

# **Private Hospitals and Health Services Act 1927**

Compare between:

[26 May 2016, 07-g0-02] and [01 Jul 2016, 07-h0-03]

## **Private Hospitals and Health Services Act 1927**

An\_Act to provide for the establishment, maintenance, and management of public hospitals and for the control and regulation of private hospitals and private psychiatric hostels, for the provision of other health services and for incidental and other and for related purposes.

[Long title inserted by No. 3311 of 19722016 s. 3; amended by No. 53 of 1985 s. 14; No. 103 of 1994 s. 4; No. 69 of 1996 s. 40260.]

## Part I — Preliminary

#### 1. Short title

This Act may be cited asis the Private Hospitals and Health Services Act 1927-4.

[Section\_1 amended inserted by No. 3311 of 19722016 s. 4; No. 103 of 1994 s. 5261.7

#### 2. Terms used

(1) In this Act, subject to the context —

agency means an agency established under section 7B(1);

agency board means an agency board referred to in section 7C(1)(b);

board means a hospital board constituted under section 15, and includes the Minister in relation to any public hospital controlled by him under section 7;

**CEO** has the meaning given by section 3 of the *Health* Legislation Administration Act 1984;

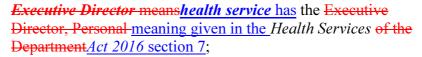
Chief Psychiatrist has the meaning given in the Mental Health Act 2014 section 4;

Commonwealth Act means the Health Insurance Act 1973, as amended from time to time, of the Parliament of the Commonwealth:

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;

**Department** means the department of the Public Service of the State principally assisting the Minister in the administration of this Act:

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hospital means an institution for the reception and treatment of persons suffering from illness or injury, or in need of medical, surgical or dental treatment or assistance, and includes a maternity home or maternity hospital, day hospital facility, nursing home or nursing post;

hospital service includes accommodation, maintenance, care, and all other services rendered, goods supplied or work done at, by or on behalf of a public hospital, in relation to the person in question;

## hospital service provider means

- (a) the board of a public hospital;
- the holder of a licence granted under this Act to conduct a private hospital or a private psychiatric hostel;

hospital has the meaning given in the Health Services Act 2016 section 8;

infectious disease has the meaning given to that expression in the Health Act 1911;

medical practitioner means a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession;

mental illness has the meaning given in the Mental Health *Act 2014* section 4;

nursing home means premises in which persons who do not require constant medical attention are received as patients and lodged for the purpose of medical supervision and nursing care but does not include any premises declared by the Minister under section 3 not to be a nursing home for the purposes of this Act:

nursing post means a place at which a nurse is stationed and at which facilities exist for medical attention but which is not normally used for the accommodation of in-patients;

#### s. 2

<del>(a)</del>	a person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the medical profession; and
— (b)	any other person practising in the field of health or medicine who is declared by the Minister under section 3(5) to be a practitioner for the purposes of this Act;
privat	e hospital means a hospital that is not a public hospital
grante	e hospital service provider means the holder of a licer d under this Act to conduct a private hospital or a private latric hostel;
maint	e non-profit hospital means a private hospital which is ained by a religious or charitable organization and is not not on for the purpose of private gain;
privat	e psychiatric hostel means private premises in which
more	persons who —
(a)	are socially dependent because of mental illness; and
(b)	are not members of the family of the proprietor of the premises,
reside	and are treated or cared for;
-	the hospital means any has the meaning given in the Heates Act 2016 section 8(6) and —
(a)	includes a hospital that is
<del>(a)</del>	-conducted or managed by
	(i) a board constituted under this Act; or
	(ii) the Minister under this Act;
	<del>or</del>
<del>(b)</del>	
<del>teach</del>	ing (b) does not include a hospital means an
	tion declared by the Minister under section 3 not to be

teachingpublic hospital forunder the purposes of this Health Services Act.

(1A) In the definition of *hospital* in subsection (1), illness includes mental illness (as defined in the Mental Health Act 2014 2016 section 4) but this subsection does not affect any requirement under that Act that a person be detained at an authorised hospital (as defined in section 4 of that Act) or at another place.8(8).

## [(1A) deleted]

- 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.
- 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).
- 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.

## [(3), (4) deleted]

[Section 2 inserted by No. 33 of 1972 s. 5; amended by No. 71 of 1976 s. 2; No. 85 of 1983 s. 3; No. 28 of 1984 s. 49; No. 53 of 1985 s. 15; No. 103 of 1994 s. 6 and 15; No. 14 of 1996 s. 4; No. 69 of 1996 s. 41; No. 61 of 2004 s. 12; No. 28 of 2006 s. 263; No. 22 of 2008 Sch. 3 cl. 27; No. 35 of 2010 s. 93; No. 25 of 2014 s. <del>26</del>26; No. 11 of 2016 s. 262.]

#### **3. Application of Act**

This Act applies to any private hospital and any public hospital (1) howsoever founded or maintained (whether wholly or partly by or under governmental authority or otherwise), but does not apply to a hospital used exclusively in connection with a prison. **Preliminary** 

(2) The Minister, acting on the written recommendation of the Executive Director and with the consent of the governing body of the institution, may by notice published in the *Gazette* declare any institution to be a public hospital subject to and for the purposes of this Act.

## $\int (2) deleted$

- (3) The Minister may by notice published in the *Gazette* declare that any institution is not a public hospital, or is not a nursing home, as the case may be, for the purposes of this Act.
- (4) The Minister may by notice published in the *Gazette* declare that any institution is a teaching hospital for the purposes of this Act.
- (5) The Minister may by notice published in the *Gazette* declare any person practising in the field of health or medicine to be a practitioner for the purposes of this Act.

#### [(4). (5) deleted]

[Section 3 inserted by No. 33 of 1972 s. 6; amended by No. 28 of 1984 s. 50; No. 53 of 1985 s. 16; No. 49 of 1994 s. 4; No. 69 of 1996 s. 4242; No. 11 of 2016 s. 263.]

#### 4. Application of Act to hospitals where mentally ill treated

Where a <u>private</u> hospital or part of a <u>private</u> hospital is an authorised hospital under the *Mental Health Act 2014*, this Act has effect in relation to the hospital or part of the hospital, and persons received or admitted into it, subject to the provisions of that Act.

[Section 4 inserted by No. 69 of 1996 s. 43; amended by No. 25 of 2014 s. 2727; No. 11 of 2016 s. 264.]

#### Part II — Administration

#### 5. Minister to control general administration

The general administration of this Act shall be under the control of the Minister.



- (1) It shall be the duty of the Minister to provide, to such extent as he considers necessary to meet all reasonable requirements,—
  - (a) hospital accommodation; and
  - (b) hospital service, whether at a public hospital or, if necessary on medical grounds, elsewhere; and
- (c) health services.
- (2) Subject to the provisions of the *University Medical School*, *Teaching Hospitals*, *Act 1955*, it shall be the duty of the Minister to ensure that such facilities as the Minister determines to be required for clinical teaching and research are provided at teaching hospitals, and that those facilities and the medical and teaching resources, and the services available, are co-ordinated and utilised effectively.
- (3) The duty of the Minister under this section may be discharged by making arrangements, on such terms, which may include the payment of charges, as the Minister thinks fit for securing the performance of any service on behalf of the Minister.
- (4) The duty of the Minister does not extend to any matter within the exclusive administrative competence of any institution other than a public hospital, unless by and with the consent of the governing body of that institution.
- [Section 5A inserted Deleted by No. 3311 of 19722016 s. 8; amended by No. 103 of 1994 s. 7; No. 17 of 1996 s. 4265.1
- [6. Deleted by No. 28 of 1984 s. 51.]

## s. 7A

 $\int 6A$ . Deleted by No. 71 of 1976 s. 3.]

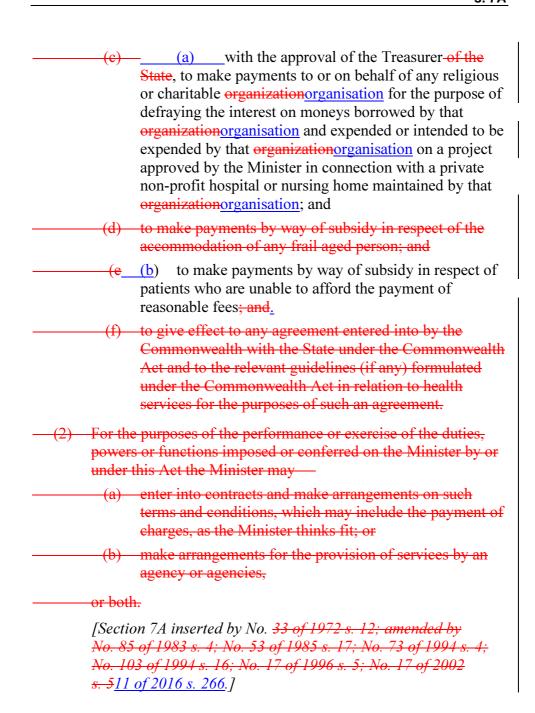
#### **[7.** Minister's functions if no board for public hospital

- Where in relation to any public hospital the Governor does not appoint any person to constitute a hospital board in accordance with the provisions of section 15, or where a board is abolished in accordance with the provisions of section 8 the management and control of the hospital is vested in the Minister.
- Whilst the Minister is so controlling any hospital he shall be deemed to be the board thereof and to be incorporated under the name of such board, and shall have all the duties, powers and functions of a board, and all property which would vest in a board of such hospital shall vest in the Minister.

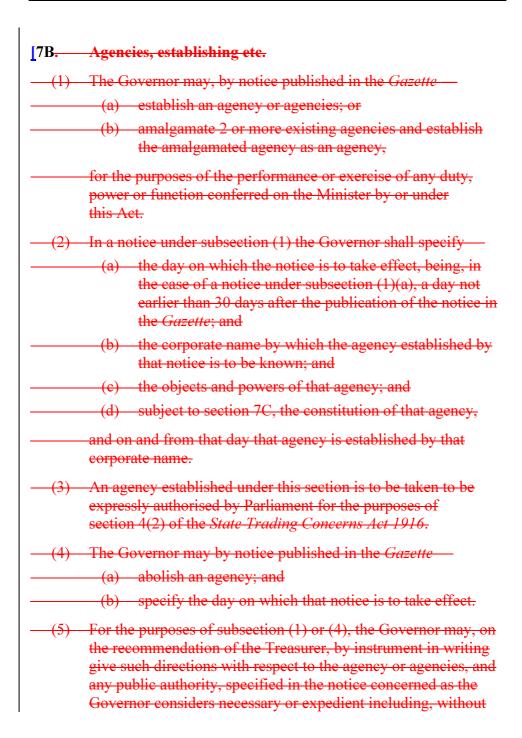
<del>[Section 7 amended</del>Deleted by No. <del>33</del>11 of <del>1972</del>2016 s. <del>11 and</del> 12; No. 98 of 1985 s. 3; No. 17 of 2002 s. 4265.]

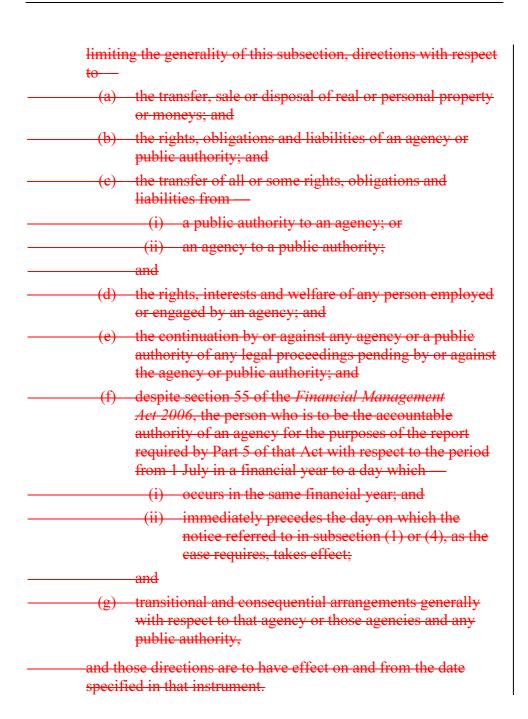
#### 7A. Minister's general powers

- (1)The Minister shall have general has power —
- to establish depots and supply equipment, stores, drugs and other hospital requisites to public hospitals and for the purposes of any public health service provided under any Act administered by the Minister; and
  - (b) to maintain an exchange through which public hospitals may secure the services of staff; and
  - to provide pathology services and related medical scientific services for the purpose of diagnosing and managing disease or protecting public health; and
- (bb) to provide forensic biology services and forensic pathology services, including obtaining DNA profiles for forensic or other purposes; and
- to conduct training and instruction in, and research into, the services referred to in paragraphs (ba) and (bb); and

