

**ACTS AMENDMENT
(HOSPITALS).**

No. 53 of 1985.

AN ACT to make better provision for the control and regulation of private hospitals, to amend the Health Act 1911 and the Hospitals Act 1927 and for incidental and other purposes.

[Assented to 5 November 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Hospitals) Act 1985.* Short title.

Commence-
ment.

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

PART II.—HEALTH ACT 1911.

Principal
Act.
Reprinted as
approved
14 May 1981
and
amended by
Acts Nos. 63
of 1981, 30
and 116 of
1982 and
28 of 1984.

3. In this Part the Health Act 1911 is referred to as the principal Act.

Section 173
amended.

4. Section 173 of the principal Act is amended—

- (a) by deleting “hospital or”; and
- (b) by inserting after “assembled” the following—

“ but does not include a hospital ”.

Section 290
amended.

5. Section 290 of the principal Act is amended—

- (a) in the definition of “declared patient” by deleting “an institution” and substituting the following—

“ a hospital ”;

- (b) by inserting the following definition—

“ “hospital” means a public hospital under the Hospitals Act 1927; ”;

- (c) by deleting the definition of “institution”; and

- (d) in the definition of “voluntary patient” by deleting “an institution” and substituting the following—

“ a hospital ”.

6. Section 291 of the principal Act is repealed. Section 291 repealed.

7. Section 294 of the principal Act is amended— Section 294 amended.

(a) in subsection (1)—

(i) by deleting “an institution” in paragraph (a) and substituting the following—

“ a hospital ”; and

(ii) by deleting “institution” wherever occurring in paragraph (b) and substituting the following—

“ hospital ”;

(b) by repealing subsection (2) and substituting the following subsection—

“ (2) When a person does not enter a hospital as directed under subsection (1) (a) or having entered a hospital pursuant to a direction given under that subsection or does not remain in the hospital or any other hospital to which he is transferred contrary to a direction given under that subsection a complaint may, with the approval of the Executive Director, Public Health, or an approved medical officer, be made against that person. ”;

(c) in subsection (5), by deleting “an institution” wherever occurring and substituting in each case the following—

“ a hospital ”;

(d) in subsection (6) by deleting “an institution” in paragraph (a) (ii) and substituting the following—

“ a hospital ”;

(e) in subsection (7)—

(i) by deleting “an institution” wherever occurring and substituting in each case the following—

“ a hospital ”; and

(ii) by deleting “the institution” wherever occurring and substituting in each case the following—

“ the hospital ”; and

(f) in subsection (8), by deleting “an institution” and substituting the following—

“ a hospital ”.

Section 295
amended.

8. Section 295 of the principal Act is amended—

(a) by repealing paragraph (a); and

(b) by deleting “an institution” in paragraph (b) and substituting the following—

“ a hospital ”.

Section 296
substituted.

9. Section 296 of the principal Act is repealed and the following section is substituted—

Regulations.

“ 296. (1) The Governor may make such regulations as may be necessary or convenient for carrying this Part into operation or for facilitating the operation of this Part.

(2) Regulations made under subsection (1) may prescribe a penalty not exceeding \$1 000 for any offence against any regulation made under that subsection. ”.

Section 311
amended.

10. Section 311 of the principal Act is amended by repealing subsection (1).

11. Section 324 of the principal Act is amended in subsection (1) by deleting “, infant health centre or hospital, public or private, for the reception of the sick generally” and substituting the following—

Section 324 amended.

“ or infant health centre ”.

12. Part XII of the principal Act is amended by repealing Divisions 2 and 3 and the headings thereto.

Part XII amended (sections 325 to 330).

PART III.—HOSPITALS ACT 1927.

13. In this Part the Hospitals Act 1927 is referred to as the principal Act.

Principal Act Reprinted as approved 11 December 1972 and amended by Acts Nos. 10 of 1973, 104 of 1975, 71 of 1976, 64 of 1980, 43 and 63 of 1981, 84 of 1982, 85 of 1983 and 28 of 1984.

14. The long title to the principal Act is amended by inserting after “Hospitals” the following—

Long title amended.

“ and for the control and regulation of Private Hospitals ”.

