

Miscellaneous Acts (Health and Justice) Amendment Bill

No.

TABLE OF PROVISIONS

Clause

PART 1—PRELIMINARY

1. Purpose
2. Commencement

PART 2—DENTISTS ACT 1972

3. Dental Therapists

PART 3—HEALTH SERVICES ACT 1988

Division 1—Preliminary

4. Principal Act

Division 2—Multi Purpose Services

5. Definitions
6. Insertion of new Part 4A

PART 4A—MULTI PURPOSE SERVICES

- 115A. Declaration and incorporation
- 115B. Multi purpose services do not represent Crown
- 115C. Objects and functions of multi purpose services
- 115D. Powers
- 115E. Board of management
- 115F. Terms and conditions of appointment
- 115G. Removal and resignation
- 115H. Annual meetings
- 115I. Procedure of board
- 115J. Membership of board not office of profit
- 115K. Immunity
- 115L. Validity of acts or decisions
- 115M. Chief General Manager may give directions
- 115N. Rules of multi purpose service
- 115O. Service agreements
- 115P. Health service agreements
- 115Q. Powers of Minister
- 115R. Appointment of administrator
- 115S. Closure
- 115T. Amalgamations
- 115U. Governor in Council may order amalgamation
- 115V. Transitional

7. Fees
8. Quality assurance
9. Confidentiality
10. Insertion of new section 157D
157D. Supreme Court—limitation of jurisdiction—section 115k
11. Removal of hospitals from Schedule 1

Division 3—Miscellaneous

12. Definition
13. Insertion of new section 95A
95A. Cancellation of registration
14. Approval in principle
15. Insertion of new section 76
76. Voluntary revocation of certificate
16. Registration of premises
17. Criteria for variation of registration
18. Offence
19. Insertion of new section 147A
147A. Entry to unregistered premises—search warrant
20. Statute law revision
21. Saving
22. Expiry

Division 4—Royal Dental Hospital

23. The Royal Dental Hospital board of management

PART 4—MAGISTRATES' COURT ACT 1989

24. Amendment of Magistrates' Court Act 1989

PART 5—PROSTITUTION CONTROL ACT 1994

25. Principal Act
26. New section 11A inserted
11A. Child over 18 months not to be in brothel
27. Regular medical examinations
28. Special provisions for small owner-operated businesses
29. Prostitution Control Board
30. Fingerprints
31. Personal supervision of business
32. Entry to premises by police
33. Refund of fees
34. Restriction on certain permit applications
35. Matters to be considered by responsible authority
36. Amendment of section 75
37. Secrecy
38. New section 88A inserted
88A. Destruction of fingerprints, etc.
39. Regulations

LEGISLATIVE ASSEMBLY

Read 1° 25 October 1995

(Brought in by Mrs Tehan and Mr Gude)

A BILL

to amend the **Dentists Act 1972**, the **Health Services Act 1988**, the **Magistrates' Court Act 1989** and the **Prostitution Control Act 1994** and for other purposes

Miscellaneous Acts (Health and Justice) Amendment Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is make amendments to the **Dentists Act 1972**, the **Health Services Act 1988**, the **Magistrates' Court Act 1989** and the **Prostitution Control Act 1994**.

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

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

PART 2—DENTISTS ACT 1972

3. Dental therapists

Act No. 8287.
Printed to
Act No.
10/1991 and
subsequently
amended by
Nos 23/1994,
31/1994 and
69/1994.

(1) In section 29 (3) of the **Dentists Act 1972**, for “school dental therapist” substitute “dental therapist”.

(2) In section 29 of the **Dentists Act 1972**, for sub-section (6) substitute—

“(6) A dental therapist under the direction and control of—

(a) the Minister; or

(b) the Secretary to the Department of Health and Community Services; or

(c) an authorised registered funded agency or an authorised class of registered funded agency—

shall only be employed in connection with the provision of dental services to children of a pre-school age and primary school and secondary school children.

(6A) The Minister may authorise a registered funded agency or a class of registered funded agency for the purposes of sub-section (6) (c) and such an authorisation must be made by notice published in the Government Gazette.”.

(3) At the end of section 29 of the **Dentists Act 1972** insert—

“(16) In this section “**registered funded agency**” has the same meaning as in the **Health Services Act 1988**.”.

PART 3—HEALTH SERVICES ACT 1988

Division 1—Preliminary

4. Principal Act

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

No. 49/1988.
Reprinted to
No. 63/1995
and
Government
Gazette 17
August 1995.

Division 2—Multi Purpose Services

5. Definitions

In section 3 of the Principal Act—

(a) in the definition of “by-law”, in paragraph (ii) after “agency” (wherever occurring) **insert** “or a multi purpose service”;

(b) after the definition of “metropolitan hospital” **insert**—

“**multi purpose service**” means—

(a) a body referred to in section 115v (2);
or

(b) a body declared under Part 4A to be a multi purpose service;’.