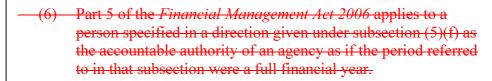


#### s. 7A





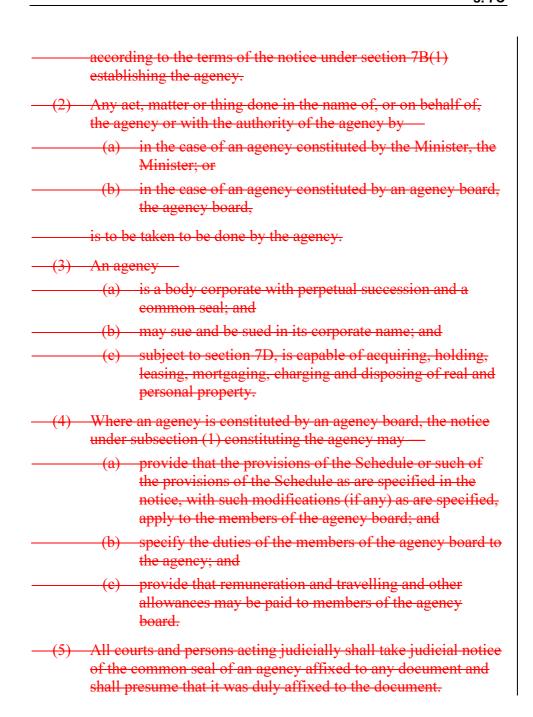
#### s. 7C



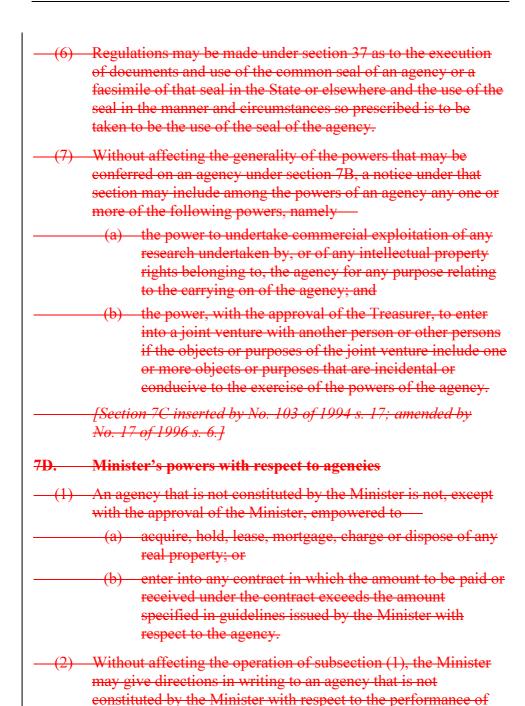
- A notice published under subsection (1) or (4) shall be laid before each House of Parliament within 6 sitting days of such House next following publication of the notice in the Gazette.
- The Registrar of Titles under the Transfer of Land Act 1893, the Registrar of Deeds and Transfers under the Registration of Deeds Act 1856, and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take note of the provisions of this section and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this section.
- Without limiting subsection (8), a statement in an instrument executed by an agency or public authority that any estate or interest in land or other property has become vested in it under a direction given under this section is evidence of that fact.
- In this section *public authority* means the Department or a body constituted or established under an Act administered by the Minister.
- FSection 7B inserted. Deleted by No. 10311 of 19942016 s. <del>17; amended by No. 57 of 1997 s. 74(3); No. 31 of 1997</del> s. 34(1); No. 17 of 2002 s. 6; No. 77 of 2006 Sch. 1 cl. 86(1) and (2); No. 47 of 2011 s. 16.7

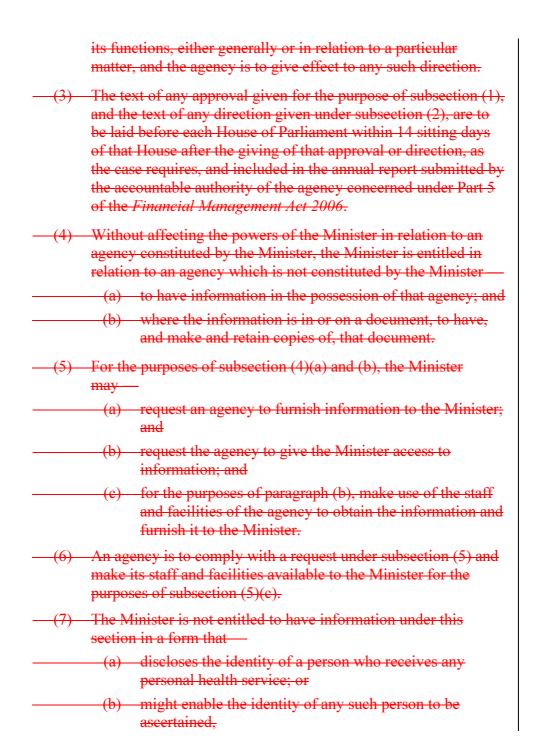
#### Agencies, constitution, nature etc. of

- An agency may be constituted by
  - (a) the Minister: or
- by an agency board appointed by the Governor consisting of such number of persons, being not less than 3, as the Governor determines,

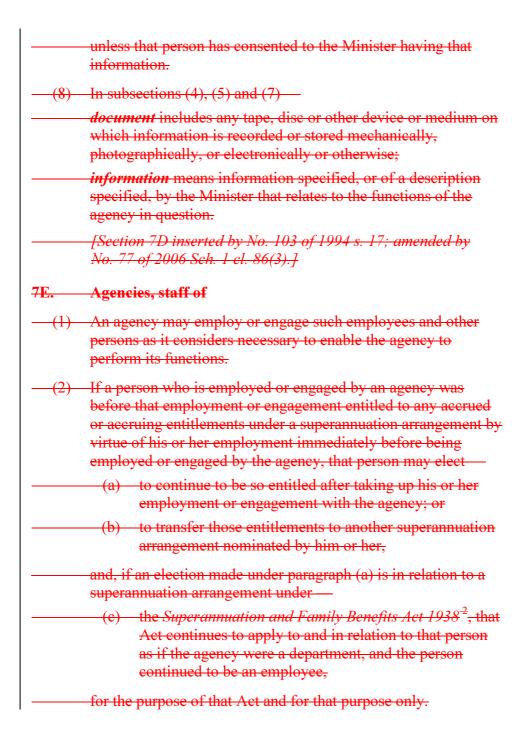


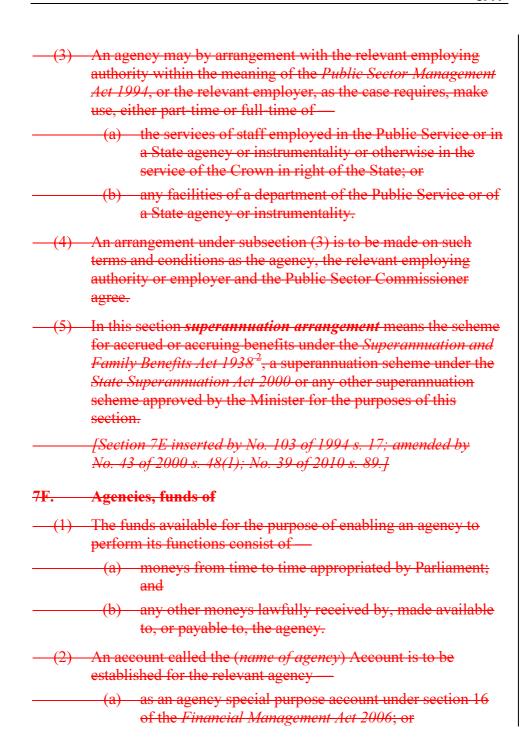
#### s. 7D



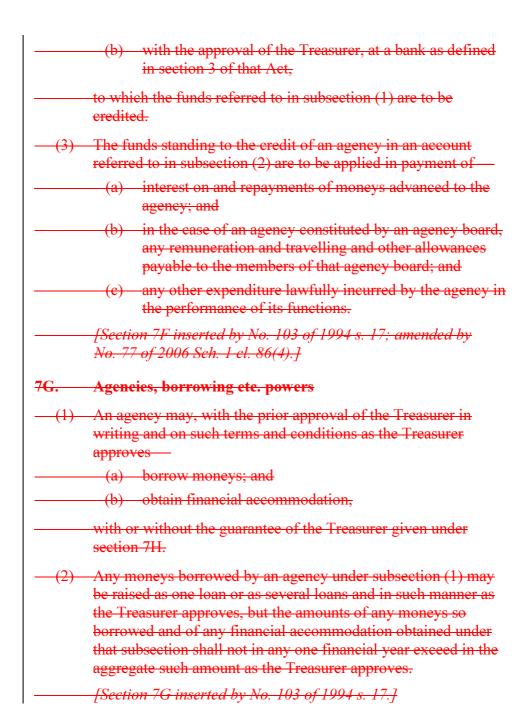


#### s. 7E





#### s. 7G





- The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee, in such form and subject to such terms as the Treasurer determines, the payment of any moneys payable by an agency in respect of moneys borrowed or financial accommodation obtained by it under section 7G(1).
- The due payment of moneys payable by the Treasurer under a guarantee given under subsection (1)
- (a) is hereby guaranteed by the State; and
- (b) shall be made by the Treasurer out of the Consolidated Account, which to the necessary extent is appropriated accordingly.
- The Treasurer shall cause any amounts received or recovered from an agency or otherwise in respect of any payment made by the Treasurer under a guarantee given under subsection (1) to be credited to the Consolidated Account.
- (4) Before a guarantee is given by the Treasurer under subsection (1), the agency shall give to the Treasurer such security as the Treasurer requires and shall execute all such instruments as are necessary for the purpose.
- The Treasurer may, after consultation with an agency, fix charges to be paid by the agency to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under this section.
- Payments by the agency to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.
- [Section 7H inserted by No. 103 of 1994 s. 17; amended by No. 77 of 2006 s. 4.1

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#### Financial Management Act 2006 and Auditor General <del>7</del>I. Act 2006, application of

The provisions of the *Financial Management Act 2006* and the Auditor General Act 2006 regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of each agency and its operations.

[Section 71 inserted by No. 103 of 1994 s. 17; amended by No. 77 of 2006 Sch. 1 cl. 86(5).1

#### Closing public hospital, abolishing board, varying trusts

The Governor may close any public hospital or abolish any board, and may, by leave of the Supreme Court or any judge thereof, make any necessary variation of any trusts affecting any property used or applicable for any of the purposes of any such public hospital.

#### **Inquiries into public hospitals**

- The Minister may, from time to time, hold such inquiries or investigations as he may deem necessary in relation to any matter concerning the public hospitals or any public hospital, or the administration of this Act in relation to public hospitals, and may appoint one or more persons to conduct such inquiries or investigations as he may deem fit.
- When an inquiry is being held the Minister or any such person shall have free access to all books, plans, maps, documents, and other things belonging to any board, and shall have in relation to witnesses and their examination, and the production of documents, the powers conferred upon a Royal Commission or the chairman thereof by the Royal Commissions Act 1968, and may enter and inspect any building, premises, or place, the entry or inspection whereof appears to be requisite for the purpose of such inquiry.

[Section 9 amended by No. 33 of 1972 s. 13; No. 53 of 1985] <del>s. 18</del>267</del>.7

# 10. Visiting and inspecting <u>private</u> hospitals, <u>Executive</u> <u>Director's powers for</u>

- (1) Any person authorised by the Executive Director CEO for that purpose may—
  - (a) visit any private hospital; and
  - (b) inspect every part of any <u>private</u> hospital, including any outbuildings or premises <del>appurtenant thereto</del> attached to the private hospital; and
  - (c) subject to subsection\_(2) if the person is a medical practitioner, medically examine any patient in any hospital.
- (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 shallmust not be made except on complaint to the Executive Director CEO; and
  - (b) the <u>patient's</u> medical practitioner <u>of the patient shallmust</u> be notified of the intention of the authorised 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 to must be notified of the intention to conduct the examination.

[Section 10 amended inserted by No. 2811 of 19842016 s. 52; No. 53 of 1985 s. 19; No. 73 of 1994 s. 4268.]

#### 11. Obstructing visits etc. under s. 10, offence

No person shall —

(a) obstruct any person authorised under section 10 in the performance of his duties, or the visitation or inspection of any public hospital; or

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wilfully mislead any person authorised under section 10 in such a way as to be likely to interfere with the due discharge of the functions of such officer under this Act.

Penalty: \$200.

[Section 11 amended by No. 33 of 1972 s. 14; No. 28 of 1984 s. 5353; No. 11 of 2016 s. 269.7

#### **Endowment lands for public hospitals; hospital sites** 12-

- It shall be lawful for the Governor to set apart and proclaim any lands vested in the Crown as a reserve for the endowment of any public hospital.
- Any lands heretofore or hereafter set apart or proclaimed by the Governor as a reserve for a hospital site or for the endowment of any public hospital shall vest in the board of the hospital.