15. Section 2 of the principal Act is amended—

Section 2 amended.

(a) by inserting after the section designation “2.” the subsection designation “(1)”;

(b) by inserting after the definition of “board” the following definitions—

“ “Commissioner” means the Commissioner of Health of the Public Service of the State;

“day hospital facility” means premises that are not attached to, or, that are set apart from, a hospital being premises at which persons are

received for professional attention or professional medical attention in a class of professional attention determined by the Minister under subsection (3) to be professional attention but not being premises at which overnight accommodation is provided; ”;

- (c) in the definition of “hospital” by deleting “maternity hospital,” and substituting the following—

“ maternity home or maternity hospital, day hospital facility, ”;

- (d) by inserting after the definition of “practitioner” the following definition—

“ “private hospital” means a hospital that is not a public hospital; ”;

- (e) by deleting the definition of “public hospital” and substituting the following definition—

“ “public hospital” means any hospital that is—

(a) conducted or managed by—

(i) a board constituted under this Act; or

(ii) the Minister under this Act; or

(b) declared to be a public hospital under section 3; ”;

and

- (f) by inserting the following subsections—

“ (2) Notwithstanding the provisions of any other Act, the making or giving of a grant or subsidy to a private

hospital under this Act does not affect the status of the hospital as a private hospital.

(3) The Minister may determine any professional medical service to be professional attention for the purposes of the definition of "day hospital facility" in subsection (1).

(4) A determination under subsection (3) may be made by the Minister either generally or in relation to such professional attention as is specified or by reference to a declaration or determination made under any law of the State or the Commonwealth.

16. Section 3 of the principal Act is amended in subsection (1) by inserting after "applies to" the following—

Section 3
amended.

" any private hospital and "

17. Section 7A of the principal Act is amended—

Section 7A
amended.

(a) in paragraph (a), by deleting "to hospitals" and substituting the following—

" to public hospitals and for the purposes of any public health service provided under any Act administered by the Minister "; and

(b) in paragraph (b), by inserting after "which" the following—

" public "

18. Section 9 of the principal Act is amended in subsection (1) by inserting after "Act" the following—

Section 9
amended.

" in relation to public hospitals "

Section 10
amended.

19. Section 10 of the principal Act is amended—

- (a) by inserting after the section designation “10.” the subsection designation “(1)”;
- (b) by deleting “public” in paragraph (a);
- (c) by deleting “such” in paragraph (b);
- (d) by inserting before “if” in paragraph (c) the following—

“ subject to subsection (2) ”;

- (e) by deleting “such” in paragraph (c); and
- (f) by inserting the following subsection—

“ (2) Where a patient is a patient in a private hospital the following provisions apply in respect of an examination under subsection (1) (c)—

(a) an examination shall not be made except on complaint to the Executive Director;

(b) the medical practitioner of the patient shall be notified of the intention of the authorized person to examine the patient and given an opportunity to be present at the examination; and

(c) the person who is the licence holder under Part IIIA in relation to the hospital in which the patient is accommodated is notified of the intention to conduct the examination. ”.

Section 12A
amended.

20. Section 12A of the principal Act is amended in subsection (1) by deleting “of any hospital” and inserting the following—

“ of any public hospital ”.

21. Section 16 of the principal Act is repealed. Section 16
repealed.

22. After Part III of the principal Act the following Part is inserted— Part IIIA
inserted.

“ PART IIIA.—PRIVATE HOSPITALS.

26A. In this Part—

Interpreta-
tion.

“body corporate” includes any association of persons whether incorporated or not but does not include a partnership;

“licence” means a licence issued under this Part.

26B. (1) Any natural person or body corporate who or which desires to conduct a private hospital may apply and obtain a licence to conduct a private hospital. Licence to
conduct a
private
hospital.

(2) Subject to this Act, a person not being a member of a firm or a body corporate who desires to obtain a licence to conduct a private hospital shall satisfy the Commissioner—

- (a) that he or she has attained the age of 18 years;
- (b) that he or she is a person of good character and repute and a fit and proper person to conduct a private hospital;
- (c) that he or she has sufficient material and financial resources available to him or her to comply with the requirements of this Act; and
- (d) that he or she understands fully the duties and obligations imposed on him or her in relation to the conduct of a private hospital under this Act and otherwise.

