

Western Australia

## **Health Services (Quality Improvement) Act 1994**

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### **THE TEXT OF THE LEGISLATION FOLLOWS**



# Health Services (Quality Improvement) Act 1994

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Western Australia

## **Health Services (Quality Improvement) Act 1994**

**An Act to provide for the approval and protection of quality improvement committees reviewing, assessing and monitoring the quality of health services, and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Health Services (Quality Improvement) Act 1994*<sup>1</sup>.

### 2. Commencement

This Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.

### 3. Object

The object of this Act is to encourage and promote the establishment of committees to review, assess and monitor health services with a view to improving the standard of health care in Western Australia.

### 4. Crown bound

This Act binds the Crown.

### 5. Effect on other enactments

- (1) This Act has effect despite the *Freedom of Information Act 1992*.
- (2) If there is an inconsistency between a provision of this Act and a provision of any other written law, the provision of this Act prevails to the extent of the inconsistency.

### 6. Interpretation

In this Act, unless the contrary intention appears —

“**Committee**” means a committee that is declared, or is by section 14 taken to have been declared, to be an approved quality improvement committee under section 7(1);

**“governing body”** means the person or body (by whatever name called) having the general direction and control of, and overall responsibility for, the operations of —

- (a) a health service; or
- (b) an association, society, college, faculty or other body of professionals who provide a health service;

**“health service”** means —

- (a) any medical, hospital, ambulance, paramedical, dental, pharmaceutical, mental health, nursing home, palliative care, community health or environmental health service;
- (b) any service relating to or associated with the provision of a service referred to in paragraph (a); or
- (c) any other service relating to or associated with the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

## **Part 2 — Quality improvement committees**

### **7. Approved quality improvement committees**

- (1) The Minister may, by order published in the *Gazette*, declare that, for such period not exceeding 3 years as is specified in that order, a specified committee established by a governing body is an approved quality improvement committee for the purposes of this Act and by like order may amend or revoke the declaration.
- (2) The Minister is not to make a declaration under subsection (1) unless the Minister is satisfied that —
  - (a) the committee is established in accordance with the rules or official procedures of the relevant governing body;
  - (b) each member of the committee has training and experience appropriate to the services to be assessed and evaluated;
  - (c) the functions of the committee include —
    - (i) the assessment and evaluation of the quality of health services, including the review of clinical practices;
    - (ii) the reporting and making of recommendations to its governing body concerning health services; and
    - (iii) the monitoring of the implementation of those recommendations;
  - (d) the performance of those functions would be facilitated by the provision of immunities and protections afforded by this Act; and
  - (e) it is in the public interest to restrict disclosure of information compiled by that committee in the course of the performance of those functions.



**8. Restrictions on Committees**

- (1) A Committee is to have regard to the rules of natural justice in so far as they are relevant to the performance of the functions of that Committee.
- (2) A report furnished or information made available by a Committee, must not disclose, either expressly or by implication, the identity of an individual who is a provider or recipient of a health service unless the individual has consented in writing to that disclosure.

**9. Disclosure of information**

- (1) A person who acquires any information solely as a result of the performance of the Committee's functions must not make a record of, or divulge or communicate that information to any person, except —
  - (a) for the purposes of —
    - (i) the performance of the functions of the Committee; or
    - (ii) furnishing reports to the relevant governing body referred to in section 7(1);
  - (b) in accordance with any standards, in addition to the restrictions imposed by this Act, that may be established by the Minister for the making available to the public or a section of the public of information that does not, either expressly or by implication, disclose the identity of an individual or individuals; or
  - (c) with the written consent of the person to whom the information relates.

Penalty: \$5 000.

- (1a) Subsection (1) applies to a person who acquires information, whether the person did so directly or indirectly.

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- (2) The Minister may from time to time determine, and publish in the manner prescribed by the regulations, standards for the purposes of subsection (1)(b).

*[Section 9 amended by No. 61 of 2004 s. 8.]*

**10. Information not to be given in evidence**

- (1) A person who acquires information solely as a result of a Committee performing its functions is neither competent nor compellable in civil proceedings to divulge or communicate that information to any court, tribunal, board or person.

