

Queensland



ANNO VICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

No. 65 of 1978

An Act to amend the Health Act 1937–1976 in certain particulars

[ASSENTED TO 2ND NOVEMBER, 1978]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Health Act Amendment Act 1978*.

(2) In this Act the *Health Act 1937–1976* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Health Act 1937–1978*.

2. Commencement of Act. (1) Save as is prescribed by subsection (2) this Act shall commence on the date it is assented to for and on behalf of the Crown.

(2) Section 9 shall commence on a day to be fixed by Proclamation.

3. Amendment of s. 3. Section 3 of the Principal Act is amended by—

(a) omitting the words " Division VI—Leprosy (s. 51), ";

(b) inserting after the words " Division XIA—Nursing Homes (ss. 76B–76J), " the words " Division XIB—Maltreatment of Children (ss. 76K–76N), ";

(c) inserting after the words " Division XIII—Sanitary Provisions, Sewers, Drains, Sanitary Conveniences, Camping Grounds, and Moveable Dwellings (ss. 93–100) " the words " , Division XIV—Tattooing and Ear-piercing (s. 100A) ".

4. Amendment of s. 5. Section 5 of the Principal Act is amended by—

(a) inserting in the definition " Article " after the words " any textile product, " the words " any toys, ";

(b) omitting from the definition " Barber " the words " or tattoos the skin of any person ";

(c) inserting in the definition "Pesticide" after the word "insecticide" the words ", rodenticide".

5. Amendment of s. 10A. Section 10A of the Principal Act is amended by inserting at the end thereof the following subsection:—

"(12) (a) Notwithstanding the provisions of the *Clean Waters Act* 1971–1978, any agreement entered into pursuant to this section prior to the coming into operation of the *Clean Waters Act* 1971 may be varied from time to time by subsequent agreement (in this subsection called the "variation agreement").

For the purposes of section 6 (1) of the *Clean Waters Act* 1971–1978, the agreement as varied by the variation agreement shall be deemed to be an agreement made under and in accordance with the provisions of this section prior to the coming into operation of the *Clean Waters Act* 1971.

(b) The provisions of this section relating to an agreement, application therefor or a proposed application therefor shall apply to a variation agreement, application therefor or proposed application therefor and for that purpose a reference herein to an agreement shall be construed as a reference to a variation agreement."

6. Repeal of Division VI of Part III. The Principal Act is amended by—

(a) omitting the words "DIVISION VI—LEPROSY" appearing before section 51;

(b) omitting section 51.

7. Amendment of s. 68. Section 68 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

"(1) Subject to section 68A, each licence granted by the Director-General, whether before or after the commencement of the *Health Act Amendment Act* 1978, shall, unless sooner cancelled, be effective from the date of issue thereof to the thirtieth day of September next following."

(b) omitting from the third paragraph of subsection (2) the words "Any such renewal of the licence shall take effect on and from the expiry of the original licence and shall expire on" and substituting the words "Subject to section 68A, a renewal of a licence, whether renewed before or after the commencement of the *Health Act Amendment Act* 1978, shall, unless the licence is sooner cancelled, be effective from the date of the expiry of the original licence to".

8. New ss. 68A and 68B. The Principal Act is amended by inserting after section 68 the following sections:—

"**68A. Cancellation and suspension of licences.** (1) If at any time the Director-General is of the opinion that—

(a) the premises of a private hospital are no longer fit for the reception, care or treatment of patients;

(b) the licensee of a private hospital is not a fit and proper person to be the holder of a licence;

(c) the licensee of a private hospital is not providing adequate care or treatment for the patients;

- (d) the licensee of a private hospital has been guilty of an offence against any provision of this Act;
- (e) the licensee of a private hospital has contravened or failed to comply with any condition of the licence; or
- (f) the licensee of a private hospital is not entitled to be the holder of the licence or has obtained the licence by any false statement or misrepresentation or, by any other means whatsoever, has not properly obtained the licence,

the Director-General may, subject to subsection (2) by notice in writing cancel or suspend the licence.

(2) Before he gives a notice under subsection (1) the Director-General shall afford to the licensee an opportunity to show cause why the notice should not be given, by notifying the licensee in writing of a day (being not earlier than 30 days after the giving of the notification), a time and place when and where the licensee may show cause why the licence should not be cancelled or suspended.