(3) Subject to this Act, 2 or more persons constituting a firm who desire to obtain a licence to conduct a private hospital shall satisfy the Commissioner—

- (a) that all the natural persons by whom the firm is constituted and all of the persons concerned in the management or conduct of any body corporate by which the firm is constituted are persons of good character and repute and are persons fit to be concerned in the management or control of the private hospital;
- (b) that the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act;
- (c) that at least 1 of the natural persons referred to in paragraph (a) understands fully the duties and obligations imposed in relation to the conduct of a private hospital under this Act and otherwise.

(4) Subject to this Act, a body corporate that desires to obtain a licence to conduct a private hospital shall satisfy the Commissioner—

- (a) that all the natural persons concerned in the management or conduct of the applicant are persons of good character and repute and are persons fit to be concerned in the management or control of a private hospital;
- (b) that the applicant has sufficient material and financial resources available to it to enable it to comply with the provisions of this Act; and

- (c) that at least 1 of the persons referred to in paragraph (a) understands fully the duties and obligations imposed in relation to the conduct and management of a private hospital under this Act and otherwise.

26C. The Commissioner shall not grant a licence to conduct a private hospital unless he is satisfied—

Premises to be approved

- (a) that the proposed premises are suitable to be approved as a private hospital; and
- (b) that arrangements for the management, equipment and staffing of the private hospital are satisfactory.

26D. (1) Where the Commissioner is satisfied that an applicant complies with the requirements of section 26B and the premises at which the applicant proposes to conduct the private hospital are satisfactory for that purpose and that the arrangements for the management, equipment and staffing of the private hospital are satisfactory he may grant a licence to the applicant.

Grant of a licence.

(2) The Commissioner may impose such terms and conditions as he thinks fit in relation to any licence granted under this section.

(3) Without limiting the generality of subsection (2) conditions imposed in relation to a private hospital may specify—

- (a) the maximum number of patients that may be treated at any one time at the private hospital and kinds or classes of patients that may be treated at the private hospital; and

(b) the number and the categories of nursing and other staff, the kinds of nursing and other care that shall be provided or available at the private hospital and the periods and times at which they shall be provided or available.

(4) Subject to subsection (5), the granting of a licence and the terms and conditions imposed in relation thereto under this section shall, subject to subsection (6), be in the discretion of the Commissioner.

(5) When an application for a licence—

(a) is in respect of premises that are not approved as premises for a hospital under this Part the Commissioner shall notify the applicant of his decision within 3 months of the day that the application for the licence is lodged at the office of the Commissioner;

(b) is in respect of premises that are approved premises for a hospital under this Part the Commissioner shall notify the applicant of his decision within 30 days of the day that the application for the licence is lodged at the office of the Commissioner.

(6) A person who is aggrieved by a decision of the Commissioner refusing to grant a licence may within 30 days of that decision appeal to the Minister.

(7) The Commissioner may revoke or vary any terms or conditions or both that apply in relation to any licence issued under this Part.

26E. (1) Subject to this Act, every licence is valid from the date of its being granted but may be surrendered or cancelled pursuant to this Part. Duration of licence.

(2) A licence may be renewed annually in accordance with the regulations.

(3) A licence is not transferable.

26F. (1) Where the Commissioner is satisfied that— Cancellation of licence.

- (a) the holder of a licence to conduct a private hospital is not fit to be concerned in or able to conduct a private hospital or, if the holder of a licence is a body corporate, any person concerned in the management or conduct of the body corporate is not fit to be concerned in or able to conduct a private hospital;
- (b) the premises of a private hospital or any portion thereof are no longer suitable to be used as a private hospital;
- (c) a licence holder does not comply with this Act or the terms or conditions imposed by the Commissioner in relation to the licence issued to him or it; or
- (d) a licence holder fails to carry out an order given under section 26G,

the Commissioner may cancel or refuse to renew the licence granted in respect of that licence holder.