#### Superannuation schemes etc. for public hospital staff -12A.

- The Minister, with the approval of the Treasurer of the State, may establish and maintain a scheme to make financial provision in respect of the retirement, invalidity or death of practitioners engaged for the purposes of this Act or on the staff of any public hospital, not being persons who are contributors for the purposes of the Superannuation and Family Benefits  $Act 1938^{-2}$ .
- A scheme established under this section shall be administered by trustees appointed in writing by the Minister and in accordance with rules to be approved by the Treasurer of the State.
- The Minister, with the approval of the Treasurer of the State, may make agreements with other persons or institutions for the establishment of joint machinery to facilitate the transfer of members of a superannuation scheme, or of persons who hold other entitlements to benefit in the event of retirement, invalidity or death, from the provisions of that scheme or

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- entitlement to the scheme established under this section or otherwise, and generally in relation to such matters.
- The Minister, with the approval of the Treasurer of the State, may amend the scheme established under this section, or any agreement made under subsection (3).
- Any act, matter or thing done or executed before the coming into operation of the Hospitals Act Amendment Act 1972<sup>4</sup>, which would have been lawful had this section been in force at the time such act, matter or thing was made, done or executed is hereby validated.
- [Section 12A inserted Deleted by No. 3311 of 19722016 s. 15; amended by No. 28 of 1984 s. 54; No. 53 of 1985 s. 20; No. 73 of 1994 s. 4270.7
- *[13.*] Deleted by No. 28 of 1984 s. 55.]

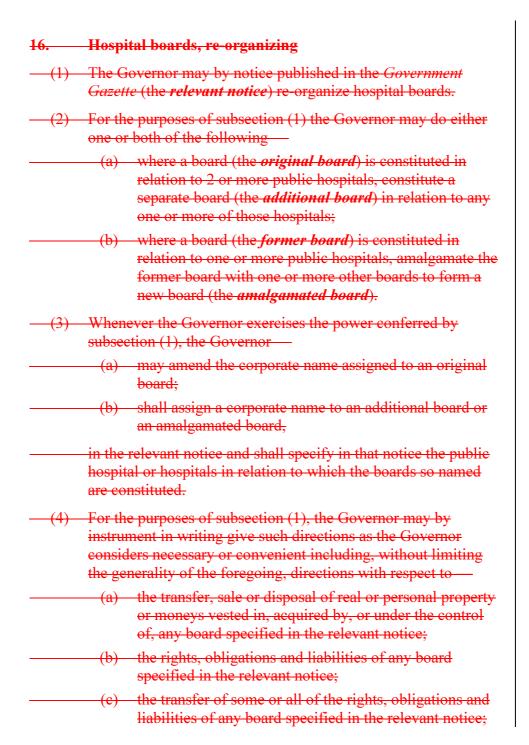
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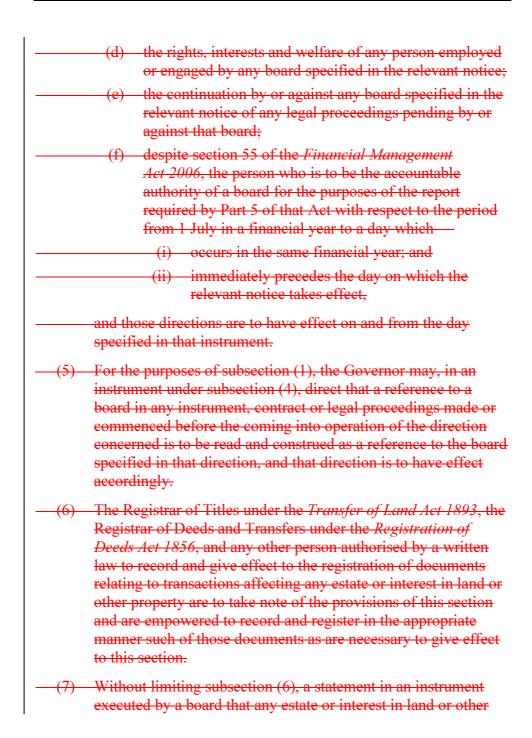
## [Part III — Local administration

Deleted by No. 33 of 1972 (s. 17.1)

#### Hospital boards, appointment and nature of etc.

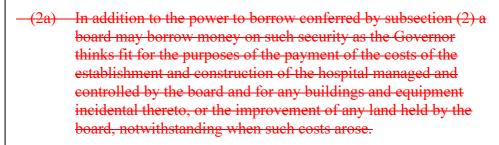
- The Governor may appoint such persons as he thinks fit to constitute a hospital board in relation to any public hospital and, without limiting his absolute discretion as to whom he appoints, may, if he thinks fit, direct the hospital board, or, if there be no hospital board appointed in relation to that hospital, the Minister acting under section 7 as the board, to seek nominations, in accordance with the regulations, of persons for appointment to a hospital board.
- [(1a) Omitted under the Reprints Act 1984 s. 7(4)(e).]
- The management and control of a public hospital is vested in the hospital board constituted in relation to it.
- Every board shall be a body corporate with perpetual succession and a common seal and the corporate name of the board shall be the name assigned to it by the Governor.
- Every board shall be capable of suing and being sued in its corporate name.
- The Governor may appoint a deputy for any member of a hospital board.
- The members of a hospital board shall appoint one of their number to be the Chairman except in the case of the hospital board of a teaching hospital when the Minister shall appoint one of the members of the hospital board to be the Chairman.
- The constitutional provisions contained in the Schedule shall have effect in relation to a hospital board.
- [Section 15 inserted by No. 33 of 1972 s. 18; amended by No. 64 of 1980 s. 3.1





- property has become vested in the board under a direction given under this section is evidence of that fact.
- (8) Part 5 of the Financial Management Act 2006 applies to a person specified in a direction given under subsection (4)(f) as the accountable authority of a board as if the period referred to in that subsection were a full financial year.
- If the accountable authority of a former board is under a direction given under subsection (4)(f) required to report in respect of the former board for the purposes of Part 5 of the Financial Management Act 2006, the former board and its accountable authority as constituted and appointed, respectively, immediately before the relevant notice takes effect continue in existence for the purposes of giving effect to that direction and for that purpose only.
- (10) The boards affected by the relevant notice are to arrange between themselves for the provision of such clerical, accounting and other assistance as is reasonably required for giving effect to any direction given under this section and, if they fail to reach such an arrangement, the Minister may give such directions to those boards as are necessary for the provision of that assistance and effect shall be given to any such direction.
- [Section 16 inserted by No. 103 of 1994 s. 8; amended by No. 31 of 1997 s. 34(2); No. 77 of 2006 Sch. 1 cl. 86(6) (8); No. 47 of 2011 s. 16.]
- Hospital boards, powers of over lands vested in them
- [(1) deleted]
- (2) A board shall also, with the consent of the Governor, have power to sell, lease, or exchange any lands vested in it, and to pay or receive money by way of equality of exchange, and to acquire land and other property, and to borrow money on such security as the Governor thinks fit.

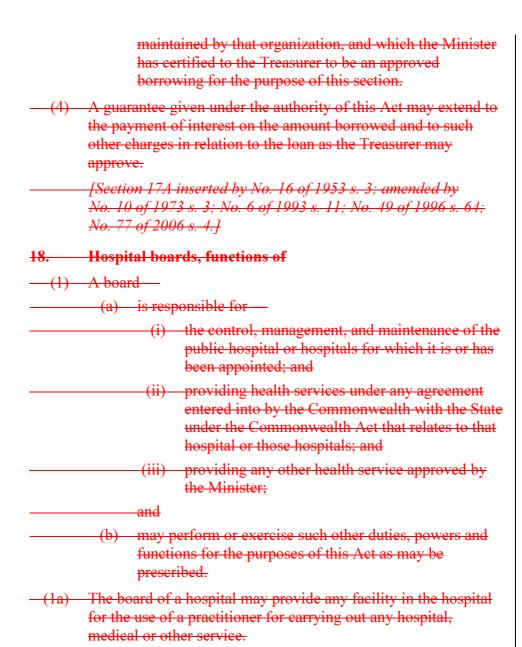
#### s. 17A



- The powers of selling, exchanging, mortgaging, or leasing lands which are conferred upon a board by this Act shall extend to land held in trust for any special purpose, notwithstanding the terms of the trust; but the proceeds of any such sale, and the land or money obtained by any such exchange, shall be subject to the like trusts, so far as may be, as the land so disposed of.
- No power conferred by this section shall be exercised without the consent of the Governor.
- [Section 17 amended by No. 16 of 1953 s. 2; No. 51 of 1955 s. 2; No. 10 of 1973 s. 2; No. 84 of 1982 s. 2; No. 74 of 2003 s. 146(2); No. 8 of 2009 s. 13.7

#### Hospital boards etc., State guarantees for

- The payment of all moneys payable by the Treasurer of the State under a guarantee given by him under the authority of this Act, is hereby guaranteed by the State.
- All sums required by the Treasurer for fulfilling a guarantee so given, shall be charged to the Consolidated Account, which is hereby to the necessary extent appropriated accordingly.
- Under the authority of this Act the Treasurer of the State may guarantee the repayment of any amount borrowed from time to
- (a) by the board of a public hospital under the powers conferred by section 17; or
- by any religious or charitable organization for expenditure on a project in connection with a private, non-profit hospital or nursing home maintained or to be



(1b) The provision of any facility under subsection (1a) shall be on

are determined by the Minister from time to time.

such terms and conditions, including the payment of charges, as

#### s. 19

- The Minister may, after consultation with a hospital board, give to it directions as to the exercise of its functions, but no such direction shall be given concerning the nature of the medical treatment to be provided in relation to a particular patient.
- Notwithstanding the State Trading Concerns Act 1916, the board of a public hospital, in addition to performing its functions, may either alone or in conjunction with any other person or body, with the prior approval of the Minister, provide services to the Minister, the Department or any other person or body upon such terms and conditions, including payment for those services, as that board thinks fit.
- In subsection (2a) services means services of the kind that the board in question provides for the purpose of performing its functions, and includes advice, the performance of work and the use of facilities.
- A hospital board shall give effect to any directions given to it under this section.

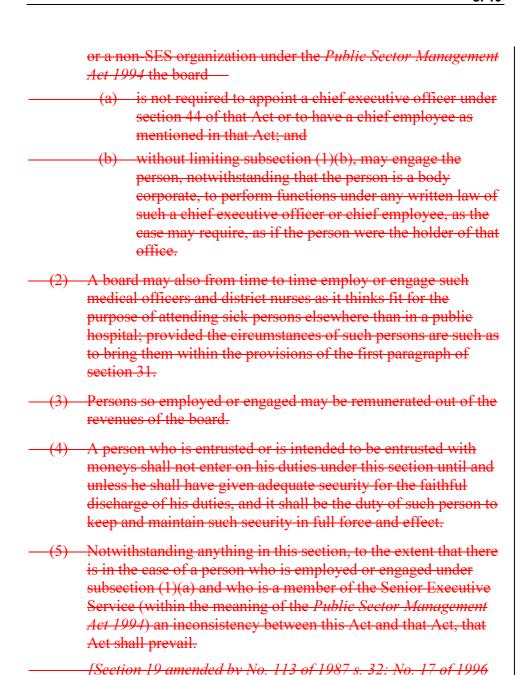
Section 18 amended by No. 33 of 1972 s. 20: No. 104 of 1975 s. 2; No. 43 of 1981 s. 3; No. 85 of 1983 s. 5; No. 73 of 1994 s. 4; No. 103 of 1994 s. 9; No. 17 of 1996 s. 7; No. 17 of 2002 s. 7; No. 74 of 2003 s. 67(2).1

Deleted by No. 61 of 2004 s. 13.1 <del>[184.-26]</del>

#### Hospital boards, staff of

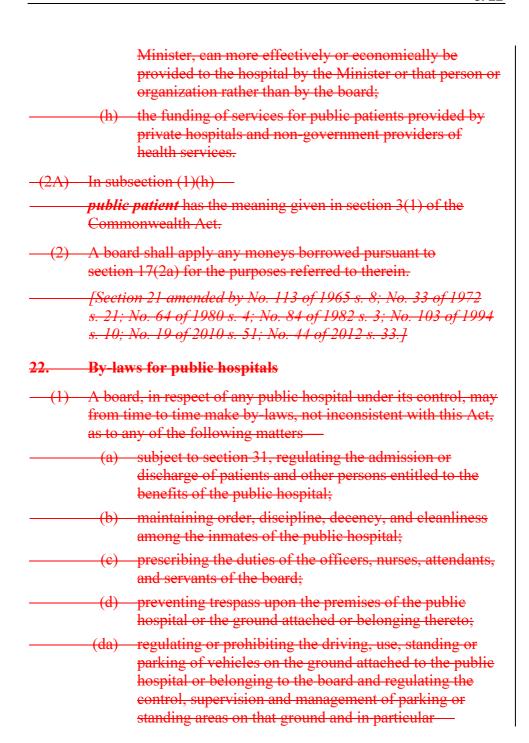
- A board may, for the purpose of the performance of its functions-
  - (a) employ or engage employees and other persons; and
- engage persons, whether or not natural persons, to perform functions on its behalf.
- (1a) Where under subsection (1)(b) a board engages a person to perform on its behalf in respect of a hospital the functions described in section 18(1) and the board is an SES organization