6. Insertion of new Part 4A

After section 115 of the Principal Act **insert**—

“PART 4A—MULTI PURPOSE SERVICES

115A. Declaration and incorporation

(1) The Governor in Council may, by Order published in the Government Gazette, declare a body that provides, or proposes to provide, services of a kind referred to in section 115C (2) to be a multi purpose service.

(2) Each multi purpose service, by operation of this Act—

(a) is a body corporate with perpetual succession; and

(b) shall have an official seal; and

(c) may sue and be sued in its corporate name; and

(d) is capable of purchasing, taking, holding, selling, leasing, taking on lease, exchanging and disposing of real and personal property; and 10

(e) is capable of doing and suffering all acts and things which bodies corporate may by law do or suffer.

115B. Multi purpose services do not represent Crown 15

A multi purpose service does not represent, and shall not be taken to be part of, the Crown.

115c. Objects and functions of multi purpose services 20

(1) The objects of a multi purpose service are as approved for the time being by the board of the multi purpose service.

(2) The functions of a multi purpose service are the provision of any or a combination of the following— 25

(a) public hospital services;

(b) health services;

(c) aged care services; 30

(d) community care services.

115D. Powers

5 The powers of a multi purpose service
include all such powers as are necessary
to enable the service to carry out its
objects and do all things it is required or
permitted to do under this Act, its
by-laws and any agreement to which it is
a party and, without limiting the
generality of the foregoing, include
10 power—

15 (a) to undertake commercial
exploitation of any research or
intellectual property rights
undertaken by or belonging to the
service for any purpose relating to
the carrying on of the service; and

20 (b) to be a member of or form or
participate in the formation of a
company, association, trust or
partnership, the objects or purposes
of which include one or more
objects or purposes that are
incidental or conducive to the
exercise of any other powers of the
service; and

25 (c) to enter into a joint venture with
another person or other persons if
the objects or purposes of the joint
venture include one or more objects
or purposes that are incidental or
conducive to the exercise of the
powers of the service.

115E. Board of management

35 (1) There shall be a board of management of
each multi purpose service.

(2) The functions of the board of a multi
purpose service are—

- (a) to oversee and manage the service; and
 - (b) to ensure that the services provided by the service comply with the requirements of this Act, the objects of the service, its by-laws and any agreement entered into by the service.
- (3) The board of a multi purpose service has such powers as are necessary to enable it to carry out its functions, including the power to make, amend or revoke by-laws. 10
- (4) The board of a multi purpose service shall consist of not less than 6 and not more than 12 natural persons— 1:
- (a) in the case of the first board of a multi purpose service, nominated by the Minister; and
 - (b) in any other case, nominated by the Minister after consideration of a name or names submitted by the board. 20
- (5) If the board does not submit a name or names for the purposes of sub-section (4) within 60 days after receiving a request to do so from the Minister, the Minister may nominate a natural person or natural persons for the purposes of that sub-section. 2: 30
- (6) The members of a board shall be appointed by the Governor in Council.
- (7) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member of a board in respect of the office of member. 3:

115F. Terms and conditions of appointment

- 5
- (1) A member of a board of a multi purpose service holds office for the term, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.
- (2) A member of a board is entitled to be paid expenses incurred in holding office as a member of the board.
- 0
- (3) A person appointed to a board of a multi purpose service to fill a vacancy which arises otherwise than by expiry of a member's term of office holds office for the remainder of that member's term.

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115G. Removal and resignation

- (1) A member of a board of a multi purpose service may resign by writing signed by that person and delivered to the Governor in Council.
- 10
- (2) The Governor in Council, on the recommendation of the Minister, may remove a member of a board from office.

115H. Annual meetings

- 25
- (1) The board of a multi purpose service must ensure that the chief executive officer convenes an annual meeting of the multi purpose service to be held on or after 1 July and on or before 31 October (or, if the Chief General Manager in writing approves a later date, on or before that later date) in each year.
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- (2) The chief executive officer of the multi purpose service must cause notice of the annual meeting to be published in a newspaper circulating generally in the
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area where the multi purpose service is situated giving notice—

- (a) of the date, time and place of the meeting; and
- (b) that the meeting is open to the public.

(3) At each annual meeting of a multi purpose service, the board—

- (a) must submit the report of operations and financial statements prepared in accordance with Part 7 of the **Financial Management Act 1994**; and 10
- (b) must report on the health services provided to the community in the preceding year and on health services proposed to be provided in the following year; and 1.
- (c) must report on such other matters that are prescribed. 20

115I. Procedure of board

Subject to this Part, the procedure of a board of a multi purpose service is in the discretion of the board.