- (1a) A document that was created by or at the request of a Committee, or solely for the performance of a Committee's functions, is not subject to discovery and is not to be used in evidence in civil proceedings before any court, tribunal, board or person unless the document has been made available to the public or given to the Minister or to the governing body of the Committee.

- (2) Subsections (1) and (1a) do not apply to —
- (a) a report which has been furnished, or information that has been made available, to a Committee which does not disclose, either expressly or by implication, the identity of an individual; or
  - (b) a requirement made in proceedings in respect of any act or omission by a Committee or by a member of a Committee as a member.

- (3) This section does not limit section 9.

*[Section 10 amended by No. 61 of 2004 s. 9.]*

**11. Findings of Committee not evidence of certain matters**

A finding or recommendation by a Committee as to the need for changes or improvements in relation to a procedure or practice is not admissible as evidence in any proceedings that the procedure or practice is, or was, careless or inadequate.

**12. Personal liability of members**

- (1) Anything done by a Committee, a member of a Committee or any other person, in good faith for the purposes of the performance of the Committee's functions, does not subject the member or person personally to any action, liability, claim or demand.
- (2) Without limiting subsection (1), for the purposes of section 354 of *The Criminal Code* —
  - (a) any statement made orally or in writing by a member of a Committee in good faith and in the performance of the functions of a member; and
  - (b) any report or other information published in good faith by the Committee,

is to be taken to be published for the information of the public and for the discharge of public functions.

- (3) A person referred to in subsection (1) is, and is entitled to be, indemnified by the governing body that established the Committee in respect of any costs incurred in defending proceedings in respect of any action, liability, claim or demand against which the person is protected by this section.

*[Section 12 amended by No. 61 of 2004 s. 10.]*

**13. Continuation of protection**

If for any reason a committee ceases to be an approved quality improvement committee under section 7(1) —

- (a) section 9 continues to apply to the making of a record of, or divulging or communicating of, information that was acquired when the committee was an approved quality improvement committee;
- (b) section 10 continues to apply to the competence or compellability of a person in relation to documents created when, or any matter or thing coming to that

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person's notice when, the committee was an approved quality improvement committee;

- (c) section 11 continues to apply to the admissibility of evidence that relates to a finding or recommendation made by the committee when it was an approved quality improvement committee; and
- (d) section 12 continues to apply to any action, liability, claim or demand that arose when the committee was an approved quality improvement committee,

as if the committee were still an approved quality improvement committee.

**14. Mortality Committees**

- (1) This Act, other than sections 7, 13 and 15(a) and (b), applies to and in relation to a Mortality Committee as if —
  - (a) that committee had been declared to be a Committee under section 7;
  - (b) the Minister were the relevant governing body for that committee; and
  - (c) a report made under Part XIII A, XIII B or XIII C of the *Health Act 1911* were a report furnished to the relevant governing body.
- (2) Regulations made under section 15, only apply to Mortality Committees where those regulations specify that they are to have that application.
- (3) In this section “**Mortality Committee**” means —
  - (a) the Maternal Mortality Committee constituted under Part XIII A of the *Health Act 1911*;
  - (b) the Perinatal and Infant Mortality Committee constituted under Part XIII B of that Act; and
  - (c) the Anaesthetic Mortality Committee constituted under Part XIII C of that Act.

- (4) The provisions of this section are to be construed so as not to limit in any way the effect and operation of the provisions of Parts XIII A, XIII B and XIII C of the *Health Act 1911*.

## **Part 3 — General**

### **15. Regulations**

The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act and, in particular —

- (a) providing for the procedure of Committees and the manner in which they are to perform their functions;
- (b) permitting or requiring Committees to make specified information available to the public; and
- (c) permitting or requiring Committees to furnish reports concerning their activities to the Minister and governing bodies.

**Notes**

- <sup>1</sup> This is a compilation of the *Health Services (Quality Improvement) Act 1994* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Health Services (Quality Improvement) Act 1994</i>	80 of 1994	20 Dec 1994	6 Sep 1995 (see s. 2 and Gazette 5 Sep 1995 p. 4159)
<b>Reprint 1: The <i>Health Services (Quality Improvement) Act 1994</i> as at 12 Dec 2003</b>			
<i>Health Legislation Amendment Act 2004 Pt. 3</i>	61 of 2004	24 Nov 2004	24 Nov 2004 (see s. 2)