

Reprinted under the
Reprints Act 1984 as
at 22 April 1993.

WESTERN AUSTRALIA

HOSPITALS ACT 1927

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WESTERN AUSTRALIA

HOSPITALS 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 for incidental and other purposes.

[Long title inserted by No. 33 of 1972 s. 3; amended by No. 53 of 1985 s. 14.]

s. 1

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Hospitals Act 1927*¹.

[Section 1 amended by No. 33 of 1972.]

Interpretation

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

“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;

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

“day hospital facility” means premises that are not attached to, or, that are set apart from, a hospital being premises at which persons are received for professional attention or professional medical attention in a class of professional attention determined by the Minister under subsection (3) to be professional attention but not being premises at which overnight accommodation is provided;

“Department” means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“Executive Director” means the Executive Director, Personal Health Services of the Department;

“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, other than the professional services of medical practitioners;

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

“local authority” means the council of a municipality;

“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;

“practitioner” includes any person who is a medical practitioner within the meaning given to that expression in the *Medical Act 1894*, and any other person practising in the field of health or medicine who is declared by the Minister under section 3 to be a practitioner for the purposes of this Act;

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

“private non-profit hospital” means a hospital which is maintained by a religious or charitable organisation and is not carried on for the purpose of private gain;

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“public hospital” means any hospital that is —

(a) conducted or managed by —

(i) a board constituted under this Act; or

(ii) the Minister under this Act;

or

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

“teaching hospital” means an institution declared by the Minister under section 3 to be a teaching hospital for the purposes of this Act;

“the Commonwealth Act” means the *Health Insurance Act 1973*, as amended from time to time, of the Parliament of the Commonwealth.

(2) Notwithstanding the provisions of any other Act, the making or giving of a grant or subsidy to a private hospital under this Act does not affect the status of the hospital as a private hospital.

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

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

[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.]

Application of Act

3. (1) This Act applies to any private hospital and any public hospital howsoever founded or maintained (whether wholly or partly by or under governmental authority or otherwise), but does not apply to any institution which is an approved hospital within the meaning of, and subject to the *Mental Health Act 1962*, or to any hospital used exclusively in connection with a prison.

(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.

(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.

[Section 3 inserted by No. 33 of 1972 s. 6; amended by No. 28 of 1984 s. 50; No. 53 of 1985 s. 16.]

[4. Repealed by No. 33 of 1972 s. 7.]

PART II — ADMINISTRATION

Minister

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

Duties of the Minister

5A. (1) It shall be the duty of the Minister to provide throughout the State, 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.

(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 by a voluntary organisation or private non-profit hospital.

(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 by No. 33 of 1972 s. 8.]

[6. *Repealed by No. 28 of 1984 s. 51.*]

[6A. *Repealed by No. 71 of 1976 s. 3.*]

Minister acting in place of board

7. (1) 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.

(2) 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 powers and duties of a board, and all property which would vest in a board of such hospital shall vest in the Minister.

*[Section 7 amended by No. 33 of 1972 ss. 11 and 12;
No. 98 of 1985 s. 3.]*

General powers of the Minister

7A. The Minister shall have general power —

- (a) to establish depots and make contracts for the supply of 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;
- (b) to maintain an exchange through which public hospitals may secure the services of staff;
- (c) with the approval of the Treasurer of the State, 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

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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;

- (d) to make payments by way of subsidy in respect of the accommodation of any frail aged person;
- (e) to make payments by way of subsidy in respect of patients who are unable to afford the payment of reasonable fees; and
- (f) to give effect to any agreement entered into by the Commonwealth with the State under section 23F of the Commonwealth Act and to any guidelines formulated under section 17 (4) (c) of the Commonwealth Act.

[Section 7A inserted by No. 33 of 1972 s. 12; amended by No. 85 of 1983 s. 4; No. 53 of 1985 s. 17.]

