

WESTERN AUSTRALIA

**HOSPITALS AND HEALTH
SERVICES AMENDMENT
ACT 1996**

No. 17 of 1996

AN ACT to amend the *Hospitals and Health Services Act 1927*.

[Assented to 2 July 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Hospitals and Health Services Amendment Act 1996*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Hospitals and Health Services Act 1927** is referred to as the principal Act.

[* Reprinted as at 22 April 1993.
For subsequent amendments, see 1994 Index to
Legislation of Western Australia, Table 1, pp. 97-8.]

Section 5A amended

4. Section 5A (1) of the principal Act is amended by deleting “throughout the State” ”.

Section 7A amended

5. Section 7A (1) of the principal Act is amended by deleting paragraph (f) and substituting the following paragraph —

“
(f) to give effect to any agreement entered into by the Commonwealth with the State under the Commonwealth Act and to the relevant guidelines (if any) formulated under the Commonwealth Act in relation to health services for the purposes of such an agreement.
”.

Section 7C amended

6. Section 7C (1) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph —

“
(b) by an agency board appointed by the Governor consisting of such number of persons, being not less than 3, as the Governor determines,
”.

Section 18 amended

7. Section 18 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) A board —

(a) is responsible for —

- (i) the control, management, and maintenance of the public hospital or hospitals for which it is or has been appointed;
- (ii) providing health services under any agreement entered into by the Commonwealth with the State under the Commonwealth Act that relates to that hospital or those hospitals; and
- (iii) providing any other health service approved by the Minister;

and

(b) may perform such other duties and functions for the purposes of this Act as may be prescribed.

”

Section 19 amended

8. (1) Section 19 (1) of the principal Act is repealed and the following subsections are substituted —

“

(1) A board may, for the purpose of the performance of its functions —

(a) employ or engage employees and other persons; and

- (b) engage persons, whether or not natural persons, to perform functions on its behalf.

(1a) Where under subsection (1) (b) a board engages a person to perform on its behalf in respect of a hospital the functions described in section 18 (1) and the board is an SES organization or a non-SES organization under the *Public Sector Management Act 1994* the board —

- (a) is not required to appoint a chief executive officer under section 44 of that Act or to have a chief employee as mentioned in that Act; and
- (b) without limiting subsection (1) (b), may engage the person, notwithstanding that the person is a body corporate, to perform functions under any written law of such a chief executive officer or chief employee, as the case may require, as if the person were the holder of that office.

”.

(2) Section 19 (2) of the principal Act is amended by deleting “appoint and remove” and substituting the following —

“ employ or engage ”.

(3) Section 19 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) Persons so employed or engaged may be remunerated out of the revenues of the board.

”.

(4) Section 19 (4) of the principal Act is amended —

(a) by deleting “No officer” and substituting the following —

“ A person ”;

- (b) by deleting “be appointed or continued in office by a board” and substituting the following —

“ not enter on his duties under this section ”;

and

- (c) by deleting “such officer” and substituting the following —

“ such person ”.

- (5) Section 19 (5) of the principal Act is repealed and the following subsection is substituted —

“

(5) Notwithstanding anything in this section, to the extent that there is in the case of a person who is employed or engaged under subsection (1) (a) and who is a member of the Senior Executive Service (within the meaning of the *Public Sector Management Act 1994*) an inconsistency between this Act and that Act, that Act shall prevail.

”.

Section 22 amended

- 9.** (1) After section 22 (1) of the principal Act the following subsection is inserted —

“

- (1a) In paragraph (da) of subsection (1) —

“officer or servant of the board” in subparagraphs (viii) and (xi) includes a person engaged under section 19 (1) and an employee of a person engaged under section 19 (1) (b);

“specified” means specified in by-laws made under that paragraph.

”.

(2) Section 22 (2a) is repealed.

Section 33 amended

10. Section 33 of the principal Act is amended by inserting after subsection (6) the following subsection —

“

(7) The provisions of this section are subject to any agreement entered into by the Commonwealth with the State under the Commonwealth Act.

”.

Sections 33A, 33B, 33C and 34 repealed and section 34 substituted

11. Sections 33A, 33B, 33C and 34 of the principal Act are repealed and the following section is substituted —

“

Medicare Principles and Commitments

34. (1) The Medicare Principles and Commitments set out in subsection (2) are established as guidelines for the delivery of public hospital services to eligible persons in the State.

(2) The Medicare Principles and Commitments are as follows —

MEDICARE PRINCIPLES AND COMMITMENTS

Explanatory Note: The principles focus on the provision of public hospital services to eligible persons, but operate in an environment where eligible persons have the right to choose private health care in public and private hospitals supported by private health insurance.

Choices of services

Principle 1: Eligible persons must be given the choice to receive public hospital services free of charge as public patients.

