
surveyor” substitute “environmental health
officer”.

16. *Changes in relation to consultative councils*

(1) After section 24 (2) of the **Health Act 1958** insert—

20 “(2A) The Minister may in an Order empower a
consultative council to co-opt any person with
special knowledge or skills to assist the
council in a particular matter on the terms
specified in the Order.

25 (2B) A person who has been co-opted to assist a
consultative council is to be considered to be
a member of that council until the period of
co-option ends.”.

(2) In section 24A (3) of the **Health Act 1958**, for “an
30 annual report” substitute “any document”.

17. Updating of outdated references to health surveyors

In sections 25 and 36A (d) of the **Health Act 1958**—

- (a) for “health surveyors” (wherever occurring) **substitute** “environmental health officers”;
- (b) for “health surveyor” (wherever occurring) **substitute** “environmental health officer”.

5

18. Substitution of section 31

For section 31 of the **Health Act 1958** substitute—

“31. Councils may share environmental health officers or medical officers of health

10

Despite anything in this or any other Act, 2 or more councils may appoint the same person to be their environmental health officer or to be their medical officer of health.”.

15

19. Repeal of provision dealing with the use of waste water

In Part IV of the **Health Act 1958**, Division 7 is repealed.

20. Changes concerning the collection of information about HIV

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In section 130 of the **Health Act 1958**—

- (a) for sub-sections (2) (c), (d) and (e) **substitute**—
“(c) any information relating to each newly diagnosed person required by the regulations.”;
- (b) sub-sections (5), (6) and (7) are **repealed**;
- (c) for sub-section (8) **substitute**—

25

“(8) The Chief General Manager may give a copy of any document given to him or her under sub-section (3) to any prescribed person, organisation or body engaged in research.”.

30

21. *Statutory defence in relation to blood and tissue donations extended to apply to Hepatitis C*

- 5
- (1) In sections 132 (1), 133 (1) and 135 of the **Health Act 1958**, after “HIV” (wherever occurring) insert “or Hepatitis C”.
 - (2) In the Tables to sections 132 and 133 of the **Health Act 1958**, after “HIV” (wherever occurring) insert “or Hepatitis C (as the case may be)”.

22. *Insertion of section 132A*

10 After section 132 of the **Health Act 1958** insert—

“132A. *Transitional provision concerning statutory defence in relation to Hepatitis C*

(1) Despite anything to the contrary in this Act, section 132 does not apply—

15 (a) in relation to any claim that a person has been infected with Hepatitis C if any court process initiating any action based on the claim was filed before the date section 22 of the **Health Acts (Amendment) Act 1995** came into operation; or

20 (b) in relation to any Hepatitis C infection that occurred or was transmitted by a blood donation made before 5 February 1990.

25 (2) For the purposes of section 132, the testing of a sample for Hepatitis C was conducted in an approved manner before the date section 22 of the **Health Acts (Amendment) Act 1995** came into operation if the sample was tested—

30 (a) between 5 February 1990 and 26 November 1991 using the ABBOTT HCV EIA test; or

(b) on or after 26 November 1991 using the ABBOTT HCV EIA Second Generation test.”.

23. Changes concerning births notification

- (1) In section 158 of the **Health Act 1958**, for the definition of “Infant Welfare Centre” **substitute—** 5
- “**Maternal and Child Health Centre**” means a centre where health advice is given to the parents, guardians and other caregivers of children under 6 years of age.’. 10
- (2) In section 160 (1) (d) of the **Health Act 1958**, for “matron” **substitute** “Director of Nursing”.
- (3) After section 160 (1) of the **Health Act 1958** **insert—**
- “(1A) However, if the mother of the child usually resides outside Victoria, the notice must be given to the Director-General of Community Services.”. 15
- (4) In section 160 (2) (a) of the **Health Act 1958**, for the phrase starting “shall be given” and ending “Officer at the council office,” **substitute—** 20
- “must be given by delivering it, posting it or sending a copy of it by facsimile transmission to the council office or the Director-General (as the case may be)”.
- (5) In section 160 (2) (b) of the **Health Act 1958—** 25
- (a) in sub-paragraph (i), for “an Infant Welfare Centre” **substitute** “a Maternal and Child Health Centre”;
- (b) in sub-paragraph (ii), for “Infant Welfare Centre” **substitute** “Maternal and Child Health Centre”. 30

24. Minor amendments to definitions

- (1) In section 162B of the **Health Act 1958—**

(a) for the definition of “**hospital**” substitute—

“**hospital**” means—

(a) a public hospital or denominational hospital within the meaning of the **Health Services Act 1988**; or

(b) a private hospital registered with the Chief General Manager under the **Health Services Act 1988**;’;

(b) the definition of “**private hospital**” is **repealed**;

(c) for the definition of “**proprietor**” substitute—

“**proprietor**” has the same meaning as it has in section 3 of the **Health Services Act 1988**;’.

(2) In section 162G (2) of the **Health Act 1958**, omit “or private hospital” (wherever occurring).

25. *Minor changes concerning disinfectants, germicides etc.*

In section 242 of the **Health Act 1958**—

(a) in sub-section (2), omit “which shall thereupon refer the matter to the Foods Standards Committee for consideration and advice”;

(b) sub-section (4) is **repealed**.

26. *One certificate may record several registrations*

After section 374 (1) of the **Health Act 1958** insert—

“(1A) If a premises is required to be registered under Part VI of the **Food Act 1984** and also under Part XII or XIX, the Chief General Manager or the Chief Executive Officer of the council may, subject to the requirements of the **Food Act 1984** applicable to registration being complied with, incorporate the certificate of registration under Part XII or Part XIX in one document with any certificate

of registration to be issued under the **Food Act 1984**.

- (1B) The Chief General Manager or the Chief Executive Officer of the council may issue a single registration certificate in respect of the registration of a premises under both Parts XII and XIX.”

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27. *Miscellaneous minor amendments and repeals*

- (1) In the **Health Act 1958**—

(a) in section 283, **omit** “on payment of the prescribed fee”;

10

(b) in section 371 (4), for all words after “(as the case may be)” **substitute** “to any person on request”.

- (2) Sections 371 (2), 387 (1A) and 390 (2) of the **Health Act 1958** are **repealed**.

15

PART 4—MISCELLANEOUS

28. *Repeal of unproclaimed health impact statement provisions*

In section 5 of the **Health (General Amendment) Act 1988**, proposed Part 1B is **repealed**.

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29. *Statute law revision*

- (1) Sections 42 (5) and (6), 45 and 47 and Schedule 2 of the **Ambulance Services Act 1986** are **repealed**.

- (2) Sections 1 and 2 (1) and Schedule 1 of the **Cemeteries Act 1958** are **repealed**.

25

- (3) In the **Health Act 1958**—

(a) in Part II, Divisions 4 and 5 are **repealed**;

(b) in Part IV, Divisions 1, 5 and 8 are **repealed**;

(c) Part X is **repealed**.

30