**Power to close a public hospital
or to abolish the board**

8. 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.

Holding of inquiries

9. (1) 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.

(2) 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 s. 18.]

Power to visit and inspect hospitals

10. (1) Any person authorized by the Executive Director for that purpose may —

- (a) visit any hospital;
- (b) inspect every part of any hospital, including any outbuildings or premises appurtenant thereto; 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 shall not be made except on complaint to the Executive Director;
- (b) the medical practitioner of the patient shall be notified of the intention of the authorized person to examine the patient and given an opportunity to be present at the examination; and

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

[Section 10 amended by No. 28 of 1984 s. 52; No. 53 of 1985 s. 19.]

Obstruction

11. No person shall —

- (a) obstruct any person authorized under section 10 in the performance of his duties, or the visitation or inspection of any public hospital; or
- (b) wilfully mislead any person authorized 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. 53.]

Hospital reserves

12. (1) 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.

(2) Any lands hereto 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 and other retirement benefits

12A. (1) 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.

(3) 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 entitlement to the scheme established under this section or otherwise, and generally in relation to such matters.

(4) 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 (2) of this section.

(5) Any act, matter or thing done or executed before the coming into operation of the *Hospitals Act Amendment Act 1972*¹, 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 by No. 33 of 1972 s. 15; amended by No. 28 of 1984 s. 54; No. 53 of 1985 s. 20.]

[13. Repealed by No. 28 of 1984 s. 55.]

PART III — LOCAL ADMINISTRATION

[14. *Repealed by No. 33 of 1972 s. 17.*]

Hospital boards

15. (1) 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 of this Act 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).*]

(2) The management and control of a public hospital is vested in the hospital board constituted in relation to it.

(3) 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.

(4) Every board shall be capable of suing and being sued in its corporate name.

(5) The Governor may appoint a deputy for any member of a hospital board.

(6) 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.

(7) The constitutional provisions contained in the Schedule to this Act 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.*]

[16. *Repealed by No. 53 of 1985 s. 21.*]

Powers of boards over lands vested in them

17. (1) The board of any public hospital shall be deemed to have the powers of an institution within the meaning of *The Public Institutions and Friendly Societies Lands Improvement Act 1892*, and may exercise in respect of lands vested in it such powers as are thereby given to institutions: Provided that the portions of the Act requiring the concurrence of three-fourths of the members of an institution shall for the purposes of this Act be deemed to be eliminated.

(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.

(2a) In addition to the power to borrow conferred by subsection (2) a board may borrow money on such security as the Governor thinks fit for the purposes of the payment of the costs of the establishment and construction of the hospital managed and controlled by the board and for any buildings and equipment incidental thereto, notwithstanding when such costs arose.

(3) 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.

(4) 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.]

s. 17A

Payments guaranteed by State

17A. (1) 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.

(2) All sums required by the Treasurer for fulfilling a guarantee so given, shall be paid out of the Consolidated Revenue Fund, which is hereby to the necessary extent appropriated accordingly.

(3) Under the authority of this Act the Treasurer of the State may guarantee the repayment of any amount borrowed from time to time —

(a) by the board of a public hospital under the powers conferred by section 17; or

(b) by any religious or charitable organisation for expenditure on a project in connection with a private, non-profit hospital or nursing home maintained or to be maintained by that organisation, and which the Minister has certified to the Treasurer to be an approved borrowing for the purpose of this section.

(4) A guarantee given under the authority of this Act may extend to the payment of interest on the amount borrowed and to such other charges in relation to the loan as the Treasurer may approve.

[Section 17A inserted by No. 16 of 1953 s. 3; amended by No. 10 of 1973 s. 3.]

Functions of hospital boards

18. (1) A board shall be responsible for the control, management, and maintenance of the public hospital or hospitals for which it is or has been appointed, and may exercise such other duties and functions for the purposes of this Act, as may from time to time be prescribed.