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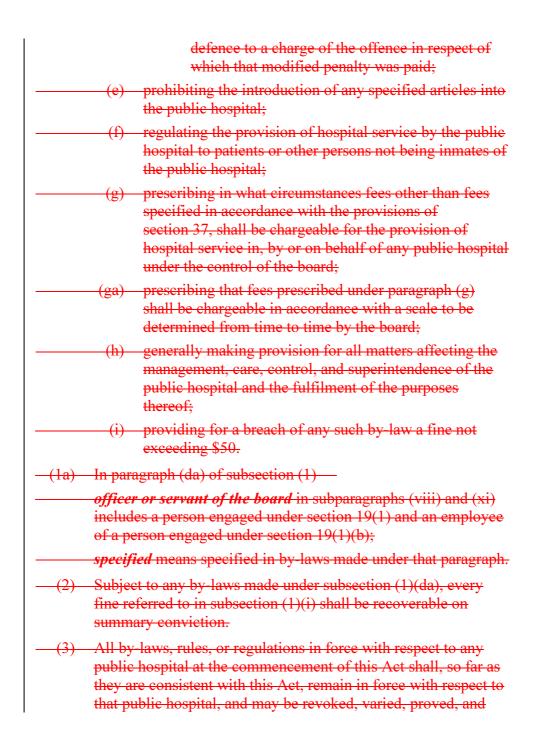
s. 8.7

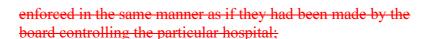
## Hospital boards may appoint collectors of public donations 20 A board may authorise any person to collect voluntary contributions and donations from the public for the purpose of the maintenance of the public hospital under its control, or for any other special purpose within the powers of the board, or for the general purposes of the administration of this Act by the board. Hospital boards, expenditure powers of A board may apply any moneys in its hands in such proportions and in such manner as it thinks fit for any of the purposes following-(a) the maintenance of the public hospital under its control; the payment in accordance with the regulations of expenses incurred by the board in connection with the nomination of any person for appointment to the board; the equipment of buildings to be used as such a public hospital; repairing, altering, or adding to any buildings used for the purposes of such a public hospital; provided that expenditure exceeding the amount specified in guidelines issued by the Minister on any alteration or addition shall first receive the approval of the Minister; the provision or subsidising of ambulances or other facilities for the transport of the sick or injured; the provision of hospital services and health services; making such provision as is deemed requisite for the isolation of persons suffering from any infectious disease, or who have been in contact with persons so suffering: the on-lending to the Minister or any person or organization of moneys borrowed in accordance with the provisions of section 17 where those moneys are required to finance a service which, in the opinion of the



(i)	prescribing charges payable to the board by a
	person using, or in respect of a vehicle occupying, a parking or standing area and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those charges;
——————————————————————————————————————	prescribing conditions under which and the period or periods of time during which a parking or standing area may be used or occupied;
<del>(iii)</del>	providing for the protection of parking and standing areas and all equipment pertaining to them against misuse, damage, interference or attempted interference by any person;
<del>(iv)</del>	regulating the parking and standing of vehicles in any parking or standing area and prohibiting any person from parking or standing any vehicle in a parking area or standing area otherwise than in accordance with by laws made under this paragraph;
<del>(v)</del>	providing for the display, erection or marking of signs for the purposes of by-laws made under this paragraph;
(vi)	exempting any person or vehicle or class of person or class of vehicle from complying with any by-law made under this paragraph prohibiting or restricting the parking or standing of vehicles generally or otherwise;
(vii)	prescribing the method and means by which any charges or modified penalties prescribed by any by-law made under this paragraph may or shall be paid and collected or recovered;
<del>(viii)</del>	prescribing the circumstances under which an officer or servant of the board may remove a vehicle or cause it to be removed from a parking or standing area or from any other area within

	that ground to a specified place, prescribing his further powers in relation thereto, prescribing the scale of charges to be paid to the board to recover the vehicle from that place, and authorising the board to hold the vehicle until the prescribed charges are paid to the board;
<del>(ix)</del>	prescribing, in respect of an alleged offence against any by-law made under this paragraph, the circumstances under which the owner of a vehicle is deemed to be the driver or person in charge of the vehicle at the time of that alleged offence;
(x)	prescribing the period of time within which a person, after being served with notice of an offence alleged to have been committed by him against any by-law made under this paragraph, may or shall pay to the board the modified penalty prescribed for that offence, and the period within which a modified penalty is payable after receipt of notice;
— (xi)	prescribing the method of notifying a person alleged to have committed an offence against any by-law made under this paragraph of that alleged offence and how it may or shall be dealt with and prohibiting the removal by any person other than the driver of a vehicle in respect of which an offence against such a by-law is alleged to have been committed of any notice relating to that offence affixed to the vehicle or left in or on the vehicle by an officer or servant of the board;
(xii)	prescribing a modified penalty not exceeding \$50 payable to the board by a person or one of a class of persons who does not contest an allegation that he committed a specified offence against a by-law made under this paragraph and providing that the due payment of a modified penalty is a





- (4) In case there is any conflict between a by-law made under this section and a regulation made by the Governor, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.
- A board may, of its own motion, by resolution adopt the whole or any portion of any model by-law published for the guidance of boards under the provisions of section 37.
- A resolution made pursuant to subsection (5) shall be published in the Gazette and thereupon shall operate with the same legal effect for all purposes as if the by-laws or portion so adopted had been passed by the board and duly brought into effect as provided in this Act.
- [Section 22 amended by No. 33 of 1972 s. 22; No. 85 of 1983 s. 6; No. 103 of 1994 s. 11; No. 17 of 19962016 s. 9; No. 19 of 2010 s. 51.7

## Medical funds, establishment of etc.

- (1) A board may itself establish and manage a medical fund the object of which shall be to secure for its subscribers medical attendance, hospital treatment, or other similar benefits; and may by by-laws provide for the regulation and control of such fund.
- (2) Such by-laws shall provide, inter alia, for—
- the rates of subscription of such fund, and the benefits to be received by subscribers;
- the administration of such fund, and the keeping of proper accounts thereof, and the provision by any person handling any moneys of such guarantee of fidelity as the board may decide or the Department may require.

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# Financial Management Act 2006 and Auditor General Act 2006, application of

- The provisions of the *Financial Management Act 2006* and the Auditor General Act 2006 regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of every board and its operations.
- The accounts caused to be kept by a board in accordance with the Financial Management Act 2006 shall, at all reasonable times, be open to the inspection of any member of the board.
- Notwithstanding the Financial Management Act 2006, the Minister may, to the extent and in the manner provided by the Treasurer's Instructions, consolidate all or some of the annual reports that he is required to make under that Act in respect of public hospitals of which the Minister is deemed to be the board.

[Section 24 inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 Sch. 1 cl. 86(9)-(11).1

## Visiting and advisory committee for public hospital, appointment of etc.

- In respect of any public hospital controlled by the Minister, the Governor may appoint a visiting and advisory committee.
- Any such committee may
  - (a) visit and inspect the hospital premises;
- (b) solicit and receive donations and subscriptions, and expend the same on the welfare and comfort of the patients and staff, and any other object of benefit to the hospital;
  - submit reports and recommendations to the Department.
- Every such committee shall submit a report to the Department as soon as possible after the close of the financial year, together with a statement in the prescribed form of any moneys received and expended during the year.

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- 26. Trust funds etc. controlled by hospital board, accounts of
- *[(1) deleted]*
- (2) A separate account shall be kept of every trust fund or trust property under the control of the board.

*[Section 26 amended by No. 33 of 1972 s. 23; No. 98 of 1985 s. 3* <u>271</u>.]

# Part IIIA — Private hospitals

[Heading inserted by No. 53 of 1985 s. 22.]

#### 26A. Terms used

In this Part —

**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.

[Section 26A inserted by No. 53 of 1985 s. 22.]

### Licence to conduct private hospital 26B.

- Any natural person or body corporate who or which desires to (1) conduct a private hospital may apply and obtain a licence to conduct a private hospital.
- Subject to this Act, a person not being a member of a firm or a (2) body corporate who desires to obtain a licence to conduct a private hospital shall satisfy the CEO
  - that he or she has attained the age of 18 years; and
  - that he or she is a person of good character and repute (b) and a fit and proper person to conduct a private hospital; and
  - that he or she has sufficient material and financial resources available to him or her to comply with the requirements of this Act; and
  - 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.
- Subject to this Act, 2 or more persons constituting a firm who (3) desire to obtain a licence to conduct a private hospital shall satisfy the CEO
  - that all the natural persons by whom the firm is constituted and all of the persons concerned in the

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- 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;
- that the persons by whom or by which the firm is (b) 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 one 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 CEO
  - 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; and
  - that the applicant has sufficient material and financial (b) resources available to it to enable it to comply with the provisions of this Act; and
  - that at least one of the persons referred to in (c) 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.

[Section 26B inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.7

### 26C. Premises to be approved etc. before licence granted

The CEO shall not grant a licence to conduct a private hospital unless he is satisfied

that the proposed premises are suitable to be approved as (a) a private hospital; and

that arrangements for the management, equipment and staffing of the private hospital are satisfactory.

[Section 26C inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.1

### 26D. Licence, grant and conditions of etc.

- Where the CEO is satisfied that an applicant complies with the (1) 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.
- (2) The CEO 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
  - 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
  - the number and the categories of nursing and other staff, (b) 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.
- Subject to subsection (5), the granting of a licence and the terms (4) and conditions imposed in relation thereto under this section shall, subject to subsection (6), be in the discretion of the CEO.
- (5) When an application for a licence
  - is in respect of premises that are not approved as premises for a hospital under this Part the CEO 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 CEO:

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- is in respect of premises that are approved premises for a hospital under this Part the CEO 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 CEO.
- (6) A person who is aggrieved by a decision of the CEO refusing to grant a licence may within 30 days of that decision appeal to the Minister.
- The CEO may revoke or vary any terms or conditions or both (7) that apply in relation to any licence issued under this Part. [Section 26D inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.]

### Private hospital not to treat etc. mentally ill unless licence 26DA. endorsed

- (1) A person shall not conduct or manage a private hospital in which any person is detained for the treatment of mental illness unless the licence for that hospital is endorsed under this section.
  - Penalty: \$5 000.
- A licence may be endorsed by the CEO to allow persons to be received and admitted to the hospital under the Mental Health Act 2014 and to be detained as involuntary patients under that
- The CEO cannot endorse a licence unless the Chief Psychiatrist (3A) recommends the endorsement.
  - (3) An application may be made to the CEO for an endorsement under this section
    - on the application for a licence; or (a)
    - on an application under regulations referred to in subsection (5).

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- (4) The CEO may make an endorsement under this section subject to any condition or restriction.
- (5) Regulations may be made under section 260 making provision for and in respect of applications for endorsements under this section, including the payment of fees in connection with the application.

[Section 26DA inserted by No. 69 of 1996 s. 44; amended by No. 28 of 2006 s. 264; No. 25 of 2014 s. 28.]

### 26E. Licence, duration and renewal of etc.

- Subject to this Act, every licence is valid from the date of its (1) being granted but may be surrendered or cancelled pursuant to this Part.
- (2) A licence may be renewed annually in accordance with the regulations.
- (3) A licence is not transferable. [Section 26E inserted by No. 53 of 1985 s. 22.]

### 26F. Licence, cancelling etc.

- Where the CEO is satisfied that (1)
  - 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; or
  - the premises of a private hospital or any portion thereof (b) are no longer suitable to be used as a private hospital; or
  - a licence holder does not comply with this Act or the (c) terms or conditions imposed by the CEO in relation to the licence issued to him or it: or
  - a licence holder fails to carry out an order given under (d) section 26G,

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- the CEO 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.

[Section 26F inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.]

## 26FA. Endorsement under s. 26DA, cancelling

- (1) The CEO may cancel an endorsement under section 26DA if he or she is satisfied that
  - (a) a private hospital is no longer suitable to have its licence endorsed under that section; or
  - (b) the licence holder
    - (i) has contravened any provision of the *Mental Health Act 2014*; or
    - (ii) failed to comply with any condition or restriction to which the endorsement is subject.
- (2A) The CEO must consult the Chief Psychiatrist before deciding whether or not to cancel an endorsement.
  - (2) Section 26F(2) applies to a proposed cancellation under this section as it applies to the proposed cancellation of a licence.

[Section 26FA inserted by No. 69 of 1996 s. 45; amended by No. 28 of 2006 s. 264; No. 25 of 2014 s. 29.]

## 26G. CEO may close private hospital

(1) Notwithstanding the fact that any premises are approved under this Part as premises for a private hospital where the CEO 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 CEO 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 CEO 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 CEO 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 CEO may, if in the opinion of the CEO, the necessity of the case so requires, order any private hospital which the CEO deems unsafe to be closed forthwith and thereupon the hospital shall be closed accordingly until the CEO by order in writing permits the private hospital to be opened.

[Section 26G inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.]