(3) Any licensee to whom a notification is given under subsection (2)—

- (a) may appear at the day, time and place so notified and take such steps as are calculated to show the specified cause; or
- (b) may endeavour to show the specified cause by writing furnished to the Director-General at any time before the time so notified.

(4) Where the Director-General has suspended the licence of any person—

- (a) such licence shall not be effective; and
- (b) that person shall be deemed not to be a licensee,

for the period of the suspension.

68B. Delivery of licence to Director-General. (1) When, under section 68A, a licence is cancelled or suspended, the person who was the licensee shall, upon request by a notice in writing served upon him, deliver that cancelled or suspended licence to the Director-General within 14 days therefrom.

(2) Whenever any licensee ceases to use as a private hospital the premises to which the licence relates, such licensee shall forthwith notify the Director-General of the cessation and deliver to the Director-General the licence in respect of that hospital.”

9. New Division XIB of Part III. The Principal Act is amended by inserting after section 76J the following heading and sections:—

“ DIVISION XIB—MALTREATMENT OF CHILDREN

76K. Notification of Maltreatment. (1) A medical practitioner who suspects on reasonable grounds that a child has been maltreated or neglected in a manner likely to subject the child to unnecessary injury, suffering or danger, shall forthwith notify the Director-General by the most expeditious means available in writing or otherwise.

(2) Where notification pursuant to subsection (1) is given other than in writing, the medical practitioner shall within seven days after the giving thereof confirm in writing to the Director-General such notification.

(3) A notification given pursuant to this section or, if the notification is otherwise than in writing, the confirmation thereof shall state the observations and opinions upon which the suspicion is based.

(4) Where a notification or confirmation thereof has been given in good faith pursuant to this section—

- (a) the giving of the notification or the confirmation thereof shall not in any proceedings before any court or tribunal be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) in any proceedings for defamation, the notification and confirmation thereof (if any) shall be regarded as absolutely privileged;
- (c) no civil liability shall be incurred in respect of the giving of such notification or confirmation thereof by the medical practitioner;
- (d) the notification or confirmation thereof shall not be admissible in evidence before any court or tribunal except where it is tendered in evidence by the medical practitioner by whom it was given in answer to a charge or allegation against him; and
- (e) a person shall not be compelled in any proceedings before any court or tribunal to produce the notification or confirmation thereof, any copy of or extract from the notification or confirmation thereof or to disclose any of the contents thereof.

76L. Temporary custody of children. (1) Where—

- (a) a child has or has been presented at a hospital; and
- (b) the prescribed medical officer suspects upon reasonable grounds that the child has been maltreated or neglected in a manner likely to subject the child to unnecessary injury, suffering or danger,

the prescribed medical officer may order in writing the detention of that child in that hospital for a period not exceeding seventy-two hours from such admission.

(2) Notwithstanding the wishes of the parent, guardian or person claiming to be entitled to the custody of a child in respect of whom an order has been duly made pursuant to subsection (1), it shall be lawful for—

- (a) that child to be detained in the hospital for the period specified in the order;
- (b) that child to be subjected to such diagnostic procedures and tests as a prescribed medical officer considers necessary to determine the medical condition of that child.

(3) Where an order has been made pursuant to subsection (1), a copy thereof shall as soon as practicable be forwarded to the Director-General and to any person recorded at the hospital as being the parent, guardian or person claiming to be entitled to the custody of the child.

The failure to comply with the provisions of this subsection shall not in any way invalidate the order.

(4) In this section, “prescribed medical officer” means the medical superintendent or other medical officer in charge of the hospital or any nominee (being a medical practitioner) of such medical superintendent or of such other medical officer (such medical superintendent or such other medical officer being hereby authorized to make such nomination or nominations as he thinks fit).

76M. Meaning of “child”. In this Division “child” means a person under or apparently under the age of seventeen years.

76N. Regulations. The Director-General may, in accordance with this Act, make regulations not inconsistent with this Act for or with respect to all matters that, in his opinion, are necessary or convenient for the proper administration of this Division or to achieve the objects and purposes of this Division.”.

