

# Health (Amendment) Bill

## EXPLANATORY MEMORANDUM

### Outline

This Bill makes a number of unrelated amendments to the *Health Act 1958*. In broad terms, the Bill will—

- (a) enable municipal councils to delegate to their officers the power to approve routine applications;
- (b) repeal the requirement that certain public buildings must be registered with the Chief General Manager of the Department of Health and provide for the exemption of public buildings from various provisions of the Act;
- (c) enable maximum fees for registrations and other services under the Act to be prescribed by regulation; and
- (d) correct anomalies and discrepancies in the Act and in cognate legislation.

### CLAUSE NOTES

*Clause 1* describes the purposes of the legislation.

*Clause 2* is the commencement provision.

*Clause 3* defines the *Health Act 1958* as being the Principal Act.

*Clause 4* enables the maximum fees under sections 65 (2) (d), 92 and 93 (m) of the Principal Act to be prescribed by regulation. These deal respectively with the installation of septic tank systems, the making of regulations with respect to the cleanliness of various premises, and the registration of cowkeepers.

*Clause 5* amends section 108 (1) (ea) of the Principal Act to enable maximum fees for licences relating to dangerous substances to be prescribed by regulation.

*Clause 6* amends section 142 (a) of the Principal Act to enable maximum fees for the registration of hairdresser's shops, beauty parlours and like establishments and chiropodists's establishments to be prescribed by regulation.

*Clause 7* amends section 142A (a) of the Principal Act to enable maximum fees for the registration of premises at which tattooing, ear piercing, acupuncture or similar processes are performed to be prescribed by regulation.

*Clause 8* amends sections 192, 195 (4) and 196 (2) (c) of the Principal Act to enable maximum fees under these provisions to be prescribed by regulation. These sections deal with the examination of plans and specifications for permanent public buildings, and for temporary public buildings, and with applications for consent to the erection of a temporary public building.

*Clause 9* has the effect of repealing the table of maximum fees payable for various categories of registration under the Principal Act as expressed in the Eleventh Schedule, and amending sections 368 and 376 to enable maximum fees to be prescribed. It also amends section 371 (4) to enable the maximum fee for a certified copy of an entry in a register to be prescribed by regulation.

*Clause 10* amends sections 8A and 8B of the Principal Act to permit the Chief General Manager and the Minister to delegate any of their "functions" as well as any of their powers. The amendment brings the wording of the two sections into line with the power of

delegation formerly available to the Health Commission under section 19 (1) of the now repealed *Health Commission Act 1977*.

*Clause 11* empowers a council to delegate to an officer or to officers of the council its powers under sections 76, 206 and Part XIX of the Principal Act. These powers relate, respectively, to the construction of drains on private premises, the removal of houses to other municipal districts, and the granting, renewal or transfer of registration of the various classes of premises which are registrable with councils under the Act.

*Clause 12* amends the penalty in section 83 (1) of the Principal Act. This section makes it an offence for a sewerage authority to remove cattle from land used by the authority for the depositing of night soil. The clause increases the penalty from \$20 to 1 penalty unit per head of cattle so removed.

*Clause 13* repeals section 193 of the Principal Act. The effect is to delete from the Act the requirement that certain public buildings, essentially places of entertainment, must be registered with the Chief General Manager. The clause also inserts a new section 199A into the Principal Act. The new section will enable the Chief General Manager, by notice in the *Government Gazette*, to exempt a public building, or class of public building from all or any of the requirements of the Division relating to public buildings.

*Clause 14* makes a number of amendments to sections 407 and 408 of the Principal Act. These sections set out the procedures which must be followed when an authorised officer has seized “any drug or substance or animal or thing” as a result of a contravention of the Act. Paragraphs (a), (b) and (d) of the clause resolve inconsistencies between the wording of sections 407 and 408 to bring it into line with the empowering section—section 401. Paragraph (c) has the effect of requiring that a complaint about a seizure must be dealt with by a magistrate rather than any two justices. This amendment is necessary as justices no longer sit as a court.

*Clause 15* increases from \$2000 to \$5000 the amount of costs which may be recovered at the option of the Chief General Manager or of a council either summarily or in proceedings before the County Court.

*Clauses 16* makes a number of minor amendments to the Principal Act as set out in Schedule 1.

*Clause 17* amends section 5 (2) of the *Health (Radiation Safety) Act 1983*. Section 5 (2) is a transitional provision which exempts from the planning criteria in section 108AE (5) (c) of the Principal Act equipment already licensed under the Health Act. The purpose of the amendment is to make clear that the exemption only applies to equipment at the same premises to which the licence applied.