115J. Membership of board not office of profit 2

A member of a board of a multi purpose service shall not be taken to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or 3
- (b) make void the member’s election to the Council or the Assembly; or 3

- (c) prevent the member continuing to be a member of the Council or the Assembly; or
- (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

115K. Immunity

A member of a board of a multi purpose service is not liable to an action or other proceedings for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function or the exercise or purported exercise of any power conferred on the board.

115L. Validity of acts or decisions

An act or decision of a board of a multi purpose service is not invalid by reason only of—

- (a) a defect or irregularity in or in connection with the appointment of a member of the board; or
- (b) a vacancy in the membership of the board.

115M. Chief General Manager may give directions

The Chief General Manager, for the purpose of carrying out functions and powers under this Act or for carrying out the objectives of this Act, may in writing give directions to a multi purpose service in relation to action to be taken or avoided to enable the State to comply with the terms of any agreement made between it and the Commonwealth or any other State.

115N. Rules of multi purpose service

A multi purpose service must not—

- (a) change its name; or
- (b) change its objects; or
- (c) make, amend or alter its by-laws—

without the approval in writing of the Chief General Manager.

115O. Service agreements

- (1) A multi purpose service may enter into a service agreement for the provision of services in respect of each financial year with the Commonwealth and the State. 10
- (2) The terms of a service agreement shall be in accordance with this Part and as agreed between the multi purpose service and the Commonwealth and the State. 11
- (3) A service agreement shall be in respect of one year or such other period as is specified in the agreement. 20
- (4) A service agreement may specify—
 - (a) particulars of services to be provided by the multi purpose service, including particulars of the type, frequency, scope and standard of services; and 21
 - (b) particulars of the organisation and management of the multi purpose service; and
 - (c) limits or controls on expenditure or the entering into of contracts or agreements by the multi purpose service; and 30
 - (d) particulars of grants, subsidies or other assistance provided or to be 31

provided to the multi purpose service by the Commonwealth or the State during or in respect of a financial year; and

5 (e) any other relevant matters.

115P. Health service agreements

10 A multi purpose service may enter into a health service agreement under section 26 as if the multi purpose service were a registered funded agency.

115Q. Powers of Minister

If the Minister is satisfied that a multi purpose service—

- 15 (a) is inefficiently or incompetently managed; or
- (b) is failing to carry out its functions, or failing to carry them out effectively; or
- 20 (c) has negligently failed to comply with an agreement entered into under section 115O or 115P—

the Minister may do either or both of the following—

- 25 (d) recommend to the Governor in Council that an administrator of the service be appointed in accordance with section 115R; or
- 30 (e) recommend to the Governor in Council that the service be closed in accordance with section 115S.

115R. Appointment of administrator

- (1) If the Minister proposes that a multi purpose service should be administered by an administrator, the Minister—

(a) must give notice in writing to the service of his or her proposal; and

(b) must consider any submissions, whether oral or in writing, made to the Minister by the service within 7 days after the giving of the notice; and

(c) may consider any other submissions and any other matters the Minister considers appropriate—

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before deciding whether or not to recommend the appointment of an administrator.

(2) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may by notice published in the Government Gazette appoint an administrator of the multi purpose service for such period and subject to such terms and conditions as are specified in the appointment.

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(3) An administrator of a multi purpose service appointed under this section has and may exercise all the powers and is subject to all the duties of the board of the service.

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(4) On the appointment of an administrator, the members of the board of the multi purpose service cease to hold office.

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(5) If the Minister recommends to the Governor in Council that the appointment of the administrator of a multi purpose service should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the

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notice, being a date not less than 28 days after the publication of the notice.

5 (6) If a notice is published under sub-section (5) in relation to a multi purpose service—

(a) members of the board of the service shall be appointed in accordance with this Part; and

(b) on the date specified in the notice—

10 (i) the appointment of the administrator is revoked; and

(ii) the board of the service is re-established.

115s. Closure

15 (1) If the Minister proposes that a multi purpose service should be closed, the Minister must cause a report of the proposal to be prepared and made available to persons who request it.

20 (2) A report under sub-section (1) must include—

(a) a statement of the circumstances giving rise to the proposal; and

25 (b) a statement of any other available options in relation to continuing the services of the multi purpose service.

30 (3) The Minister, after consideration of any submissions made on a report under sub-section (1) within 90 days after the report is made available to interested persons—

35 (a) must decide whether or not to recommend the closure of the multi purpose service; and

- (b) must give notice in writing of his or her decision to the service.
- (4) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette direct that the multi purpose service be closed on and after the date fixed in the Order.
- (5) If an Order is published under sub-section (4)— 10
 - (a) the multi purpose service shall be closed subject to and in accordance with the directions contained in the Order; and
 - (b) except as otherwise provided in any service agreement— 1.
 - (i) the property of the service becomes the property of the State and may be dealt with or disposed of accordingly; and 2
 - (ii) the liabilities of the service become liabilities of the State.