10. New Division XIV of Part III. The Principal Act is amended by inserting after section 100 the following heading and section:—

“DIVISION XIV—TATTOOING AND EAR-PIERCING

100A. Regulations. The Director-General may, in accordance with this Act, make regulations in relation to premises in which the business of tattooing, ear-piercing or any like process involving the penetration of the skin of a living human being is or may be carried on.

Without limiting the foregoing provisions of this section, regulations may be made under this section for or in respect of all or any of the following matters or things:—

- (a) providing for the registration of such premises by Local Authorities, the renewal of registration and the suspension and cancellation thereof;
- (b) prohibiting the carrying on of such business in any premises unless such premises are registered;
- (c) prescribing the fees payable for registration or renewal of registration;
- (d) prescribing minimum standards in relation to the structure, floor area and ventilation of such premises;
- (e) providing for the cleanliness of such premises and the cleansing, disinfection and sterilization of the appliances, implements, tools and things used in the carrying on of such business and regulating and controlling the hygienic conduct of such business;
- (f) safeguarding the health of customers and persons employed in such premises;
- (g) providing for the inspection of such premises whether registered or not;
- (h) prescribing penalties not exceeding \$500 for any breach of the regulations.”.

11. Amendment of s. 101. Section 101 of the Principal Act is amended by omitting provision (k) from subsection (1) and substituting the following provision:—

“(k) If, being a food, it contains methyl alcohol;”.

12. Repeal of and new s. 114. The Principal Act is amended by omitting section 114 and substituting the following section:—

“**114. Labelling of disinfectant.** There shall be supplied on or attached to every package of disinfectant, germicide, antiseptic

or deodorant packed or enclosed for sale a label which complies in all respects with what is prescribed by the Director-General by regulations in relation thereto, it being hereby declared, without limiting any of the provisions of section 152, that such regulations may be made by the Director-General.

A person shall not sell in a package any disinfectant, germicide, antiseptic or deodorant unless a label complying in all respects as aforesaid is supplied on or attached to such package.”.

13. Amendment of s. 131J. Section 131J of the Principal Act is amended by—

(a) inserting in the definition “ Pest control operator ” after the words “ mites or vermin ” the words “ but not a person who uses pesticides for agricultural, horticultural or pastoral purposes ”;

(b) omitting the definition “ Pesticide ” and substituting the following definition:—

“ “ Prohibited pesticide ”—Any substance for the time being declared by Order in Council for the purpose of this Division to be a pesticide, the use of which is prohibited: the term includes any admixture, preparation or solution that contains one or more of those substances.”.

14. New s. 131KA. The Principal Act is amended by inserting after section 131K the following section:—

“ **131KA. Prohibited pesticides not to be used.** A pest control operator shall not use a prohibited pesticide.”.

15. Amendment of s. 131L. Section 131L of the Principal Act is amended in subsection (2) by—

(a) omitting from provision (a) the word “ pesticides ” and substituting the words “ the pesticides specified in the application ”;

(b) inserting in provision (b) after the word “ pesticide ” the words “ specified in the application ”;

(c) inserting in provision (d) after the words “ to use ” the word “ those ”.

16. Amendment of s. 131P. Section 131P of the Principal Act is amended by inserting at the end thereof the following paragraph:—

“ Without in any way limiting the power of the Director-General to impose conditions pursuant to this section, the Director-General may impose a condition or conditions that the licensee shall use only or shall not use that pesticide or those pesticides specified in the condition.”.

17. Repeal of and new s. 131V. The Principal Act is amended by omitting section 131v and substituting the following section:—

“ **131V. Powers of inspectors.** Without derogating from the powers of an inspector under any other provision of this Act, an inspector authorized by the Director-General for the purpose of this Division either generally or for any limited period or for any particular case—

(a) may enter and inspect any premises which he believes on reasonable grounds is kept or used for the storage, manufacture, preparation, mixing or conveyance of pesticides by or on behalf of a person whom he believes on reasonable grounds to be a pest control operator;

- (b) may inspect any apparatus, equipment or pesticides which he believes on reasonable grounds is kept or used by or on behalf of a person whom he believes on reasonable grounds to be a pest control operator;
- (c) may order a pest control operator to discontinue using any apparatus, equipment or pesticide which, in the inspector's opinion, may prejudice the health of a person using the apparatus, equipment or pesticide or within premises wherein the pesticide is used;
- (d) may remove for examination or analysis a sample of any substance which he believes on reasonable grounds is being used, has been used or is likely to be used as a pesticide by a pest control operator; and
- (e) may exercise such other powers as are prescribed by regulations made for the purpose of this Division."