(1a) The board of a hospital may provide any facility in the hospital for the use of a practitioner for carrying out any hospital, medical or other service.

(1b) Subject to subsection (1c), the provision of any facility under subsection (1a) shall be on such terms and conditions, including the payment of charges, as are determined by the Minister from time to time.

(1c) The Minister shall, in relation to a public hospital which is a recognized hospital within the meaning of the Commonwealth Act, determine terms and conditions, including the payment of charges, under subsection (1b) in accordance with such guidelines (if any) as are formulated under section 17 (4) (c) of the Commonwealth Act.

(2) 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 at a public hospital.

(3) 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.]

Returns or information

18A. Where the Minister gives a direction requiring the board of a public hospital to furnish to him or persons nominated by him statistical or other returns or information on matters relating to the hospital and arising there or elsewhere and he fixes a reasonable time within which the returns are or the information is to be furnished, the board shall, within that time, comply with the direction.

[Section 18A inserted by No. 89 of 1969 s. 2.]

s. 19

Board may appoint officers and servants

19. (1) A board may from time to time appoint and remove a secretary, a treasurer, and such other medical and other officers, matrons, nurses, attendants, and servants as it thinks requisite to assist in the management of any public hospital under the control of the board, or otherwise in the execution of this Act.

(2) A board may also from time to time appoint and remove such medical officers and district nurses as it thinks fit for the purpose of attending sick persons elsewhere than in a public hospital; provided the circumstances of such persons are such as to bring them within the provisions of the first paragraph of section 31.

(3) All persons so appointed may be paid out of the revenues of the board such salaries, wages, or other remuneration as the board thinks fit.

(4) No officer who is entrusted or is intended to be entrusted with moneys shall be appointed or continued in office by a board until and unless he shall have given adequate security for the faithful discharge of his duties, and it shall be the duty of such officer to keep and maintain such security in full force and effect.

(5) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under —

- (a) subsection (1) to be a secretary, treasurer or other medical or other officer, matron, nurse, attendant or servant; or
- (b) subsection (2) to be a medical officer or district nurse,

and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978* an inconsistency between this Act and that Act that Act shall prevail.

[Section 19 amended by No. 113 of 1987 s. 32.]

**Boards may appoint collectors
of voluntary contributions**

20. A board may authorize 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.

**Expenditure by boards of
moneys under their control**

21. (1) 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.
- (aa) 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.
- (b) The equipment of buildings to be used as such a public hospital.
- (c) Repairing, altering, or adding to any buildings used for the purposes of such a public hospital; provided that expenditure exceeding \$100 on any alteration or addition shall first receive the approval of the Minister.
- (d) The provision or subsidising of ambulances or other facilities for the transport of the sick or injured.
- (e) The provision of medicines, disinfectants, surgical requisites, and medical, surgical, and nursing attendance for sick or injured persons.

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- (f) 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.
- (g) The on-lending to the Minister or any person or organisation 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 Minister, can more effectively or economically be provided to the hospital by the Minister or that person or organisation rather than by the board.

(2) A board shall apply any moneys borrowed pursuant to section 17 (2a) for the purposes referred to therein.

[Section 21 amended by No. 113 of 1965 s. 8; No. 33 of 1972 s. 21; No. 64 of 1980 s. 4; No. 84 of 1982 s. 3.]

Boards may make by-laws in respect of institutions

22. (1) A board, in respect of any public hospital under its control, may from time to time make by-laws, not inconsistent with this Act, as to any of the following matters:—

- (a) Regulating the admission or discharge of patients and other persons entitled to the benefits of the public hospital.
- (b) Maintaining order, discipline, decency, and cleanliness among the inmates of the public hospital.
- (c) Prescribing the duties of the officers, nurses, attendants, and servants of the board.
- (d) Preventing trespass upon the premises of the public hospital or the ground attached or belonging thereto.