115T. *Amalgamations*

- (1) The governing bodies of 2 or more bodies, each being a registered funded agency or a multi purpose service, may agree that the bodies should amalgamate under this Part only if— 2
 - (a) the bodies and the agencies or the services, as the case may be, are not prohibited from doing so by any Acts or other documents creating them and the amalgamation is made in accordance with those Acts or other documents; and 3
 - (b) apart from this Part, there is no law of the Commonwealth or the State 3

under which they could amalgamate.

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- (2) The governing bodies of the agencies or multi purpose services must submit the agreement to the Chief General Manager.
- (3) The Chief General Manager must not advise the Minister to approve the agreement unless the Chief General Manager is satisfied that—
- 10
- (a) the amalgamation will result in the provision of better health services in any part of Victoria; and
- (b) the amalgamation is otherwise in the public interest.
- 15
- (4) The Minister, on the advice of the Chief General Manager, may approve the agreement.

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115U. Governor in Council may order amalgamation

- (1) The Governor in Council, on the recommendation of the Minister made after receiving advice from the Chief General Manager under section 115T, may by Order published in the Government Gazette direct that—
- 25
- (a) 2 or more registered funded agencies be amalgamated and declare the amalgamated body to be a multi purpose service; or
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- (b) a multi purpose service and one or more registered funded agencies, or 2 or more multi purpose services, be amalgamated and declare the amalgamated body to be—
- 35
- (i) a multi purpose service; or
- (ii) a public hospital; or

(iii) an incorporated association.

(2) If an Order is made under sub-section (1)—

(a) on a date specified in the Order—

(i) the incorporation of each registered funded agency to which the Order relates that is an incorporated body shall be cancelled; or

(ii) each registered funded agency to which the Order relates that is an unincorporated body shall cease to exist; or 1

(iii) each multi purpose service to which the Order relates shall cease to exist— 1

as the case requires; and

(b) on that date a new body of the kind specified in the Order having a board or committee of management constituted as specified in the Order shall come into existence by operation of the Order as if on that date— 2

(i) in the case of a multi purpose service or public hospital, it had been incorporated under this Act; or 2

(ii) in the case of an incorporated association, a certificate of incorporation had been granted under the **Associations Incorporation Act 1981**; and 3

(c) on that date the property of each registered funded agency and multi purpose service that is the subject of the Order vests in the new body without the necessity for any 3

conveyance, transfer or assignment
and so vests subject to—

(i) any trust; and

(ii) any restriction, limitation,
mortgage, charge, encumbrance,
lien, lease, covenant, contract or
liability—

to which the property was subject
immediately before that date; and

(d) on that date all debts and liabilities,
whether certain or contingent, of a
registered funded agency or multi
purpose service that is the subject
of the Order existing at that date
become the debts and liabilities of
the new body.

(3) An Order under sub-section (1) may
include such other provisions not
inconsistent with this Part or, in the case
of a public hospital or an incorporated
association, Part 3 as are necessary or
expedient, including provisions giving
effect to any agreement under section
115T.

115v. *Transitional*

(1) In this section—

“**liabilities**” means all liabilities, duties
and obligations, whether actual,
contingent or prospective;

“**property**” means a legal or equitable
estate or interest (whether present
or future and whether vested or
contingent) in real or personal
property of any description;

“**rights**” means all rights, powers,
privileges and immunities, whether
actual, contingent or prospective;

“the appointed day” means the day on which the **Miscellaneous Acts (Health and Justice) Amendment Act 1995** comes into operation.

- (2) On the appointed day the following public hospitals are deemed to have been declared under section 115A (1) to be multi purpose services—

Far East Gippsland Health and Support Service 1

The Otway Health and Community Services

Upper Murray Health and Community Services.

- (3) The objects of a multi purpose service referred to in sub-section (2) are its objects as existing immediately before the appointed day as altered or added to from time to time by the board of the service. 1
2

- (4) The by-laws of a multi purpose service referred to in sub-section (2) are its by-laws as existing immediately before the appointed day as amended from time to time. 2

- (5) Each member of the board of a public hospital that on the appointed day becomes a multi purpose service continues as a member of the board of the multi purpose service for the remainder of the term of office specified in the instrument of his or her appointment. 3

- (6) On the coming into existence of a multi purpose service under this section— 3

(a) all property and rights of the body it was before the appointed day,

wherever located, vest in the multi purpose service; and

(b) all liabilities of the body it was before the appointed day, wherever located, become liabilities of the multi purpose service; and

(c) the multi purpose service becomes the successor in law of the body it was before the appointed day.”.