Explanatory Note 1: Hospital services include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards.

Explanatory Note 2: At the time of admission to a hospital, or as soon as practicable after that, an eligible person will be required to elect or confirm whether he or she wishes to be treated as a public or private patient.

Explanatory Note 3: Public hospital services do not include those services for which charges may be made as set out in subsection (3).

Universality of services

Principle 2: Access to public hospital services is to be on the basis of clinical need.

Explanatory Note 1: None of the following factors are to be a determinant of an eligible person's priority for receiving hospital services:

- whether or not an eligible person has health insurance;
- an eligible person's financial status or place of residence;
- whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient.

Explanatory Note 2: This principle applies equally to waiting times for elective surgery.

Explanatory Note 3: The phrase "waiting times" means waiting times for access to elective surgery from a hospital waiting or booking list.

Equity in service provision

Principle 3: To the maximum practicable extent, a State will ensure the provision of public hospital services equitably to all eligible persons, regardless of their geographical location.

Explanatory Note 1: This principle does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need.

Explanatory Note 2: In rural and remote areas, a State should ensure provision of reasonable public access to a basic range of hospital services which are in accord with clinical practices.

Explanatory Note 3: To the extent practicable, hospital services should be available at all recognized hospitals, however, where this is not possible, the State accepts responsibility for referring or transferring the eligible person to where the necessary hospital services are available.

Information about service provision

Commitment 1: The Commonwealth and a State must make available information on the public hospital services eligible persons can expect to receive as public patients.

Explanatory Note 1: The joint Commonwealth/State development of a Public Patients' Hospital Charter will be a vehicle for the public dissemination of this information.

Explanatory Note 2: The Public Patients' Hospital Charter will set out the public hospital services available to public patients.

Efficiency and quality in service provision

Commitment 2: The Commonwealth and the States are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery.

Explanatory Note: This includes a commitment to quality improvement, outcome measurement, management efficiency and effort to integrate the delivery of hospital and other health and health-related community services.

(3) Any eligible person will be entitled to receive, without charge, out-patient and accident and emergency services provided by a recognized hospital except for —

- (a) dental services;
- (b) spectacles and hearing aids;
- (c) pharmaceuticals;
- (d) surgical supplies, prostheses, aids and appliances and home modifications; and
- (e) other services as agreed between the Commonwealth Minister and the Minister,

for which service charges, as determined by the Minister, may be applied provided that no charge to the Commonwealth results.

(4) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action, and, without limiting the generality of the foregoing, nothing in this section operates to create in any person legal rights not in existence before the enactment of this section.

(5) In this section —

- (a) “**eligible person**” and “**public patient**” have the same meanings as they have in the Commonwealth Act; and

- (b) **“Commonwealth Minister”** has the same meaning as “Commonwealth Minister for Health” has in section 27 (4) of the Commonwealth Act.

(6) This section ceases to have effect on a day to be fixed by proclamation.

”.

Section 35C inserted

12. After section 35B of the principal Act the following section is inserted —

“

Bond for due performance of agreement

35C. (1) Where an agreement is made for the purposes of this Act between a person (**“the contractor”**) and —

- (a) the Minister;
- (b) a board or an agency board; or
- (c) the Minister for Works or the State Supply Commission acting on behalf of the Minister, a board or an agency board,

the agreement may include a performance bond.

(2) A performance bond is a provision by which the contractor acknowledges that the contractor is bound in a specified sum if the contractor fails to observe and perform the terms, conditions and provisions of the agreement.

(3) The contractor is liable to pay to the Minister, a board or an agency board as a debt the amount of

any such bond if the contractor fails to observe and perform the terms, conditions and provisions of the agreement, and that debt may be recovered by proceedings in a court of competent jurisdiction.

(4) In any proceedings to recover an amount referred to in subsection (3) —

(a) the amount is to be taken to be a genuine pre-estimate of the damage suffered and recoverable by the Minister, the board or the agency board, as the case may be, in respect of any non-observance or non-performance by the contractor;

(b) the contractor cannot plead and evidence is not admissible to show —

(i) that the damage so suffered and recoverable was less than that amount;

or

(ii) that the amount or any part of it is a penalty or penal damages; and

(c) the amount cannot be reduced or called in question by the court.

(5) This section applies notwithstanding any rule of law to the contrary.

(6) In subsection (1) —

“Minister for Works” means the body corporate created by section 5 of the *Land Acquisition and Public Works Act 1902*;

“State Supply Commission” means the body established by section 4 of the *State Supply Commission Act 1991*.

”.

Section 37 amended

13. Section 37 (2d) of the principal Act is amended in paragraph (a) by deleting “section 23F of the Commonwealth Act” and substituting the following —

“

the Commonwealth Act in relation to the provision of health services

”.