(2) A licence shall not be cancelled under subsection (1) unless and until a notice of intention to cancel the licence and summary of the reasons for the proposed cancellation have been served on the licence holder and the licence holder has been given a reasonable opportunity to be heard on the matter.

Commis-
sioner may
close private
hospital.

26G. (1) Notwithstanding the fact that any premises are approved under this Part as premises for a private hospital where the Commissioner is satisfied that any building work in the private hospital has not been carried out in a workmanlike manner or that any part of the building is unsafe or unsatisfactory or that any equipment or thing is faulty or unsatisfactory the Commissioner may by order in writing direct the licence holder to have the building work remedied or to remedy or renew the faulty or unsatisfactory equipment or thing within such time as the Commissioner specifies in the order.

(2) A licence holder who fails to comply with an order given under subsection (1) within the time specified in the order commits an offence.

Penalty: \$2 000.

(3) Where a licence holder fails to comply with an order under subsection (1) within the time specified therein the Commissioner may order the closure of the private hospital notwithstanding the fact that proceedings for an offence against subsection (2) have not been commenced or if commenced have not been completed.

(4) Notwithstanding anything in this section, the Commissioner may, if in the opinion of the Commissioner, the necessity of the case so requires, order any private hospital which the Commissioner deems unsafe to be closed forthwith and thereupon

the hospital shall be closed accordingly until the Commissioner by order in writing permits the private hospital to be opened.

26H. (1) A person whose licence to Appeals.
conduct a private hospital is cancelled or whose licence is not renewed under section 26F may appeal to the Local Court against the cancellation.

(2) An appeal under subsection (1)—

(a) shall be lodged with the clerk of the Local Court within 30 days of the date of the decision of the Commissioner cancelling or refusing to renew the licence in question;

(b) does not operate as a stay on the cancellation of the licence.

(3) Notwithstanding section 26K or subsection (2) (b) where the Commissioner has cancelled or refused to renew a licence under section 26F and the licence holder appeals against the cancellation or refusal to renew the licence the Commissioner may pending the determination of an appeal permit a person to conduct the private hospital conducted by the licence holder prior to the cancellation or refusal subject to such terms and conditions as the Commissioner specifies in writing.

26I. (1) The Governor may, out of moneys Grants and
subsidies.
appropriated by Parliament, make grants or subsidies towards the costs of establishing or maintaining, or both, a private hospital in respect of which a licence is granted under this Part.

(2) A grant or subsidy shall not be made or given under this section unless the licence holder agrees to conduct the private hospital in accordance with the regulations and such

conditions as are imposed by the Commissioner and to comply with any directions given by the Commissioner.

Guidelines.

26J. (1) The Commissioner may issue guidelines with respect to the construction, establishment and maintenance of private hospitals.

(2) Guidelines issued under subsection (1) may—

- (a) specify standards to be observed and procedures to be followed in relation to the construction, establishment and maintenance of private hospitals;
- (b) adopt, either wholly or in part or with modifications and either specifically or by reference to any rules, regulations, codes, instructions or subsidiary legislation under any Act of the State or the Commonwealth or any standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution or other body specified in the guidelines.

Offences.

26K. (1) A person shall not on or after the appointed day—

- (a) conduct or manage a private hospital or nursing home or by any means hold out that that person conducts or manages a private hospital or nursing home unless that person is the holder of a licence;
- (b) conduct or manage a private hospital or nursing home or by any means hold out that that person conducts or manages a private hospital or nursing home unless those premises are premises that are approved as a private hospital under this Part; or

- (c) build, alter or extend any private hospital or nursing home unless the Commissioner has approved of the building, alteration or extension as the case requires.

Penalty: \$5 000.

(2) In subsection (1) "appointed day" means such day or days as is or are fixed by the Minister by notice published in the *Government Gazette* in relation to subsection (1) (a), (b) or (c) as the case may be.

26L. A licence holder who or which fails to comply with any term or condition specified in the licence issued to the licence holder commits an offence.

Failure to comply with conditions.

Penalty: \$1 000.

26M. Where a body corporate is guilty of an offence against any provision of this Part, every director and every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was acting, or purporting to act in any such capacity, shall also be liable to be convicted of the offence unless that person proves that the offence was committed without his or her consent or knowledge and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to his or her functions in that capacity and in all the circumstances.