## 26H. SAT may review decisions under s. 26F and 26FA

- (1) A person whose licence to conduct a private hospital is cancelled or whose licence is not renewed under section 26F or whose endorsement under section 26DA is cancelled may apply to the State Administrative Tribunal for a review of the cancellation or non-renewal.
- [(2) deleted]
- (3) Notwithstanding section 26K where the CEO has cancelled a licence or endorsement or refused to renew a licence under

section 26F and the licence holder applies for a review of the cancellation of the licence or endorsement or refusal to renew the licence the CEO may pending the determination of the application 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 CEO specifies in writing.

[Section 26H inserted by No. 53 of 1985 s. 22; amended by No. 69 of 1996 s. 46; No. 55 of 2004 s. 517; No. 28 of 2006 s. 264.1

### **26I.** Grants and subsidies by State to private hospitals

- (1) The Governor may, out of moneys 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.
- 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 CEO and to comply with any directions given by the CEO.

[Section 26I inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.]

### 26J. Guidelines for construction etc. of private hospitals

- (1) The CEO may issue guidelines with respect to the construction, establishment and maintenance of private hospitals.
- (2) Guidelines issued under subsection (1) may
  - specify standards to be observed and procedures to be followed in relation to the construction, establishment and maintenance of private hospitals;
  - adopt, either wholly or in part or with modifications and (b) either specifically or by reference to any rules,

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[Section 26J inserted by No. 53 of 1985 s. 22; amended by No. 74 of 2003 s. 67(3); No. 28 of 2006 s. 264.]

#### 26K. **Offences**

A person must not —

- conduct or manage, or by any means hold out that the person conducts or manages, a private hospital unless
  - the person is the holder of a licence; or (i)
  - (ii) the private hospital is a nursing home and the conduct or management of the nursing home is a residential care service, or part of a residential care service, that is certified under Part 2.6 of the Aged Care Act 1997 of the Commonwealth;

or

- conduct or manage, or by any means hold out that that (b) person conducts or manages, a private hospital unless
  - the premises are premises that are approved as a private hospital under this Part; or
  - the premises are a nursing home and the conduct (ii) or management of the nursing home is a residential care service, or part of a residential care service, that is certified under Part 2.6 of the Aged Care Act 1997 of the Commonwealth;

or

- (c) build, alter or extend a private hospital unless
  - the CEO has approved of the building, alteration or extension, as the case requires; or

the private hospital is a nursing home and the conduct or management of the nursing home is a residential care service, or part of a residential care service, that is certified under Part 2.6 of the Aged Care Act 1997 of the Commonwealth.

Penalty: \$5 000.

[Section 26K inserted by No. 45 of 2006 s. 4; amended by No. 47 of 2011 s. 27.]

### 26L. Failure to comply with licence conditions

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.

Penalty: \$1 000.

[Section 26L inserted by No. 53 of 1985 s. 22.]

### Vicarious liability of directors etc. for offence by body 26M. corporate

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.

[Section 26M inserted by No. 53 of 1985 s. 22.]

### 26N. Application for licence and licence, forms of

- An application for a licence under this Part and any licence (1) issued under this Part shall be in the form of a form approved by the CEO.
- (2) The CEO may require an applicant for a licence to submit such additional information in support of the application as the CEO specifies and the CEO may require any information in support of an application to be verified by statutory declaration.

[Section 26N inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.1

### **260.** Regulations

- (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.
- Without limiting the generality of subsection (1), the regulations (2) may
  - prescribe the fees payable in relation to an application (a) for a licence to be paid to the CEO, for the renewal of any licence and for the approval of any premises as a private hospital;
  - provide for the conduct, good management and staffing (b) of private hospitals;
  - provide for the establishment and keeping of registers containing such information as may be prescribed in relation to private hospitals;
  - provide for the separation or removal of any patient suffering from any fever or infectious or contagious disease;
  - prescribe penalties not exceeding \$500 for a breach of (e) 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*.

[Section 260 inserted by No. 53 of 1985 s. 22; amended by No. 28 of 2006 s. 264.]

# Part IIIB — Private psychiatric hostels

[Heading inserted by No. 69 of 1996 s. 47.]

## 26P. Terms Term used

In this Part —

mental illness has the meaning given in the Mental Health Act 2014 section 4:

*private psychiatric hostel* means private premises in which 3 or more persons who

- (a) are socially dependent because of mental illness; and
- (b) are not members of the family of the proprietor of the premises,

reside and are treated or cared for;

*resident*, in relation to a private psychiatric hostel, means a person —

- (a) who is socially dependent because of mental illness; and
- (b) who is residing and being cared for or treated in the hostel.

[Section 26P inserted by No. 69 of 1996 s. 47; amended by No. 25 of 2014 s. 3030; No. 11 of 2016 s. 272.]

# **26Q.** Part IIIA, with modifications, applies to private psychiatric hostels

- (1) Subject to this section, Part IIIA applies to and in relation to private psychiatric hostels as if references in that Part to a private hospital were references to a private psychiatric hostel.
- (2) In its application under subsection (1) Part IIIA is modified as follows
  - (a) section 26D(3)(a) is to be read as if it referred to "the maximum number of residents who may reside in a private psychiatric hostel at any one time and the kinds

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- or classes of residents that may be cared for or treated at the private psychiatric hostel"; and
- (b) section 26DA does not apply; and
- (c) in section 26O(2)(d) the reference to "patient" is to be read as "resident"; and
- (d) section 26O is to be read as authorising the making of regulations
  - (i) prescribing, in relation to residents of private psychiatric hostels who are in receipt of pension payable under laws of the Commonwealth, the minimum proportion of pension that is to be paid or remitted to the resident for his or her own use; and
  - (ii) prescribing returns and other particulars to be furnished to the Chief Psychiatrist.

[Section 26Q inserted by No. 69 of 1996 s. 47; amended by No. 25 of 2014 s. 31.]

### s. 26R

# Part\_IIIC — Collection of information about health services Information

[Heading inserted by No. 6111 of 20042016 s. 14273.]

## 26R. Purpose for collecting, using or disclosing information

The purpose for which the CEO may collect, use or disclose information under this Part is to assist in —

(a) the management of public hospitals; and

## [(a), (c)] deleted

- (b) the regulation of private hospitals and private psychiatric hostels; and
- (c) the planning for and evaluation of hospital and health services; and
  - (d) the conduct of epidemiological analysis and health research.
  - (d) health related research, whether that research is conducted by persons employed or engaged in the Department or other persons.

[Section 26R inserted by No. 61 of 2004 s. 14; amended by No. 28 of 2006 s. 264; No. 11 of 2016 s. 274.]

# 26S. CEO may requiredirect private hospital service provider to give information

- (1) The CEO may direct a <u>private</u> hospital service provider to give to the CEO the information specified in the direction.
- (2) The information specified may include personal information.
- (3) The CEO may not specify information in a direction unless—
  - (a) the information relates to hospital, health or psychiatric services provided to individuals by the <u>private</u> hospital service provider; and

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- (b) the CEO is satisfied that collecting the information is consistent with the purpose for which information may be collected under this Part.
- (4) The direction may specify the information by reference to a class of information and may specify the form in which it is to be given.
- (5) The <u>private</u> hospital service provider must comply with the direction.
- (6) A direction may be given in relation to information obtained by the <u>private</u> hospital service provider before the commencement of this Part.
- (7) A particular direction may be given to one or more named <u>private</u> hospital service providers, one or more classes of <u>private</u> hospital service providers, or all <u>private</u> hospital service providers.
- (8) In this section —

*personal information* means information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

[Section 26S inserted by No. 61 of 2004 s. 14; amended by No. 28 of 2006 s. 264; No. 11 of 2016 s. 275.]

## 26T. No liability for notification etc. or disclosure

A<u>If a private</u> hospital <u>services service</u> provider <u>that</u> <u>eomplies discloses information in compliance</u> with a direction <u>given</u> under section 26S<u>incurs</u>

- (a) no civil or criminal liability as a result, is incurred in respect of the disclosure; and
- (b) the disclosure is not to be regarded for any purpose as being in as
  - (i) a breach of any duty of confidentiality-or secrecy imposed by law; or

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## s. 26T

- a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
  - (iii) unprofessional conduct.

[Section 26T inserted by No. 6111 of 20042016 s. 14276.]

## Part IV — General

### 27. Local governments may fund etc. public hospitals

- A local government shall have power to expend and apply or to give a binding undertaking to expend and apply for any number Deleted by No. 11 of years any portion of its general rates in subsidising any hospital scheme, and in or towards the construction or acquisition, establishment, and maintenance of any hospital, and in subsidising any district nursing scheme, and in contributing towards a subsidy or providing a subsidy to secure the services of a medical practitioner.
- (1A) Despite subsection (1), no portion of the general rates shall be expended or applied as aforesaid, and no such undertaking as aforesaid shall be valid in so far as it purports to bind the local government to expend or apply in any year a sum exceeding 10% of the average annual amount received by it from general rates during the last 2 financial years preceding the year in which the undertaking was given.
- (1B) Despite subsection (1), no such agreement shall have effect for more than 5 years, but any such agreement may be renewed during the last year thereof (with or without modification) from time to time for any period not exceeding 5 years.
- It shall be lawful for any local government to borrow money for all or any of the following objects, that is to say the construction, enlargement, improvement, and equipment of any hospital within the area of such local government, and the powers and provisions contained in the Local Government Act 1995 relating to the borrowing of money shall apply to the objects above-mentioned.
- <del>[(3) deleted]</del>
- The provisions of this section are without prejudice to any power vested in a local government by or under any other Act and the powers of a local government vested in it by or under

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the Local Government Act 1995, are deemed to be extended in so far as is necessary to give effect to those provisions.

- The local governments of 2 or more districts the boundaries of which are adjacent, may enter into an agreement between themselves and the Minister for the purposes of this section.
- 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.

Section 27 amended by No. 33 of 19722016 s. 24; No. 53 of 1985 s. 23; No. 14 of 1996 s. 4; No. 19 of 2010 s. 51277.]

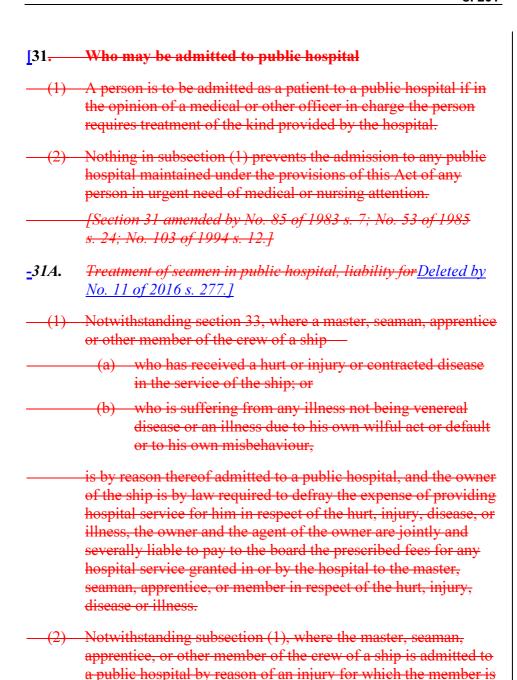
- *[28.*] Deleted by No. 33 of 1972 s. 25.]
- **[29.** Closure of public hospital, consequences of

In the case of a public hospital which is closed under section 8. the following provisions shall apply—

- (a) the buildings and equipment may be utilised by the Minister as he deems best in the interests of other public hospitals, and for carrying out the purposes of this Act; and
- any money in the hands of the board, and all debts owing to the board, shall vest in the Minister who, after paving the liabilities of the board, shall dispose of any balance remaining for the benefit of existing hospitals as he may think fit.

<del>[Section 29 amended</del>Deleted by No. <del>19</del>11 of <del>2010</del>2016 s. <del>51</del>277.7

*[30.*] Deleted by No. 33 of 1972 s. 26.7



entitled to compensation under the provisions of the *Workers'*Compensation and Injury Management Act 1981, the provisions

### s. 26T

of that Act apply to the fees for the hospital service granted in or by the hospital in respect of the injury.

Section 31A inserted by No. 16 of 1953 s. 4; amended by No. 42 of 2004 s. 161.]

[32. Deleted by No. 53 of 1985 s. 25.]

## [33. Hospital services, recovery of costs of by hospital board

- (1) The cost of hospital service granted by or at the expense of a board to any person shall constitute a debt due by that person to the board, and may be recovered by action in any court of competent jurisdiction.
- (2) The cost of hospital service granted to a minor shall, without excluding the liability of the person so relieved, constitute a debt due by each of the parents or the sole surviving parent of the minor, as the case may be, and may be recovered by action in any court of competent jurisdiction.
- (3) Without prejudice to the liability of any other person, the board which has granted any such service as aforesaid to any person whomsoever is hereby empowered to enforce payment of the cost thereof against any adult child of such person.
- (4) The cost so recoverable shall be the sum payable in accordance with the relative by-laws, or such lesser sum as the court in which any action for the recovery thereof is brought thinks reasonable, having regard to the means of the defendant and the circumstances of the case, and in the absence of such by-law it shall be such sum as such court so thinks reasonable as aforesaid.
- (5) A board may contract for the payment to it, by any body corporate, any corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth, or other society or person, of the cost of hospital service to be afforded by the board to any person, and the amount so agreed to be paid, or a reasonable sum if no

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- specific amount is so agreed upon, shall be a debt recoverable in any court of competent jurisdiction.
- Notwithstanding any other provision of this Act, where a board thinks it reasonable to do so, having regard to the means of the person indebted and the circumstances of the case, the board may reduce or waive payment of any fees for hospital service that would otherwise be payable to the board.
- The provisions of this section are subject to any agreement entered into by the Commonwealth with the State under the Commonwealth Act.