7. Fees

In section 138 (1) of the Principal Act—

(a) after “hospital” (where secondly occurring) **insert** “or multi purpose service”; and

(b) for paragraph (b) **substitute**—

“(b) if no such fee is prescribed, the fee (if any)—

(i) determined by the hospital; or

(ii) subject to any agreement under section 26 or 1150 and any by-laws, determined by the multi purpose service—

in respect of that accommodation, care or service.”.

8. Quality assurance

(1) In section 139 (1) of the Principal Act, after “establishments,” **insert** “multi purpose services,”.

(2) In section 139 (2) of the Principal Act—

(a) in paragraph (a), after “establishments,” **insert** “multi purpose services,”;

(b) in paragraph (b), after “establishments,” **insert** “multi purpose services,”.

9. Confidentiality

In section 141 (1) of the Principal Act, in the definition of “relevant health service”, after paragraph (b) **insert**—

“(c) a multi purpose service; or”.

10. Insertion of new section 157D

After section 157C of the Principal Act **insert**—

“157D. Supreme Court—limitation of jurisdiction—section 115K

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action or other proceedings of the kind referred to in section 115K.”.

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11. Removal of hospitals from Schedule 1

In Schedule 1 to the Principal Act, **omit** “Far East Gippsland Health and Support Service”, “Otway Health and Community Services, The” and “Upper Murray Health and Community Services”.

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Division 3—Miscellaneous

12. Definition

In section 3 of the Principal Act, in the definition of “day procedure centre”, in paragraph (b) for “day” **substitute** “date”.

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13. Insertion of new section 95A

After section 95 of the Principal Act **insert**—

“95A. Cancellation of registration

- 5 (1) The proprietor of a health service establishment registered under this Division may apply to the Chief General Manager for the cancellation of the registration of the establishment.
- 0 (2) A person making application under sub-section (1) must, at the time of the application, give notice in writing of the application to any other person who has an interest in the land as owner or lessee.
- 5 (3) If an application is made under sub-section (1)—
- (a) the Chief General Manager must cancel the registration of the health service establishment; and
 - 10 (b) the proprietor must produce the certificate of registration to the Chief General Manager for cancellation.”.

14. Approval in principle

- 15 (1) In section 70 (1) of the Principal Act, for paragraph (b) **substitute**—

“(b) premises proposed to be constructed for use as a health service establishment of a particular kind; or

(ba) alterations or extensions to premises used or proposed to be used as a health service establishment; or ”.

- 30 (2) In section 70 (4) of the Principal Act—

(a) after “Manager” (where first occurring) **insert** “_

(a)”;

(b) at the end of the sub-section **insert**—

“; and

(b) any design sketches and construction drawings, plans or specifications relating to the premises proposed to be constructed, altered or extended that the Chief General Manager requests.”.

(3) In section 71 (1) of the Principal Act—

(a) in paragraph (a), after sub-paragraph (iii) **insert—**

“(iv) if design sketches have been supplied, whether the design of the premises to be constructed, or of the alterations or extensions, are satisfactory having regard to the type of health service establishment to be carried on in the premises; and”;

(b) **omit** paragraph (b);

(c) in paragraph (c), after sub-paragraph (iii) **insert—**

“; and
(iv) if design sketches have been supplied, whether the design of the premises to be constructed, or of the alterations or extensions, are satisfactory having regard to the type of health service establishment to be carried on in the premises.”.

(4) After section 71 (2) of the Principal Act **insert—**

“(3) If construction drawings, plans or specifications have been supplied, in determining whether to grant or refuse to grant approval in principle relating to a health service establishment, the Chief General Manager must consider whether the standard and style of construction work proposed is satisfactory having regard to the type of health service establishment to be carried on in the premises.”.

(5) In section 73 of the Principal Act, **omit** paragraph (d).

(6) In section 75 (2) of the Principal Act, after “(1)”
insert “or section 76”.

(7) Division 2 of Part 4 of the Principal Act is **repealed**.

15. Insertion of new section 76

In Division 1 of Part 4 of the Principal Act, after
section 75 **insert**—

“76. Voluntary revocation of certificate

(1) If a certificate of approval in principle
relating to a health service establishment
has been issued, the proprietor of the
establishment may apply to the Chief
General Manager for revocation of the
certificate.

(2) On an application under sub-section (1),
the Chief General Manager must, by
notice in writing given to the proprietor,
revoke the certificate.”.

16. Registration of premises

(1) In section 83 (1) of the Principal Act, after paragraph
(k) **insert**—

“; and

(l) whether all conditions to which the
approval in principle is subject have been
met.”.

(2) In section 83 (2) of the Principal Act—

(a) **omit** “or design approval”;

(b) **omit** “or 2”.

17. Criteria for variation of registration

In section 93 (2) of the Principal Act—

(a) **omit** “or a design approval”;

(b) **omit** “or 2”;

(c) **omit** “or design approval”.