Vicarious liability.

26N. (1) An application for a licence under this Part and any licence issued under this Part shall be in the form of a form approved by the Commissioner.

Form of application and licence.

(2) The Commissioner may require an applicant for a licence to submit such additional information in support of the application as the Commissioner specifies and the Commissioner may require any information in support of an application to be verified by statutory declaration.

Regulations.

26O. (1) The Governor may make such regulations as are contemplated by this Part or as he considers necessary or expedient for the purposes of this Part.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) prescribe the fees payable in relation to an application for a licence to be paid to the Commissioner, for the renewal of any licence and for the approval of any premises as a private hospital;
- (b) provide for the conduct, good management and staffing of private hospitals;
- (c) provide for the establishment and keeping of registers containing such information as may be prescribed in relation to private hospitals;
- (d) provide for the separation or removal of any patient suffering from any fever or infectious or contagious disease;
- (e) prescribe penalties not exceeding \$500 for a breach of any regulation.

(3) The Governor may by order published in the *Government Gazette* exempt any private hospital from any of the regulations made under this section generally or for such period as is specified in the order.

(4) An order made under subsection (3) may be cancelled or extended from time to time by the Governor by further order published in the *Government Gazette*. ”.

23. Section 27 of the principal Act is amended— Section 27 amended.

(a) in subsection (1)—

(i) by deleting “, with the approval of the Minister,”; and

(ii) by deleting “public”;

(b) by repealing subsection (3); and

(c) by inserting after subsection (5) the following subsection—

“ (6) The provisions of this section do not apply to or in relation to a public hospital or proposed public hospital unless the Minister has given prior approval in relation thereto and has given a valid undertaking to provide at least one-half of the capital costs thereof. ”.

24. Section 31 of the principal Act is amended— Section 31 amended.

(a) in subsection (1) by deleting “any hospital” and substituting the following—

“ any public hospital ”; and

(b) by inserting before “hospital” the following—

“ public ”.

25. Section 32 of the principal Act is repealed. Section 32 repealed.

Sections 34
and 34A
inserted.

26. After section 33C of the principal Act the following sections are inserted—

Applica-
tion of
sections 33A
to 33C.

“ 34. Sections 33A to 33C apply to and in relation to public hospitals only.

Board may
set apart
hospitals for
treatment of
infectious
diseases.

34A. The board of a public hospital may, and at the direction of the Minister shall, conduct the public hospital or set apart any portion of the public hospital for the purposes of the reception and treatment of any person suffering from or suspected to be suffering from an infectious disease. ”.

Section 35
amended.

27. Section 35 of the principal Act is amended by inserting after “this Act,” where secondly occurring the following—

“ in relation to a public hospital ”.

Section 35A
inserted.

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

Indemnity.

“ 35A. No liability shall attach to the Commissioner, any officer of the Department, a member of a board of a public hospital or any person authorized by the Executive Director for any act or omission by him or her in good faith and in the exercise or purported exercise of his or her powers or functions or in the discharge or purported discharge of his or her duties under this Act. ”.

29. Section 37 of the principal Act is amended— amended.
Section 37

(a) in subsection (2)—

(i) by deleting paragraphs (a) and (b) and substituting the following paragraphs—

“ (a) publish model by-laws for the guidance of boards in respect of all or any of the matters regarding which boards may make by-laws;

(b) enable the Executive Director to transfer patients from any public hospital to any other public hospital or institution having or providing special facilities, skill or equipment or for any other purpose; ”; and

(ii) by deleting “hospital board” in paragraph (e) and substituting the following—

“ board of a public hospital ”;

(b) in subsection (2a)—

(i) by deleting “made by a hospital” and substituting the following—

“ made by a public hospital ”;
and

(ii) by deleting “provided by or in the hospital” and substituting the following—

“ provided by or in the public hospital ”;

- (c) in subsection (2b) by deleting “made by a hospital” and substituting the following—

“ made by a public hospital ”;

- (d) in subsection (2c) by deleting “provided by the hospital” and substituting the following—