[Section 33 amended Deleted by No. 3311 of 19722016 s. 27; No. 17 of 1996 s. 10; No. 26 of 1999 s. 86; No. 28 of 2003 s. 119(2).1277.1

/33A-33C. Deleted by No. 17 of 1996 s. 11.]

### Medicare Principles and Commitments, effect of

[**34-35.** Deleted by No. 11 of 2016 s. 277.]

### 35A. **Protection from personal liability**

- An action in tort does not lie against a person for anything that (1) the person has done, in good faith, in the performance or purported performance of a function under this Act.
- The Medicare Principles and Commitments set out protection given by this section applies even though the thing done as described in subsection (2) are established as guidelines for the delivery of public hospital services to eligible persons in the (1) may have been capable of being done whether or not this Act had been enacted.
- Despite subsection (1), the State is not relieved of any liability that it might have for another person having done any thing as described in that subsection.

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(2) The Medicare Principles and Commitments are as set out in the Table.

### **Table of 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.

This principle applies equally to waiting **Explanatory Note 2:** 

times for elective surgery.

The phrase waiting times means waiting **Explanatory Note 3:** 

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.

This principle does not require a local **Explanatory Note 1:** 

> 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.

To the extent practicable, hospital services **Explanatory Note 3:** 

> 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.

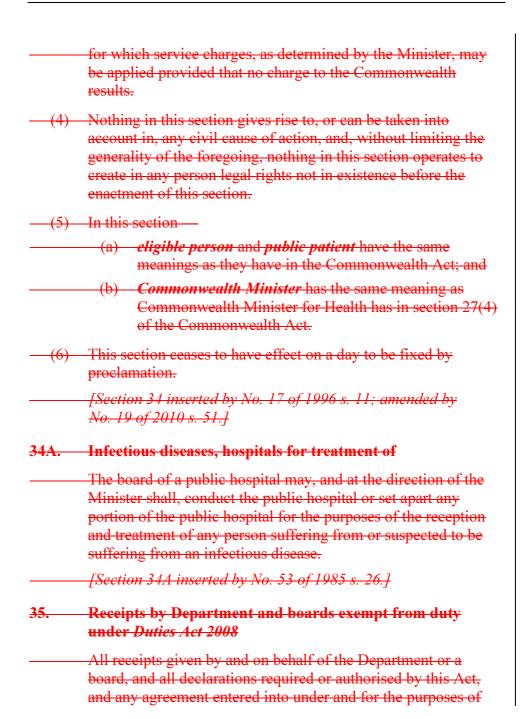
Compare 26 May 2016 [07-g0-02] / 01 Jul 2016 [07-h0-03] page 63 Extract from www.slp.wa.gov.au, see that website for further information

## s. 35A

## 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. The joint Commonwealth/State Explanatory Note 1: development of a Public Patients' Hospital Charter will be a vehicle for the public dissemination of this information. The Public Patients' Hospital Charter will **Explanatory Note 2:** 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. 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; and spectacles and hearing aids; and pharmaceuticals; and surgical supplies, prostheses, aids and appliances and home modifications; and

Minister and the Minister,

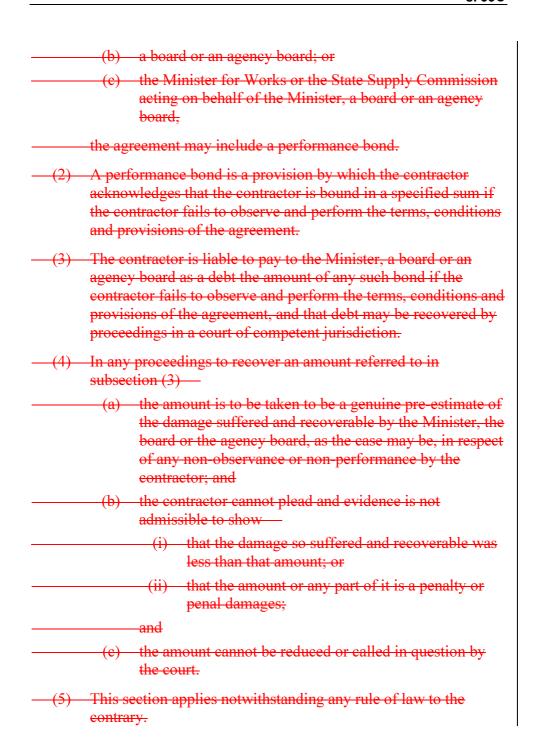
other services as agreed between the Commonwealth



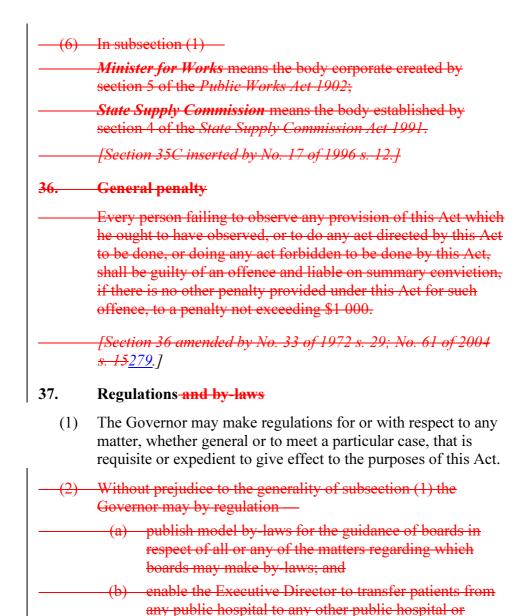
### s. 35A

this Act, in relation to a public hospital shall be exempt from duty under the Duties Act 2008. Section 35 amended by No. 53 of 1985 s. 27; No. 12 of 2008 Sch. 1 cl. 16.1 **Protection from personal liability** No liability shall attach to the Minister, the CEO, any officer of the Department, a member of a board of a public hospital or an agency or any person authorised 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. In this section, a reference to the doing of anything includes a reference to an omission to do anything. [Section 35A inserted by No. 53 of 1985 s. 28; amended by No. 103 of 1994 s. 13; No. 28 of 2006 s. 26411 of 2016 s. 278.1 Minister, board and agency not required to be registered 35B-Notwithstanding any written law requiring the registration of a person who provides a health service, the Minister, a board or an agency (a) may provide a health service even though the Minister, board or agency is not registered under that written law; and (b) does not commit any offence by so providing. [Section 35B inserted-36. Deleted by No. 10311 of 19942016  $s. \frac{14.7}{1}$ Agreements with Minister etc., performances bonds in Where an agreement is made for the purposes of this Act between a person (the contractor) and

(a) the Minister; or



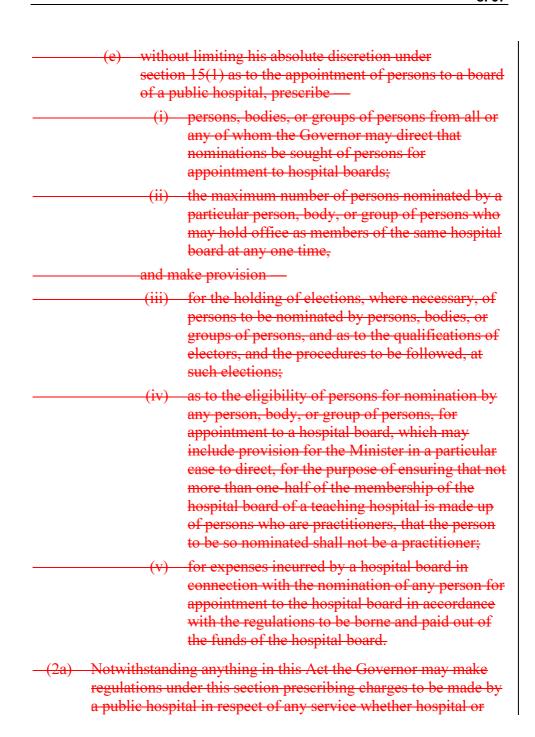
General

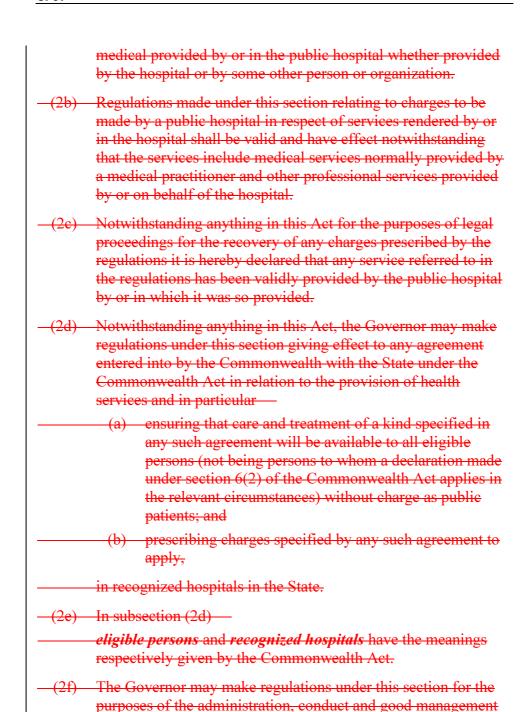


equipment or for any other purpose; and

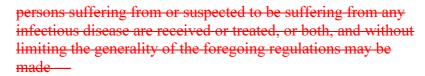
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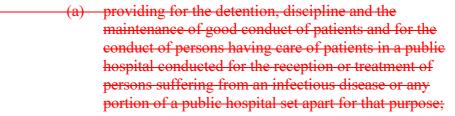
institution having or providing special facilities, skill or



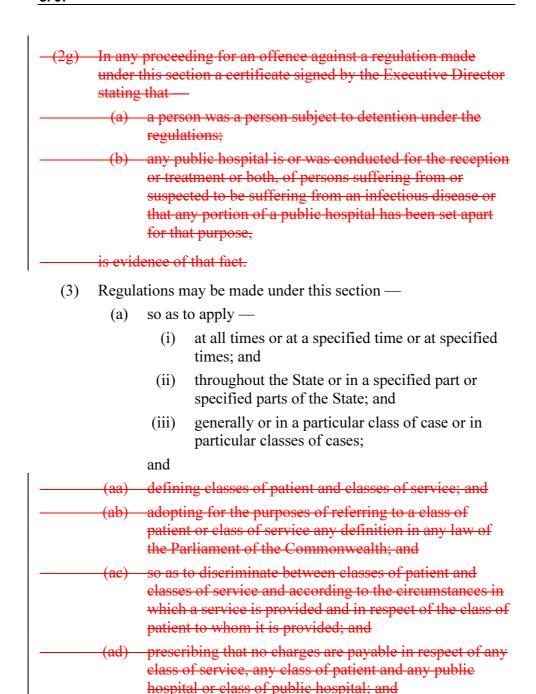


of any public hospital or portion of a public hospital in which





- (b) controlling the conduct of visitors and other persons;
- authorising 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 the seizure of anything found on persons entering or visiting any such place that is prohibited under the regulations;
- enabling a medical practitioner or any person authorised in writing by the CEO 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;
- 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.



- prescribing different charges according to the public hospital or class of public hospital in which or on behalf of which a service or class of service is provided; and
- prescribing that the charges for any goods or services or class of goods or service rendered in respect of any class of patient at or by a public hospital shall be of an amount determined by the Minister or other person according to the cost thereof: and

#### $\int (aa)-(af)$ deleted]

- (b) so as to require a matter affected by them to be
  - in accordance with a specified standard or specified requirement; or
  - as approved by, or to the satisfaction of, a (ii) specified person or body or a specified class of person or body;

and

- so as to confer on a specified person or body or a (c) specified class of person or body a discretionary authority; and
- (d) so as to provide that, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified; and
- so as to impose a penalty not exceeding \$50 for any (e) breach of the regulations.
- In subsection (3) *specified* means specified in the regulations. (4)

[Section 37 inserted by No. 33 of 1972 s. 30; amended by No. 64 of 1980 s. 5; No. 43 of 1981 s. 4; No. 85 of 1983 s. 9; No. 28 of 1984 s. 56; No. 53 of 1985 s. 29; No. 73 of 1994 s. 4; No. 17 of 1996 s. 13; No. 28 of 2006 s. 264; No. 19 of 2010 s. <del>51</del>51; No. 11 of 2016 s. 280.]

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#### **38. Review of Act**

- The Minister shall carry out a review of the operation of this Act (1) as soon as is practicable after 1 January 1991 and every fifth anniversary of that date and in the course of such review the Minister shall consider and have regard to
  - the attainment of the objects of this Act; (a)
  - (b) the administration of this Act;
  - the effectiveness of the operations of the Minister, the (c) boards of the public hospitals under this Act, the Department, the CEO, the Executive Director and authorised persons under this Act;
  - 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;

#### I(d)deleted]

- such other matters as appear to the Minister to be (e) 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.