*Clause 18* makes various minor amendments to other Acts as set out in Schedule 2.

## SCHEDULES

Details of each of the proposed amendments to be made by clauses 16 and 18 are as follows:

## SCHEDULE 1

<i>Item</i>	<i>Section Amended</i>	<i>Purpose</i>
1	3	Amends the definition of "boarding-house" by updating the reference to "licensed victualler" to read "licensed hotelkeeper" to reflect the current terminology used in the <i>Liquor Control Act 1968</i> .
2	3	Corrects the definition of "common lodging-house" by substituting "licensed hotelkeeper" for "licensed victualler".
3	3	Repeals the definition of "daily penalty". The definition is unnecessary as the Health Act no longer fixes daily penalties for offences.
4	3	Revises the definition of "house" by updating the expression "licensed victuallers' premises" to read "licensed hotelkeepers' premises".
5	3	Substitutes for "licensed victualler" a definition of "licensed hotelkeeper".
6	3	Repeals the interpretation of "Minister". A definition in the Act is unnecessary as "Minister" is defined by section 38 of the <i>Interpretation of Legislation Act 1984</i> .
7	3	Amends the definition of "piggery", which is an offensive trade under the Health Act, by reducing the number of pigs which constitute a piggery from five to four. The item also omits the requirement that the pigs must be kept for the purpose of trade. The amendment brings the definition of "piggery" into line with that used by the Department of Agriculture for the purpose of the tattoo branding scheme operated by that Department.
8	3	Amends the definition of "public building". The purpose of the amendment is to make clear that amusement structures do not have to comply with the Health Act provisions relating to public buildings. It will resolve doubts which have arisen about the continuing applicability of the Health Act following the transfer to the <i>Lifts and Cranes Act 1967</i> of those sections dealing with amusement structures.
9	4	Amends an error in the interpretation of "Chairman of the Board of Public Health". This is currently defined, in part, as being "the chairman of the Chief General Manager". The item corrects the definition to read "the Chief General Manager".
10	31 (5)	This item corrects a grammatical error by substituting "a" for "an" in the expression "an health surveyor".
11	66 (1)	Updates the reference to the Public Service Act in section 66 (1). This section deals with appointments of inspectors for the purpose of registering plumbers and gas-fitters.
12	82 (5)	Repeals the proviso in section 82 (5), which requires the Chief General Manager to refuse an application for the disposal of industrial waste if the approval would be contrary to Part XVI of the Act. Part XVI was repealed by the <i>Health (Amendment) Act 1978</i> .
13	95 (3A)	Revises the reference to "Minister for Minerals and Energy" to read "Minister for the time being administering the <i>Minerals and Energy Act 1976</i> ". The sub-section requires the consent of that Minister to any application relating to a trade involving the reception and disposal of refuse and rubbish.
14	107	Corrects a reference to the Health Commission to read "Chief General Manager". The provision concerned deals with the registration of dangerous trades.
15	108 (1)	Substitutes references to "Chief General Manager" for "Commission" wherever occurring. The sub-section enables the Governor in Council to make regulations about dangerous trades.
16	108 (1) (ee)	Drafting correction which substitutes "the Chief General Manager" for the word "it".