- (da) Regulating or prohibiting the driving, use, standing or parking of vehicles on the ground attached to the public hospital or belonging to the board and regulating the control, supervision and management of parking or standing areas on that ground and in particular —
- (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;
 - (ii) prescribing conditions under which and the period or periods of time during which a parking or standing area may be used or occupied;
 - (iii) 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;
 - (iv) 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;
 - (v) 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;

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- (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;
- (viii) 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 authorizing the board to hold the vehicle until the prescribed charges are paid to the board;
- (ix) 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 defence to a charge of the offence in respect of which that modified penalty was paid.
 - (e) Prohibiting the introduction of any specified articles into the public hospital.
 - (f) Regulating the provision of hospital service by the public hospital to patients or other persons not being inmates of the public hospital.
 - (g) Prescribing in what circumstances fees other than fees specified in accordance with the provisions of section 37, shall be chargeable for the provision of hospital service in, by or on behalf of any public hospital under the control of the board.
 - (ga) Prescribing that fees prescribed under paragraph (g) shall be chargeable in accordance with a scale to be determined from time to time by the board.
 - (h) Generally making provision for all matters affecting the management, care, control, and superintendence of the public hospital and the fulfilment of the purposes thereof.
 - (i) Providing for a breach of any such by-law a fine not exceeding \$50.
- (2) Subject to any by-laws made under subsection (1) (da), every fine referred to in subsection (1) (i) shall be recoverable on summary conviction.

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(2a) In paragraph (da) of subsection (1) —

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

(3) All by-laws, rules, or regulations in force with respect to any public hospital at the commencement of this Act shall, so far as they are consistent with this Act, remain in force with respect to that public hospital, and may be revoked, varied, proved, and enforced in the same manner as if they had been made by the board controlling the particular hospital.

(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.

(5) 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.

(6) 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.]

Medical funds

23. (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 —
- (a) the rates of subscription of such fund, and the benefits to be received by subscribers;
 - (b) 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.

Application of Financial Administration and Audit Act 1985

24. (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of every board and its operations.

(2) The accounts caused to be kept by a board in accordance with the *Financial Administration and Audit Act 1985* shall, at all reasonable times, be open to the inspection of any member of the board.

(3) Notwithstanding the *Financial Administration and Audit Act 1985*, 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.]

Local visiting and advisory committees

25. (1) In respect of any public hospital controlled by the Minister, the Governor may appoint a visiting and advisory committee.

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(2) 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;
- (c) submit reports and recommendations to the Department.

(3) 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.

Accounts

26. [(1) *repealed*]

(2) A separate account shall be kept of every trust fund or trust property under the control of the board.

[*Section 24 amended by No. 33 of 1972 s. 23; No. 98 of 1985 s. 3.*]

PART IIIA — PRIVATE HOSPITALS

[Part IIIA inserted by No. 53 of 1985 s. 22.]

Interpretation

26A. 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 a private hospital

26B.² (1) Any natural person or body corporate who or which desires to conduct a private hospital may apply and obtain a licence to conduct a private hospital.

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

- (a) that he or she has attained the age of 18 years;
- (b) that he or she is a person of good character and repute and a fit and proper person to conduct a private hospital;
- (c) that he or she has sufficient material and financial resources available to him or her to comply with the requirements of this Act; and

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- (d) that he or she understands fully the duties and obligations imposed on him or her in relation to the conduct of a private hospital under this Act and otherwise.

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

- (a) that all the natural persons by whom the firm is constituted and all of the persons concerned in the management or conduct of any body corporate by which the firm is constituted are persons of good character and repute and are persons fit to be concerned in the management or control of the private hospital;
- (b) that the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act;
- (c) that at least 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 Commissioner —

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

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

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

Premises to be approved

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

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

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

Grant of a licence

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

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

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

- (a) the maximum number of patients that may be treated at any one time at the private hospital and kinds or classes of patients that may be treated at the private hospital; and
- (b) the number and the categories of nursing and other staff, the kinds of nursing and other care that shall be provided or available at the private hospital and the periods and times at which they shall be provided or available.