[Section 38 inserted by No. 53 of 1985 s. 30; amended by No. 28 of 2006 s. 264; No. 11 of 2016 s. 281.]

# [Schedule—Constitutional provisions for hospital boards

[s. 15]

[Heading inserted deleted by No. 33\_11 of 1972 s. 31; amended by No. 19 of 2010 s. 42016 s. 282.]

#### 1. Tenure of office

- (1) A member shall hold and vacate office in accordance with the terms of the instrument under which he is appointed, or until his term of tenure is terminated by the Governor.
- (2) A member may resign his office by a written notice given under his hand to, and accepted by, the Minister.
- (3) A member who ceases to hold office shall, unless otherwise disqualified, be eligible for reappointment.
- [Clause 1 inserted by No. 33 of 1972 s. 31.]

#### 2. When vacancies occur

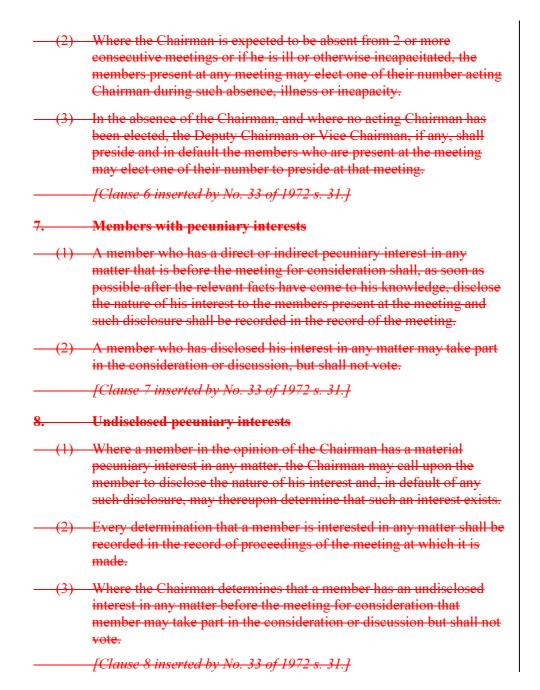
If a member —

- (a) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration*Act 1990: or
- (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) is convicted of an indictable offence; or
- (d) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,
- his office becomes vacant and he is not eligible for reappointment.
- [Clause 2 inserted by No. 33 of 1972 s. 31; amended by No. 24 of 1990 s. 123; No. 18 of 2009 s. 43.]

#### s. 38

# **Deputies** While taking the place of a member a deputy has all the powers and entitlements of, and all the protection given to, the member under this Any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member. [Clause 3 inserted by No. 33 of 1972 s. 31.] Validity of proceedings (1) A vacancy among the membership shall not invalidate the proceedings of any meeting. All acts done at any meeting shall, notwithstanding it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed. [Clause 4 inserted by No. 33 of 1972 s. 31.] <del>Ouorum</del> To constitute a meeting there must be not less than one half of the members present. [Clause 5 inserted by No. 33 of 1972 s. 31.] **Telephone and video meetings** Despite anything in this Schedule, a communication between members constituting a quorum under clause 5 by telephone, audio-visual or other electronic means is a valid meeting, but only if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings. [Clause 5A inserted by No. 24 of 2000 s. 18.] **Chairman**

The Chairman shall when present, preside at all meetings.



#### s. 38

# **Voting** At any meeting all members present who have not declared an interest shall vote on any question submitted.

- All questions shall be decided by a majority.
- Each member, including the member presiding, shall have a deliberative vote only.
- In the case of an equality of votes the question shall be declared to be negatived.

[Clause 9 inserted by No. 33 of 1972 s. 31.]

## Records of meetings

A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.

[Clause 10 inserted by No. 33 of 1972 s. 31.]

### -Convening meetings

The Minister or the Chairman may at any time convene a meeting, and a meeting shall be convened by the Chairman within 7 days of the receipt by him of a written request signed by 2 or more members specifying the business in respect of which the meeting is to be convened.

[Clause 11 inserted by No. 33 of 1972 s. 31.]

#### **Committees**

- Committees, which may consist of persons who are not members, and any person having relevant experience, may be invited to act in an advisory capacity, but the delegation of any matter to such a committee or person does not relieve the members of responsibility.
  - The provisions of this Schedule, except in so far as the resolution establishing the committee may otherwise direct, shall have effect in relation to a committee.

[Clause 12 inserted by No. 33 of 1972 s. 31.]

# 13. Disputes etc. as to procedure etc. In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of an interest, then the decision of the Chairman shall be final and conclusive. [Clause 13 inserted by No. 33 of 1972 s. 31.] Conduct of proceedings Subject to this Act the proceedings may be regulated in such manner as the members think fit. [Clause 14 inserted by No. 33 of 1972 s. 31.]

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## **Notes**

This is a compilation of the <u>Private Hospitals and Health Services Act 1927</u> and includes the amendments made by the other written laws referred to in the following table  $^{1a, 3, 10}$ . The table also contains information about any reprint.

## **Compilation table**

	•		
Short title	Number and year	Assent	Commencement
Hospitals Act 1927 <sup>4</sup>	23 of 1927 (18 Geo. V No. 23)	23 Dec 1927	1 Jan 1928 (see s. 1)
Hospitals Act Amendment Act 1948	9 of 1948 (12 Geo. VI No. 9)	11 Nov 1948	11 Nov 1948
Hospitals Act Amendment Act 1953	16 of 1953 (2 Eliz. II No. 16)	20 Nov 1953	20 Nov 1953
Hospitals Act Amendment Act 1955	51 of 1955 (4 Eliz. II No. 51)	9 Dec 1955	9 Dec 1955
Reprint of the <i>Hospitals A</i> Acts (includes amendments	* *	ed 14 Aug 196	11 in Volume 15 of Reprinted
Decimal Currency	113 of 1965	21 Dec 1965	Act other than s. 4-9:

Decimal Currency Act 1965	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Hospitals Act Amendment Act 1969	89 of 1969	17 Nov 1969	17 Nov 1969
Hospitals Act Amendment Act 1972	33 of 1972	16 Jun 1972	30 Jun 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2098-9)

### Reprint of the Hospitals Act 1927 approved 11 Dec 1972 (includes amendments listed above)

Hospitals Act Amendment Act 1973	10 of 1973	25 May 1973	25 May 1973
Hospitals Act Amendment Act 1975	104 of 1975	1 Dec 1975	1 Dec 1975
Hospitals Act Amendment Act 1976	71 of 1976	6 Oct 1976	6 Oct 1976
Hospitals Amendment Act 1980	64 of 1980	26 Nov 1980	8 Jul 1983 (see s. 2 and <i>Gazette</i> 8 Jul 1983 p. 2475)

Short title	Number	Assent	Commencement
Short title	and year	Assent	Commencement
Hospitals Amendment Act 1981	43 of 1981	26 Aug 1981	1 Sep 1981 (see s. 2)
Acts Amendment (Statutory Designations) and Validation Act 1981 s. 4	63 of 1981	13 Oct 1981	13 Oct 1981
Hospitals Amendment Act 1982	84 of 1982	15 Nov 1982	15 Nov 1982
Hospitals Amendment Act 1983	85 of 1983	22 Dec 1983	Act other than s. 3-9: 22 Dec 1983 (see s. 2(1)); s. 3-9: 1 Feb 1984 (see s. 2(2) and <i>Gazette</i> 20 Jan 1984 p. 120)
Health Legislation Amendment Act 1984 Pt. X	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
Acts Amendment (Hospitals) Act 1985 Pt. III	53 of 1985 (as amended by No. 55 of 2004 s. 518)	5 Nov 1985	23 Jan 1987 (see s. 2 and <i>Gazette</i> 23 Jan 1987 p. 179)
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
Acts Amendment (Public Service) Act 1987 s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
Guardianship and Administration Act 1990 s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
Reprint of the Hospitals Ac	ct 1927 as at 22	Apr 1993 (inc	cludes amendments listed above)
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Acts Amendment (Health Services Integration) Act 1994 Pt. 2	49 of 1994	10 Oct 1994	10 Oct 1994 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 1994 s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)

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Extract from www.slp.wa.gov.au, see that website for further information

Short title	Number and year	Assent	Commencement
Hospitals Amendment Act 1994	103 of 1994	11 Jan 1995	s. 1 and 2: 11 Jan 1995; s. 3 and Pt. 2 and 3: 3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Hospitals and Health Services Amendment Act 1996	17 of 1996	2 Jul 1996	s. 1 and 2: 2 Jul 1996; Act other than s. 1 and 2: 18 Sep 1996 (see s. 2 and <i>Gazette</i> 17 Sep 1996 p. 4691)
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Mental Health (Consequential Provisions) Act 1996 Pt. 10	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Acts Amendment (Land Administration) Act 1997 Pt. 32	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
Statutes (Repeals and Minor Amendments) Act 1997 s. 74(3) <sup>5</sup>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 86	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the <i>Hospitals an</i> amendments listed above)	nd Health Serv	ices Act 1927 a	s at 15 Oct 1999 (includes
Statutes (Repeals and Minor Amendments) Act 2000 s. 18	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 48(1)	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(2) and <i>Gazette</i> 16 Feb 2001 p. 903)
Hospitals and Health Services Amendment Act 2002 <sup>6</sup>	17 of 2002	8 Jul 2002	8 Jul 2002 (see s. 2)

Compare 26 May 2016 [07-g0-02] / 01 Jul 2016 [07-h0-03] Extract from www.slp.wa.gov.au, see that website for further information page 8

Short title	Number and year	Assent	Commencement
Acts Amendment (Equality of Status) Act 2003 s. 119	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
Statutes (Repeals and Minor Amendments) Act 2003 s. 67 and 146(2)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Workers' Compensation Reform Act 2004 s. 161	42 of 2004	9 Nov 2004	14 Nov 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657); Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see <i>Gazette</i> 17 Jun 2005 p. 2657)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 63 Subdiv. 1 <sup>7</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Health Legislation Amendment Act 2004 Pt. 4	61 of 2004	24 Nov 2004	24 Nov 2004 (see s. 2)

Reprint 5: The Hospitals and Health Services Act 1927 as at 26 Aug 2005 (includes amendments listed above except those in the Workers' Compensation Reform Act 2004)

	1		1 ,
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 9 Div. 6 <sup>8</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
Hospitals and Health Services Amendment Act 2006	45 of 2006	4 Oct 2006	4 Oct 2006 (see s. 2)
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 86	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Duties Legislation Amendment Act 2008 Sch. 1 cl. 16	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
Medical Practitioners Act 2008 Sch. 3 cl. 27	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

Reprint 6: The Hospitals and Health Services Act 1927 as at 13 Feb 2009 (includes amendments listed above)

Compare 26 May 2016 [07-g0-02] / 01 Jul 2016 [07-h0-03] Extract from www.slp.wa.gov.au, see that website for further information

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 13	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 43	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Standardisation of Formatting Act 2010 s. 4 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 26	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
Statutes (Repeals and Minor Amendments) Act 2011 s. 16 and 27	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
Reprint 7: The <i>Hospitals an</i> amendments listed above)	nd Health Ser	vices Act 1927 :	as at 27 Jan 2012 (includes
National Health Funding Pool Act 2012 Pt. 7	44 of 2012	20 Nov 2012	15 Dec 2012 (see s. 2(b) and <i>Gazette</i> 14 Dec 2012 p. 6195)
Mental Health Legislation Amendment Act 2014 Pt. 4 Div. 3	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)
Health Services Act 2016 Pt. 20 Div. 1	11 of 2016	26 May 2016	1 Jul 2016 (see s. 2(b) and Gazette 24 Jun 2016 p. 2291)

On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

## Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 48(2) 9	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
Hospitals and Health Services Amendment Act 2013 s. 3-7-10,12	8 of 2013 (as amended by No. 111 of 2016 s. 283)	19 Aug 2013	To be proclaimed (see s. 2(b))
Health Services Act 2016 Pt. 20 Div. 1	<del>11 of 2016</del>	<del>26 May 2016</del>	To be proclaimed (see s. 2(b))

- The Superannuation and Family Benefits Act 1938 was repealed by the State Superannuation Act 2000 s. 39, but its provisions continue to apply to and in relation to certain schemes because of the State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 26.
- The Courts Legislation Amendment and Repeal Act 2004 Sch. 2 cl. 25 was deleted by the Criminal Law and Evidence Amendment Act 2008 s. 77(13).
- Now known as the Hospitals and Health Services Act 1927; short title changed (see note under s. 1).
- The amendments in the Statutes (Repeals and Minor Amendments) Act 1997 s. 74(1) and (2) are not included because the subsections they sought to amend were amended by the Mental Health (Consequential Provisions) Act 1996 s. 42 before the amendments purported to come into operation.
- The Hospitals and Health Services Amendment Act 2002 s. 8 reads as follows:

#### 8. Validation

- (1) In this section agency has the same meaning as it has in the Hospitals and Health Services Act 1927.
- Anything done or purporting to have been done by an agency for the purposes referred to in section 7B(1) of the Hospitals and Health Services Act 1927 is, and is taken always to have been, as valid and effective as it would have been if the amendments to that Act in sections 5 and 6 had at all relevant times been made.