18. Offence

In section 115 of the Principal Act—

- (a) in sub-section (1), for “a design approval” **substitute** “an approval in principle”;
- (b) in sub-section (2), for “a design approval” **substitute** “an approval in principle”;
- (c) in sub-section (3), for “a design approval” **substitute** “an approval in principle”.

19. Insertion of new section 147A

After section 147 of the Principal Act **insert**—

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“147A. Entry to unregistered premises—search warrant

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the officer believes on reasonable grounds that a person is carrying on business at those premises as a health service establishment in contravention of section 111.
- (2) If the magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that a person is carrying on business at the premises as a health service establishment in contravention of section 111, the magistrate may issue a search warrant.
- (3) A search warrant issued under this section must be directed to the applicant for it and must authorise him or her, and any assistants he or she reasonably requires, to enter the premises, or the part of the premises, named or described

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5 in the warrant to search for any article, thing or material of a kind named or described in the warrant which there is reasonable ground to believe will afford evidence as to the commission of an offence against section 111.

10 (4) In addition to any other requirement, a search warrant issued under this section must state—

(a) any conditions to which the warrant is subject; and

15 (b) whether entry is authorised to be made any time of the day or night or during stated hours of the day or night; and

(c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.

20 (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.

25 (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.”.

20. Statute law revision

30 The Principal Act is amended as follows—

(a) in section 65A, in the definition of “transferred aggregated hospital employe” for “employe” **substitute** “employee”;

35 (b) in section 65L (4), for “office” **substitute** “officer”;

(c) in section 65M (a), for “award of” **substitute** “award or”.

21. *Saving*

If—

(a) a certificate of design approval of proposed premises or of alterations or extensions to premises has been issued under section 80 of the Principal Act before the day on which this Act comes into operation; and

(b) the period of the approval has not expired—

the design of the proposed premises or of the alterations or extensions and the standard and style of construction work proposed must be taken to be satisfactory for the purposes of an application under section 70 of the Principal Act as amended by this Part.

1

22. *Expiry*

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(1) The amendments to the Principal Act made by Division 2 of this Part expire on the day which is 4 years after the day on which this Act comes into operation and, thereafter, the Principal Act has effect as if it had not been amended by that Part.

2

(2) Despite sub-section (1), a multi purpose service established before the expiry referred to in sub-section (1) continues to have all the powers and duties that it had under the Principal Act (except sections 115T and 115U), the by-laws and any agreement to which it is a party as if sub-section (1) had not been enacted.

2

Division 4—Royal Dental Hospital

23. *The Royal Dental Hospital board of management*

In section 33 of the Principal Act, sub-section (9) is **repealed.**

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Act N . 49/1988. Reprinted to Act N . 63/1995 and Government Gazette 17 August 1995.

PART 4—MAGISTRATES’ COURT ACT 1989

24. Amendment of Magistrates’ Court Act 1989

In Schedule 4 to the **Magistrates’ Court Act 1989**,
after item 48 insert—

5 **“48A. Offence to have interest in more than one
 permit for operating brothel**

 Offences under section 75 (1) of the
 Prostitution Control Act 1994.”

PART 5—PROSTITUTION CONTROL ACT 1994

10 **25. Principal Act**

No. 102/1994.

In this Part, the **Prostitution Control Act 1994** is
called the Principal Act.

26. New section 11A inserted

After section 11 of the Principal Act insert—

15 **‘11A. Child over 18 months not to be in brothel**

(1) A person who carries on a business of a
kind referred to in the definition of
“brothel” in section 3 or who assists in the
management of that business must not
allow a child over the age of 18 months to
enter or remain in a brothel at which that
business is carried on for any purpose
whatsoever.

20 Penalty: 120 penalty units or
 imprisonment for 12 months.

(2) In a proceeding for an offence against
sub-section (1)—

25 (a) it is not necessary for the prosecution
 to prove that the accused knew that

the person concerned was a child over the age of 18 months; but

- (b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more or under 18 months.’.

1

27. Regular medical examinations

- (1) In section 19 (2) of the Principal Act, for paragraph (a) **substitute**—

“(a) that the prostitute had been undergoing—

1

- (i) regular blood tests, on at least a quarterly basis, for HIV (as defined by section 3 of the **Health Act 1958**) and each other sexually transmitted disease for which blood tests are appropriate; and

2

- (ii) regular swab tests, on at least a monthly basis, for the purpose of determining whether he or she was infected with any other sexually transmitted disease; and”.

- (2) In section 20 (2) of the Principal Act, for paragraph (a) **substitute**—

2

“(a) that he or she had been undergoing—

- (i) regular blood tests, on at least a quarterly basis, for HIV (as defined by section 3 of the **Health Act 1958**) and each other sexually transmitted disease for which blood tests are appropriate; and

3

- (ii) regular swab tests, on at least a monthly basis, for the purpose of determining whether he or she was infected with any other sexually transmitted disease; and”.