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

(5) When an application for a licence —

- (a) is in respect of premises that are not approved as premises for a hospital under this Part the Commissioner shall notify the applicant of his decision within 3 months of the day that the application for the licence is lodged at the office of the Commissioner;
- (b) is in respect of premises that are approved premises for a hospital under this Part the Commissioner shall notify the applicant of his decision within 30 days of the day that the application for the licence is lodged at the office of the Commissioner.

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

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

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

Duration of licence

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

(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.]

Cancellation of licence

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

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

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

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(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.]

Commissioner may close private hospital

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

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

Penalty: \$2 000.

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

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

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

Appeals

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

(2) An appeal under subsection (1) —

- (a) shall be lodged with the clerk of the Local Court within 30 days of the date of the decision of the Commissioner cancelling or refusing to renew the licence in question;
- (b) does not operate as a stay on the cancellation of the licence.

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

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

s. 26I

Grants and subsidies

26I. (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.

(2) A grant or subsidy shall not be made or given under this section unless the licence holder agrees to conduct the private hospital in accordance with the regulations and such conditions as are imposed by the Commissioner and to comply with any directions given by the Commissioner.

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

Guidelines

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

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

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

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

Offences

- 26K.²** (1) A person shall not on or after the appointed day —
- (a) conduct or manage a private hospital or nursing home or by any means hold out that that person conducts or manages a private hospital or nursing home unless that person is the holder of a licence;
 - (b) conduct or manage a private hospital or nursing home or by any means hold out that that person conducts or manages a private hospital or nursing home unless those premises are premises that are approved as a private hospital under this Part; or
 - (c) build, alter or extend any private hospital or nursing home unless the Commissioner has approved of the building, alteration or extension as the case requires.

Penalty: \$5 000.

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

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

Failure to comply with conditions

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

Penalty: \$1 000.

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

s. 26M

Vicarious liability

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

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

Form of application and licence

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

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

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

Regulations

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

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

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

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

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

[Section 260 inserted by No. 53 of 1985 s. 22.]

PART IV — GENERAL

**Power of local authorities to
expend revenues on, and borrow
money for, public hospitals**

27. (1) A local authority shall have power to expend and apply or to give a binding undertaking to expend and apply for any number 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:

Provided that 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 authority to expend or apply in any year a sum exceeding 10 per centum 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.

Provided also, that 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.

(2) It shall be lawful for any local authority 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 authority, and such objects shall be deemed to be works and undertakings within the meaning of Part XXVI of the *Local Government Act 1960*, as though the same had been included therein respectively, and the powers and provisions contained in that Act relating to the borrowing of money shall apply to the objects abovementioned.

[(3) *repealed.*]

(4) The provisions of this section are without prejudice to any power vested in a local authority by or under any other Act and the powers of a local authority vested in it by or under the *Local Government Act 1960*, are deemed to be extended in so far as is necessary to give effect to those provisions.

(5) Any 2 or more local authorities, whose boundaries are adjacent, may enter into an agreement between themselves and the Minister for the purposes of this section.

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

[*Section 27 amended by No. 33 of 1972 s. 24; No. 53 of 1985 s. 23.*]

[28. *Repealed by No. 33 of 1972 s. 25.*]

Effect of closing of hospitals

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

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.

Any money in the hands of the board, and all debts owing to the board, shall vest in the Minister who, after paying the liabilities of the board, shall dispose of any balance remaining for the benefit of existing hospitals as he may think fit.

[30. *Repealed by No. 33 of 1972 s. 26.*]

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Qualifications of person for admission to public hospital

31. (1) The qualifications of any person for admission to any public hospital maintained under the provisions of this Act shall be sickness of such a nature as in the opinion of the medical or other officer in charge warrants hospital treatment.