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- The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5, the State Administrative Tribunal Act 2004 s. 167 and 169, and the State Administrative Tribunal Regulations 2004 r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.
- The Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 9 Div. 13 reads as follows:

#### Division 13 — Transitional provisions

#### 289. Commissioner of Health

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner of Health before commencement under, or for the purposes of, an enactment has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the CEO.
- (2) In this section —

**CEO** has the meaning given by section 3 of the *Health Legislation Administration Act 1984* as in force after commencement; commencement means the time at which this Division comes into operation;

Commissioner of Health means the Commissioner of Health referred to in section 6(1)(a) of the Health Legislation Administration Act 1984 as in force before commencement.

On the date as at which this compilation was prepared, the *State Superannuation* (*Transitional and Consequential Provisions*) *Act 2000* s. 48(2) had not come into operation. It reads as follows:

## 48. Hospitals and Health Services Act 1927 amended

- (2) The *Hospitals and Health Services Act 1927* is amended as follows:
  - (a) in section 7E(2)
    - (i) at the end of paragraph (b) by deleting the comma and inserting a full stop instead;
    - (ii) by deleting the rest of the subsection;
  - (b) in section 7E(5) by deleting "the scheme for accrued or accruing benefits under the *Superannuation and Family Benefits Act 1938*,";

in section 12A(1) by deleting "contributors for the

Act 1938." and inserting instead —

purposes of the Superannuation and Family Benefits

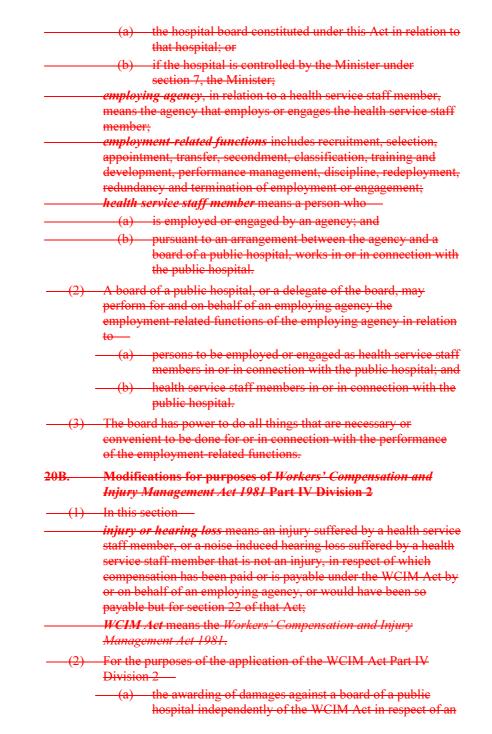
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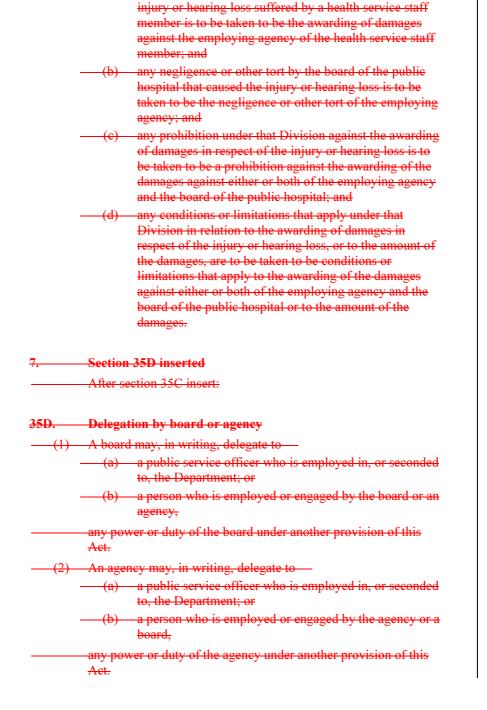
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	"
	Members of a superannuation scheme continued by section 29(c) or (d) of the <i>State</i>
	Superannuation Act 2000.
	e as at which this compilation was prepared, the The Hospitals and vices Amendment Act 2013 s. 3-7 had not come into operation. They lows:
3.	Act amended
	This Act amends when it was deleted by the Hospitals and Health Services Act-1927.
4.	Section 7A amended
	After section 7A(2) insert:
<del>(3)</del>	In subsection (2)(b)
	provision of services includes
	(a) the provision of staff to provide services in, or in connection with, public hospitals; and
	(b) the employment or engagement of staff for that purpose.
5.	Section 7C amended
	In section 7C(1)(b) delete "persons, being not less than 3," and insert:
	<del>persons</del>
6.	Sections 20A and 20B inserted
-	After section 19 insert:
20A.	Hospital board may perform employment-related functions on behalf of agency
	In this section and section 20B—
	board, in relation to a public hospital, means

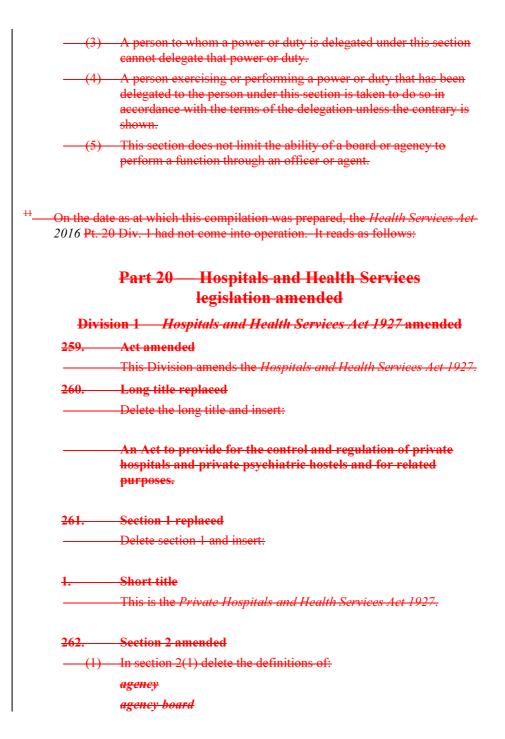
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	<del>board</del>
	Commonwealth Act
	day hospital facility
	Executive Director
	hospital
	hospital service
	hospital service provider
	nursing post
	<del>practitioner</del>
	public hospital
	teaching hospital
<del>(2)</del>	
	•
	health service has the meaning given in the Health Services
	Act 2016 section 7;
	hospital has the meaning given in the Health Services Act 2016 section 8;
	medical practitioner means a person registered under the Health
	Practitioner Regulation National Law (Western Australia) in the medical profession;
	- mental illness has the meaning given in the Mental Health
	Act 2014 section 4;
	private hospital service provider means the holder of a licence
	granted under this Act to conduct a private hospital or a private psychiatric hostel:
	private psychiatric hostel means private premises in which 3 or
	more persons who
	(a) are socially dependent because of mental illness; and
	(b) are not members of the family of the proprietor of the
	<del>premises,</del>
-	reside and are treated or cared for;
	<i>public hospital</i> has the meaning given in the <i>Health Services</i> Act 2016 section 8(6) and
	(a) includes a hospital declared to be a public hospital under the <i>Health Services Act 2016</i> section 8(7); and
	(b) does not include a hospital declared not to be a public hospital under the <i>Health Services Act</i> 2016 section 8(8).

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<del>(3)</del>	In section 2(1) in the definition of <i>private non-profit hospital</i> delete "a hospital" and insert:
	a private hospital
<del>(4)</del>	Delete section 2(1A).
<del>(5)</del>	Delete section 2(3) and (4).
<del>263.</del>	Section 3 amended
<del>(1)</del>	In section 3(1) delete "and any public hospital".
<del>(2)</del>	Delete section 3(2).
<del>(3)</del>	In section 3(3) delete "a public hospital, or is not a nursing home, as the case may be, for" and insert:
	a nursing home for
<del>(4)</del>	Delete section 3(4) and (5).
<del>264.</del>	Section 4 amended
	In section 4 delete "a hospital or part of a hospital" and insert:
	a private hospital or part of a private hospital
<del>265.</del>	Sections 5A and 7 deleted
	Delete sections 5A and 7.
<del>266.</del>	Section 7A replaced
	Delete section 7A and insert:
<del>7A.</del>	Minister's powers
	The Minister has power
	(a) with the approval of the Treasurer, to make payments to
	or on behalf of any religious or charitable organisation
	for the purpose of defraying the interest on moneys
	borrowed by that organisation and expended or intended to be expended by that organisation on a project
	approved by the Minister in connection with a private
	non-profit hospital or nursing home maintained by that
	organisation: and

	(b) to make payments by way of subsidy in respect of patients who are unable to afford the payment of reasonable fees.
<del>267.</del>	Sections 7B to 9 deleted
	— Delete sections 7B to 9.
<del>268.</del>	Section 10 replaced
	Delete section 10 and insert:
10.	Visiting and inspecting private hospitals
<del>(1)</del>	Any person authorised by the CEO for that purpose may
	— (a) visit any private hospital; and
	<ul> <li>(b) inspect every part of any private hospital, including any outbuildings or premises attached to the private hospital; and</li> </ul>
	— (c) subject to subsection (2) if the person is a medical practitioner, medically examine any patient in any hospital.
<del>(2)</del>	Where a patient is a patient in a private hospital the following provisions apply in respect of an examination under subsection (1)(c)—
	an examination must not be made except on complaint to the CEO; and
	the patient's medical practitioner must be notified of the intention of the authorised person to examine the patient and given an opportunity to be present at the examination; and
	the person who is the licence holder under Part IIIA in relation to the hospital in which the patient is accommodated must be notified of the intention to conduct the examination.
<del>269.</del>	Section 11 amended
	In section 11(a) delete "duties, or the visitation or inspection of any public hospital; or" and insert:
	— duties; or

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<del>270.</del>	Sections 12 and 12A deleted
	Delete sections 12 and 12A.
<del>271.</del>	Part III deleted
	Delete Part III.
<del>272.</del>	Section 26P amended
	In section 26P delete the definitions of:
	mental illness
	private psychiatric hostel
<del>273.</del>	Part IIIC heading replaced
	Delete the heading to Part HIC and insert:
	Part IIIC Information
	Tart fire information
<del>274.</del>	Section 26R amended
	In section 26R:
	— (a) delete "collect" and insert:
	<del>collect, use or disclose</del>
	(b) delete paragraphs (a) and (c);
	(c) delete paragraph (d) and insert:
	(d) health related research, whether that research is
	conducted by persons employed or engaged in the Department or other persons.
	Note: The heading to amended section 26R is to read:  Purpose for collecting, using or disclosing information
275.	Section 26S amended
	In section 26S(1), (3)(a), (5), (6) and (7) before "hospital service"
	(each occurrence) insert:
	<del>private</del>
	Note: The heading to amended section 26S is to read:  CEO may direct private hospital service provider to give information

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<del>276.</del>	Section 26T replaced
	Delete section 26T and insert:
26T.	No liability for disclosure
	If a private hospital service provider discloses information in compliance with a direction under section 26S—
	(a) no civil or criminal liability is incurred in respect of the disclosure; and
	(b) the disclosure is not to be regarded as
	(i) a breach of any duty of confidentiality or secrecy imposed by law; or
	— (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
	— (iii) unprofessional conduct.
<del>278.</del>	— Delete sections 27 to 35.  — Section 35A replaced
278.	Section 35A replaced  Delete section 35A and insert:
	- Delete section 33A and insert.
35A.	Protection from personal liability
<del>(1)</del>	An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
	The motestian given by this section applies even though the thing
<del>(2)</del>	The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
, ,	
<del>(3)</del>	done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.  Despite subsection (1), the State is not relieved of any liability that it might have for another person having done any thing as
— <del>(3)</del> —— <del>(4)</del> —	done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.  Despite subsection (1), the State is not relieved of any liability that it might have for another person having done any thing as described in that subsection.  In this section, a reference to the doing of anything includes a

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	<del>280</del>	Section 37 amended
	<del>(1)</del>	Delete section 37(2) to (2g).
	<del>(2)</del>	Delete section 37(3)(aa) to (af).
		Note: The heading to amended section 37 is to read:
		Regulations
	<del>281</del>	Section 38 amended
		Delete section 38(1)(c) and (d) and insert:
		(c) the effectiveness of the operations of the Minister, the Department, the CEO and authorised persons under this Act;
;	282.	Schedule deleted
		Delete the Schedule.
		e as at which this compilation was prepared, the <i>Health Services</i> t. 20 Div. 2 had not come into operation. It reads as follows:  Part 20 — Hospitals and Health Services
		legislation amended
	<b>Divisio</b>	n 2 Hospitals and Health Services Amendment Act 2013
		<del>repealed</del>
<u>s.</u> 283	- Hospita	rls and Health Services Amendment Act 2013 repealed
		The Hospitals and Health Services Amendment Act 2013 is
		<del>repealed.</del>