SCHEDULE 1—*continued*

<i>Item</i>	<i>Section Amended</i>	<i>Purpose</i>
17	108 (1) (eg)	Deletes the expression "relating to any dangerous substance". The amendment is intended to put beyond doubt that the penalty referred to in the paragraph can be applied to any offence against a regulation made under the Division, rather than only those relating to dangerous substances.
18	118 (2)	Updates a reference to the <i>Poisons Act</i> 1962. The sub-section provides that notwithstanding anything in the <i>Poisons Act</i> 1962 a council may provide for the sale of disinfectants and deodorants.
19	124 (2)	Inserts the words "or by the Department". The amendment makes clear that a registered general nurse employed by the Health Department, in addition to a health surveyor or nurse employed by a council, is authorised to examine school children for pediculosis.
20	126 (2)	Revises the reference to "licensed victualler". The provision deals with the letting of houses and rooms to persons suffering from an infectious disease.
21	135 (a)	Substitutes "licensed hotelkeeper's premises" for "licensed victualler's premises" in the provision which makes it an offence for a person suffering from an infectious disease to expose himself in a public place.
22	146 (1)	Updates references to the Public Service Act, and to the Consolidated Fund in the provision dealing with the conditions of employment of the Director of Tuberculosis.
23	179 (9) (b)	Makes a drafting correction by substituting "the Chief Manager" for "it".
24	183 (4) (c)	Substitutes "copies" for "of copies". Among other things the provision concerned makes it an offence for a person to prevent a medical practitioner or nurse from "making of copies" of an entry in the record of patients required to be kept at a private hospital. The amendment corrects the obvious error.
25	197A	Metricates the expression "1000 square feet". Section 197A exempts certain tents and marquees with a floor area less than 1000 square feet from the requirements of the Act relating to temporary public buildings.
26	201 (1)	Substitutes "magistrates' court" for "court of petty sessions". The section concerned enables a justice to summons before the court a person permitting the overcrowding of a house.
27	208FA (a) (ii) and (iii)	This item deletes duplications of the word "that" in the relevant subparagraphs.
28	209A (5)	Revises the definition of a State Agricultural College for the purpose of exemptions from the boarding-house provisions of the Act.
29	213A (5)	Revises the definition of a State Agricultural College for the purpose of exemptions from the common lodging-house provisions of the Act.
30	228 (1) (b)	Amends the reference to "licensed victuallers' premises" in the provision enabling regulations to be made regarding fire precautions in various classes of buildings.
31	259 (1)	Updates the reference to the "British Pharmaceutical Codex" in the definition of "proprietary medicine".
32	263 (5)	Revises the reference to the <i>Poisons Act</i> 1962 in the provision dealing with applications for the registration of proprietary medicines.
33	270	Updates the reference to the <i>Poisons Act</i> 1962. The section requires the provisions of the Division (relating to proprietary medicines) to be read in aid of the other provisions of the Act, and of the <i>Poisons Act</i> 1962.
34	270A (1) (b)	Updates a reference to the "British Pharmaceutical Codex". The section sets out the various formularies which may be used as a guide in the preparation of medicines in Victoria.
35	270B (1)	Revises the reference to the "British Pharmacopeia (sic) Codex" in the definition of "Contraceptive".

SCHEDULE 1—*continued*

<i>Item</i>	<i>Section Amended</i>	<i>Purpose</i>
36	270E (3)	Amends the reference to the <i>Poisons Act</i> 1962 in the provision which prohibits the registration of a contraceptive in certain circumstances.
37	270J (3)	Converts to equivalent penalty units, the penalty of \$250 for selling a package of registered contraceptives unless it bears the words "Registered Victoria".
38	270P	Updates the reference to the <i>Poisons Act</i> 1962. Section 270P requires the provisions of the Division relating to contraceptives to be read in aid of the other provisions of the Act and of the <i>Poisons Act</i> 1962.
39	371 (1)	Deletes the requirement that records of registrations, renewals and transfers made under the Act kept by the Chief General Manager and by councils must be "in the prescribed form". The effect is to enable a register to be maintained in such form as is considered appropriate (e.g. in book form or on computer) provided that it contains the prescribed particulars.
40	384 (b)	Updates a reference to the "Justices Acts" by substituting the " <i>Magistrates' Courts Act</i> 1971 and the <i>Magistrates (Summary Proceedings) Act</i> 1975". The provision deals with the powers of the Chief General Manager or an officer holding an inquiry for the purposes of the Act.
41	390 (2A)	Deletes the superfluous word "and" between paragraphs (b) and (c). Section 390 (2A) enables regulations to be made prescribing labels to be attached to packages of substances compounds or mixtures.
42	398(1)	Revises a reference to "the Consolidated Revenue" to read "Consolidated Fund". The sub-section concerned enables the Treasurer to suspend payments due to a council if the council fails to carry out a power or duty under the Act.
43	418	Substitutes "Director-General of Conservation, Forests and Lands" for "Commissioner of Crown Lands and Survey". Section 418 makes it the duty of the Commissioner to put Crown land in a municipality into a sanitary condition whenever required by the council.
44	431	Repeals the section which, in part, prohibits a justice who is a member of a council from adjudicating on cases involving the council. The section is no longer required because all such cases are now dealt with by magistrates.
45	445	Deletes references to "justices". Section 445 provides for appeals to the County Court against convictions or orders of any justices or magistrates' court under the Act.
46	450 (2)	Amends a reference to the "consolidated revenue" to read "Consolidated Fund". The sub-section provides that all fines, penalties and forfeitures recovered by the Chief General Manager are to form part of the Consolidated Fund.
47	451 (1)	Revises the reference to the Public Service Act in the provision which empowers the Governor in Council to employ medical practitioners as Government medical officers.
48	Part XX	Repeals the heading "Division 6—Transitory Provisions". The heading is superfluous as all the provisions in Division 6 have now been repealed.