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28. Special provisions for small owner-operated businesses

(1) In section 23 (1) of the Principal Act, for paragraphs (a) and (b) **substitute**—

5 ‘(a) a person carrying on business as a prostitution service provider—

 (i) of a kind referred to in the definition of “brothel” in section 3 at premises in accordance with a permit granted under the **Planning and Environment Act 1987**; or

10 (ii) of a kind referred to in the definition of “escort agency” in section 3; or

 (iii) of a kind referred to in both sub-paragraphs (i) and (ii)—

15 if only that person works as a prostitute in that business or only that person and one other particular person so work;

 (b) two persons who either jointly or separately carry on such a business if only those persons work as prostitutes in that business.’.

20 (2) In section 23 (2) of the Principal Act—

 (a) in paragraph (a)—

 (i) for “the premises” (where first occurring) **substitute** “premises”;

15 (ii) for “at the premises” **substitute** “in the business”;

 (iii) for “a business” **substitute** “another business”;

 (b) in paragraph (b) for “at the premises” (where twice occurring) **substitute** “in the business”;

30 (c) in paragraph (c)—

 (i) **omit** “at the premises”;

35 (ii) for ‘business of a kind referred to in the definition of “brothel” in section 3’ **substitute** ‘prostitution service providing business, whether of the kind referred to in the definition of “brothel” or “escort agency” in section 3 or of both kinds’.

- (3) In section 23 (3) (b) (iii) of the Principal Act, omit ‘of a kind referred to in the definition of “brothel” in section 3’.

29. Prostitution Control Board

- (1) In section 25 (2) of the Principal Act—
- (a) after “consists of” **insert** “at least”;
 - (b) in paragraph (b), before “two” **insert** “at least”;
 - (c) in paragraph (c), before “one” **insert** “at least”;
 - (d) in paragraph (d), before “three” **insert** “at least”.
- (2) In section 25 of the Principal Act, for sub-section (4) **substitute**— 1
- “(4) Subject to sub-section (4A), an application or other matter in relation to which a hearing is conducted by the Board must be determined by the Board constituted by— 1
- (a) the chairperson; and
 - (b) at least two members selected by the chairperson who are persons referred to in section 25 (2) (b); and
 - (c) at least one member selected by the chairperson who is a person referred to in section 25 (2) (c); and 2
 - (d) at least three members selected by the chairperson who are persons referred to in section 25 (2) (d). 2
- (4A) If no objection to the grant or renewal of a licence or manager approval has been received by the Board, the application may be determined by the Board constituted by—
- (a) the chairperson; and 3
 - (b) one member selected by the chairperson who is a person referred to in section 25 (2) (b) or (c); and
 - (c) one member selected by the chairperson who is a person referred to in section 25 (2) (d).” 3

30. Fingerprints

(1) In section 33 of the Principal Act, after sub-section

(2) **insert—**

5 “(3) An applicant must consent to having his or her fingerprints taken by an officer of the Board or an authorised member of the police force.

0 (4) The Board may refuse to consider an application for a licence if the applicant refuses to allow his or her fingerprints to be taken.”.

(2) In section 36 of the Principal Act, after sub-section

(1) **insert—**

5 “(1A) The Board must refer any fingerprints taken under section 33 (3) to the Chief Commissioner of Police and must not itself keep a copy of those fingerprints.”.

(3) In section 50 of the Principal Act, after sub-section

(2) **insert—**

20 “(2A) The person with respect to whom an application under sub-section (1) is made must consent to having his or her fingerprints taken by an officer of the Board or an authorised member of the police force.

25 (2B) The Board may refuse to consider an application under sub-section (1) if the person with respect to whom the application is made refuses to allow his or her fingerprints to be taken.”.

30 (4) In section 50 of the Principal Act, after sub-section

(5) **insert—**

35 “(5A) The Board must refer any fingerprints taken under sub-section (2A) to the Chief Commissioner of Police and must not itself keep a copy of those fingerprints.”.

31. Personal supervision of business

In section 49 (1) of the Principal Act, for “prostitution service providing business” **substitute** ‘business of a kind referred to in the definition in section 3 of “brothel”’.

32. Entry to premises by police

(1) In section 62 (1) of the Principal Act, after “licensee” **insert** “, or a person exempted by section 23 from the requirement to hold a licence,”.

(2) In section 62 of the Principal Act, at the end of the section **insert**—

“(5) Nothing in this section authorises a member of the police force to enter and inspect a part of any premises that is used solely as a residence unless the occupier of the residence has consented in writing to the entry and inspection.”.