“ provided by the public hospital ”;

- (e) by inserting after subsection (2e) the following subsections—

“ (2f) The Governor may make regulations under this section for the purposes of the administration, conduct and good management of any public hospital or portion of a public hospital in which persons suffering from or suspected to be suffering from any infectious disease are received or treated, or both, and without limiting the generality of the foregoing regulations may be made—

- (a) providing for the detention, discipline and the maintenance of good conduct of patients and for the conduct of persons having care of patients in a public hospital conducted for the reception or treatment of persons suffering from an infectious disease or any portion of a public hospital set apart for that purpose;
- (b) controlling the conduct of visitors and other persons;
- (c) authorizing the search of persons and of the possessions of persons entering or visiting

a public hospital conducted for the reception and or treatment of persons suffering from or suspected to be suffering from infectious diseases or any portion of a public hospital set apart for those purposes and seize anything found on persons entering or visiting any such place that is prohibited under the regulations;

- (d) enabling a medical practitioner or any person authorized in writing by the Commissioner to control any patient whose conduct is detrimental to his own condition or that of any other patient therein by such means, including personal restraint, detention or by administration of a medication, as is most conducive to the welfare of the patient concerned and any of the other patients, but so that no greater force or medication is used or administered than is reasonably necessary in the circumstances;
- (e) enabling the treatment in a suitable hospital within any prison of any patient who cannot be restrained conveniently in a public hospital or a patient who is serving a sentence of imprisonment.

(2g) In any proceeding for an offence against a regulation made under this section a certificate signed by the Executive Director stating that—

(a) a person was a person subject to detention under the regulations;

(b) any public hospital is or was conducted for the reception or treatment or both, of persons suffering from or suspected to be suffering from an infectious disease or that any portion of a public hospital has been set apart for that purpose,

is evidence of that fact. ”; and

(f) in subsection (3)—

(i) by inserting before “hospital” wherever occurring in paragraph (ad) in each case the following—

“ public ”;

(ii) by inserting before “hospital” wherever occurring in paragraph (ae) in each case the following—

“ public ”; and

(iii) by inserting after “patient” in paragraph (af) the following—

“ at or by a public hospital ”.

30. After section 37 of the principal Act the following section is inserted—

Section 38
inserted.

“ 38. (1) The Minister shall carry out a review of the operation of this Act as soon as is practicable after 1 January 1991 and every 5th anniversary of that date and in the course of such review the Minister shall consider and have regard to—

Review of
Act.

- (a) the attainment of the objects of this Act;
- (b) the administration of this Act;
- (c) the effectiveness of the operations of the Minister, the boards of the public hospitals under this Act, the Department, the Commissioner, the Executive Director and authorized persons under this Act;
- (d) the need for the continuation of the boards of public hospitals and any other committee or body established or constituted under or for the purposes of this Act;
- (e) such other matters as appear to the Minister to be relevant.

(2) The Minister shall prepare a report based on the review referred to in subsection (1) and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament. ”.

31. (1) Subject to this section, any institution or premises registered as a private hospital under the Health Act 1911 as in force before the commencement of this Act shall be deemed to be approved premises for a private hospital for the purposes of the principal Act as in force after the commencement of this Act.

Savings and
transitional.

(2) Subject to this section, any person, firm or body corporate conducting any premises to which subsection (1) applies shall, subject to satisfying the Commissioner as to the matters referred to in section 26B of the principal Act within 60 days after the appointed day fixed under section 26K of the principal Act, be deemed to be a licence holder under the principal Act as amended by this Act in respect of those premises.

(3) The Commissioner may give such directions as he thinks fit requiring any matter or thing to be done to or in relation to any premises to which subsection (1) applies for the purposes of ensuring that the premises are fit for a private hospital and may specify in the directions the time or times within which the directions shall be complied with.

(4) Where the Commissioner has given a direction under subsection (3) in relation to any premises and the directions have not been complied with within the time specified in relation to those directions the Commissioner may cancel the licence of the person, firm or body corporate conducting the premises in question and where he does so the person, firm or body corporate, as the case requires, may within 30 days of that decision appeal to the Local Court against the cancellation.