18. Amendment of s. 131W. Section 131W of the Principal Act is amended by—

(a) renumbering subsection (2) as subsection (3);

(b) inserting after subsection (1) the following subsection:—

“(2) Without limiting the provisions of subsection (1) regulations may be made under this section for or in respect of all or any of the following matters or things:—

- (a) prescribing the containers in which pesticides may be held and their use therefor;
- (b) providing for the storage and conveyance of pesticides by pest control operators and the disposal thereof and of containers used to hold pesticides;
- (c) requiring the labelling by pest control operators of containers holding pesticides and prescribing the mode of labelling thereof and the matter to be contained or not contained in such labels.”

(c) omitting from subsection (3) as so renumbered the expression “\$200” and substituting the expression “\$500”.

19. Amendment of s. 148. Section 148 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) Where any person is convicted of an offence, the court shall order that all fees and other expenses incident to—

- (a) the analysis of any food, drug or article (including an analysis made under section 147); and
- (b) the examination by a State botanist of any prohibited plant,

in respect of which the conviction is obtained shall be paid by the person convicted.”

20. Amendment of s. 152. Section 152 of the Principal Act is amended by in subsection (1)—

(a) inserting in the note appearing at the beginning of paragraph (xvi) after the word “**Defining**” the words “**or prescribing**”;

(b) inserting in paragraph (xvi) after the word “**Defining**” the words “**or prescribing**”;

(c) inserting after paragraph (xvii) the following paragraphs:—

“(xviiA) **Registration of pharmacies.** The registration by the Director-General of premises in which medicines, mixtures, compounds and drugs are dispensed (other than a dispensary in any hospital controlled by a Hospitals Board under the *Hospitals Act* 1936–1978 or premises in which medicines, mixtures, compounds or drugs are dispensed by a person (not being a pharmacist within the meaning of the *Pharmacy Act* 1976–1978) authorized so to do under this Act) or items of trade are sold or services in conjunction with such dispensing are provided; the siting, construction, layout and condition of such premises;

(xviiB) **Labelling and packaging dangerous substances.** Requiring the packaging of dangerous substances, prescribing the mode of such packaging, requiring the labelling of dangerous substances packaged for sale and prescribing the mode of labelling thereof and the matter to be contained or not contained in such labels;”;

(d) omitting from paragraph (xxviii) the expression “\$200” and the expression “\$1,000” and substituting the expression “\$500” and the expression “\$2 000” respectively.

21. New s. 152A. The Principal Act is amended by inserting after section 152 the following section:—

“**152A. Defined poisons, restricted drugs, dangerous drugs and biological preparations deemed prescribed.** Where, before the commencement of the *Health Act Amendment Act* 1978, the Director-General has defined a substance or article as a poison, a restricted drug, a dangerous drug or a biological preparation, then, for so long as such definition continues or continued in force, such substance or article shall be, and it is hereby declared always was, a poison, a restricted drug, a dangerous drug or, as the case may be, a biological preparation in each case prescribed by or under this Act.”.

22. Amendment of s. 154i. Section 154i of the Principal Act is amended in subsection (3) by—

(a) omitting the words “The change” and substituting the words “Save as is prescribed by this subsection, the change”;

(b) inserting at the end thereof the following paragraph:—

“Upon the passing of the *Health Act Amendment Act* 1978 the Institute is divested of the powers, functions and duties of The X-ray and Other Electro-Medical Equipment Advisory Board appointed by the Governor in Council on 1st May, 1935, and notified in the Gazette on 3rd May, 1935.”.

23. Amendment of s. 175. Section 175 of the Principal Act is amended by omitting the expression “\$200” and substituting the expression “\$500”.

24. Repeal of Schedule C. The Principal Act is amended by repealing Schedule C.