1

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33. Refund of fees

(1) In section 66 (3) of the Principal Act, before paragraph (a) **insert**—

“(aa) any fees paid under this Act that, in accordance with the regulations, are required to be refunded; and”.

(2) In section 68 of the Principal Act, after paragraph (f) **insert**—

“(fa) the refund, in whole or in part, of fees paid under this Act;”.

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34. Restriction on certain permit applications

In section 72 (b) of the Principal Act, for “exempted” **substitute** “intending to rely on an exemption”.

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35. Matters to be considered by responsible authority

In section 73 (c) of the Principal Act, after “(c)”
insert “except”.

36. Amendment of section 75

(1) In section 75 of the Principal Act, for sub-section (1)
substitute—

“(1) A person must not have at any one time an
interest in more than one unexpired permit for
the use of land for the purposes of the operation
of a brothel, being a permit under which the use
has started.

Penalty: 600 penalty units or imprisonment for
5 years or both.”.

(2) In section 75 (2) of the Principal Act, for “to”
substitute “in respect of land owned by”.

(3) In section 75 of the Principal Act, at the end of the
section **insert**—

“(4) For the purposes of this section two persons are
not associated only because one has borrowed
money from the other (being a bank as defined
in section 5 of the Banking Act 1959 of the
Commonwealth or a bank constituted under a
law of a State or a financial body within the
meaning of the AFIC (Victoria) Code) and the
repayment of the debt is secured by a mortgage
over or in respect of land owned by the debtor.

(5) An offence against sub-section (1) is an
indictable offence.”.

37. Secrecy

(1) In section 87 (1) of the Principal Act, for “sub-section
(2)” **substitute** “this section”.

(2) In section 87 (2) of the Principal Act—
(a) for “sub-section” **substitute** “section”;

(b) **omit** “in the course of legal proceedings or”.

(3) In section 87 of the Principal Act, for sub-section (3) **substitute**—

‘(3) Nothing in sub-section (2) prevents a person bound by this section from—

(a) producing a document containing specified information, or divulging specified information, to such persons as the Minister directs if the Minister certifies that it is necessary in the public interest that the document should be so produced or the information should be so divulged; or

1

(b) producing a document containing information, or divulging information, to a prescribed authority or a prescribed class of person or the holder of a prescribed office; or

1

(c) producing a document containing information, or divulging information, to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

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(4) An authority or person to whom a document containing information is produced or information is divulged under sub-section (3), and a person or employee under the control of that authority or person, is subject, in respect of that information, to the same rights, privileges, obligations and liabilities under this section as if that authority, person or employee were a person performing functions under this Act and had acquired the information in the performance of those functions.

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(5) Subject to sub-sections (6) and (7), a person bound by this section is not, except for the purposes of this Act, required—

3

(a) to produce in a court a document that has come into his or her possession or under his or her control; or

(b) to divulge to a court any information that has come to his or her notice—

in the exercise of powers or performance of functions under or in connection with this Act.

(6) If—

(a) the Minister certifies that it is necessary in the public interest that specified information should be divulged to a court; or

(b) a person to whom information relates has expressly authorised it to be divulged to a court—

a person bound by this section may be required—

(c) to produce in the court any document containing the information; or

(d) to divulge the information to the court.

(7) A person bound by this section may be required—

(a) to produce in a court a document that has come into his or her possession or under his or her control; or

(b) to divulge to a court any information that has come to his or her notice—

if the court is hearing and determining an indictable offence, including a committal proceeding into an indictable offence and a summary hearing of an indictable offence.

(8) In this section—

“**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“**produce**” includes permit access to.’

38. New section 88A inserted

After section 88 of the Principal Act insert—

“88A. Destruction of fingerprints, etc.

(1) The Chief Commissioner of Police must destroy any fingerprints obtained by the Board or an authorised member of the police force under this Act and referred to the Chief Commissioner, and any record, copy or photograph of them, or cause them to be destroyed as soon as he or she has no further use for them. 1

Penalty: 10 penalty units.

(2) The Chief Commissioner of Police is to be considered to have no further use for fingerprints when— 1

(a) they were obtained in connection with an application for a licence or the approval of a person as a manager of a prostitution service providing business and the application is refused; or 2

(b) the licence or approval in connection with which they were obtained is cancelled or not renewed.

(3) A person who in connection with an application for a licence or the approval of a person as a manager of a prostitution service providing business has possession of fingerprints obtained by the Board or an authorised member of the police force under this Act, or of a record, copy or photograph of them, must deliver them to the Chief Commissioner of Police, in accordance with his or her directions, so as to enable the Chief Commissioner to comply with sub-section (1). 2
3
3

Penalty: 10 penalty units.”.

39. Regulations

In section 90 (2) of the Principal Act, after paragraph (e) **insert**—

“; and

(f) so as to impose a penalty not exceeding 40 penalty units for a contravention of the regulations.”.

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