## SCHEDULE 2

<i>Item</i>	<i>Purpose</i>
1	This amendment to item 26 of the Schedule to the <i>Building Control Act</i> 1981 will have the effect of repealing section 182A of the Health Act. Section 182A applies the provisions of sections 198 and 199 to private hospitals as if a private hospital were a public building. When item 28 of the Schedule is proclaimed, sections 198 and 199 will be repealed. Section 182A will then become redundant. This amendment provides for its consequential repeal.
2	This amendment makes two changes to item 28 of the Schedule to the <i>Building Control Act</i> 1981. The first is to repeal proposed section 188 of the Health Act to be inserted by that Schedule. The repeal of proposed section 188 becomes necessary because it corresponds to section 193 of the Health Act being repealed by clause 13 of the Bill. The second change is to bring the penalty for offences against regulations made under proposed section 189 into line with the penalty in section 200 (2) which is the equivalent provision in the Health Act.
3	The effect of this amendment to item 29 of the Schedule to the <i>Building Control Act</i> 1981 will be to repeal section 208H of the Health Act. The section applies sections 198 and 199 to a child minding centre as if a child minding centre was a public building. As indicated in notes on item 1 above, sections 198 and 199 will be repealed by item 28 of the Schedule. This amendment provides for the consequential repeal of section 208H.
4	This amendment to the <i>Medical Practitioners (Private Hospitals) Act</i> 1984 deletes the requirement in proposed section 184A of the Health Act that the proprietor of a private hospital must, among other things, keep a record showing the "value" of any interest which a medical practitioner has in that private hospital. An interest may be held in many ways, both direct and indirect, and often will be difficult to quantify. The purpose of this amendment is to omit a requirement which would be difficult to comply with in practice. The amendment also corrects references to the "Commission" (i.e. Health Commission of Victoria) to read "Chief General Manager".
5	Item 18 (b) of the <i>Health (General Amendment) Act</i> 1984 had the effect of repealing a reference to a daily penalty in section 208F of the Health Act. The purpose of this amendment is to correct a drafting error in the repealing words by inserting the missing word "daily".
6	The effect of this item is to repeal section 9 (7) (b) of the <i>Health (Amendment) Act</i> 1985. This provision, when proclaimed, would have inserted a scale of fees for the registration of special accommodation houses in the Eleventh Schedule to the Health Act. The Schedule is repealed by clause 9 of the Bill and, accordingly, section 9 (7) (b) becomes superfluous.
7	The item in the Schedule of the <i>Health (Amendment) Act</i> 1985 relating to section 49A of the Health Act substituted "Chief General Manager" for "Commission" (i.e. the Health Commission of Victoria) wherever occurring. An unintended effect was to also substitute "Chief General Manager" for "Commission" in the expression "Rural Water Commission". The purpose of this amendment is to correct the obvious error which has occurred.
8	This item makes a similar correction to the amendments made to section 82 of the Health Act by the <i>Health (Amendment) Act</i> 1985 as outlined in the notes on item 7 above.

SCHEDULE 2—*continued*

<i>Item</i>	<i>Purpose</i>
9	This amendment corrects an error in the item in the Schedule to the <i>Health (Amendment) Act 1985</i> relating to the <i>Historic Buildings Act 1981</i> . The item concerned substituted "Department of Health" for "Health Commission of Victoria" in the definition of "Public authority". However, the section referred to in the item should have been section 3, and not section 13.
10	This item corrects an error in amendments made to section 18 of the <i>Hospitals and Charities Act 1958</i> by the Schedule to the <i>Health (Amendment) Act 1985</i> . The relevant item had the effect of substituting "Chief General Manager" for "it" in this section. There were, in fact, two "it"s in the provision. The amendment should have related only to the second "it", and not to the first.
11 and 12	These two amendments to the Schedule to the <i>Health (Amendment) Act 1985</i> are complementary. They have the effect, respectively, of inserting in the Schedule a missing reference to the Hospitals Superannuation Act, and correcting a reference to the "Hospitals Remuneration Tribunal Act 1978" to read "Hospitals Superannuation Act 1965".
13	This amendment to the Schedule to the <i>Health (Amendment) Act 1985</i> corrects a typographical error in the item referring to the Director General of Community Services. In the amendments made by that Act to the <i>St. Nicholas Hospital (Sale of Land) Act 1982</i> the Director General is incorrectly identified as the "Director General of Community 1982 Services".