(2) Nothing in subsection (1) prevents the admission to any public hospital maintained under the provisions of this Act of any person in urgent need of medical or nursing attention.

[Section 31 amended by No. 85 of 1983 s. 7; No. 53 of 1985 s. 24.]

Liability for treatment of seamen

31A. (1) Notwithstanding section 33, where a master, seaman, apprentice or other member of the crew of a ship —

- (a) who has received a hurt or injury or contracted disease in the service of the ship; or
- (b) who is suffering from any illness not being venereal disease or an illness due to his own wilful act or default or to his own misbehaviour,

is by reason thereof admitted to a public hospital, and the owner of the ship is by law required to defray the expense of providing hospital service for him in respect of the hurt, injury, disease, or illness, the owner and the agent of the owner are jointly and severally liable to pay to the Board the prescribed fees for any hospital service granted in or by the hospital to the master, seaman, apprentice, or member in respect of the hurt, injury, disease or illness.

(2) Notwithstanding subsection (1), where the master, seaman, apprentice, or other member of the crew of a ship is admitted to a public hospital by reason of a personal injury by accident for which he is entitled to compensation under the

provisions of the *Workers' Compensation Act 1912*³, the provisions of that Act apply to the fees for the hospital service granted in or by the hospital in respect of the personal injury.

[*Section 31A inserted by No. 16 of 1953 s. 4.*]

[**32.** *Repealed by No. 53 of 1985 s. 25.*]

Cost of relief to constitute a debt

33. (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 married woman not living apart from her husband or a minor shall, without excluding the liability of the person so relieved, constitute a debt due by the husband of the married woman, and 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, registered friendly society, registered branch of a friendly society, or other society or person, of the cost of hospital

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service to be afforded by the board to any person, and the amount so agreed to be paid, or a reasonable sum if no specific amount is so agreed upon, shall be a debt recoverable in any court of competent jurisdiction.

(6) 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.

[Section 33 amended by No. 33 of 1972 s. 27.]

**Restrictions on medical practitioners
in recognized hospitals**

33A. (1) Notwithstanding anything in this Act or in any other Act, when an eligible person (not being a person to whom a declaration made under section 6 (2) of the Commonwealth Act applies in the relevant circumstances) —

- (a) as a public in-patient of a recognized hospital; or
- (b) as a registered out-patient under an outpatient service of a recognized hospital,

obtains a professional service from or under the supervision of a medical practitioner —

- (c) the eligible person is not liable to pay any fees; and
- (d) the medical practitioner shall not —
 - (i) render an account to the eligible person; or
 - (ii) seek or accept from the eligible person remuneration in any form, or any assignment of benefits,

in respect of the professional service.

(2) A medical practitioner shall not render on his own behalf a professional service in respect of a prescribed item —

- (a) to an in-patient of a recognized hospital;
- (b) in a recognized hospital, to an outpatient of the recognized hospital; or
- (c) in a case —
 - (i) to which neither paragraph (a) nor (b) applies; and
 - (ii) in which the State is a party to an agreement under section 23F of the Commonwealth Act that declares the State to be a State to which section 17 (1) (aa) (iii) (A) of the Commonwealth Act applies,

to a patient at a recognized hospital,

unless —

- (d) there is in force between the medical practitioner and the board of the recognized hospital an approved agreement which -
 - (i) provides for the right of the medical practitioner to render on his own behalf a professional service of the kind in question; and
 - (ii) in the case of an approved agreement to which a board constituted under section 15 is a party, is in accordance with such directions (if any) as are given under subsection (3) to that board;
- and
- (e) the professional service rendered is rendered in accordance with the approved agreement referred to in paragraph (d).

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(3) The Minister may, after consultation with a board constituted under section 15 and subject to section 17 of the Commonwealth Act and to any Commonwealth guidelines and State guidelines —

- (a) give to that board such directions in writing as he thinks fit in respect of such approved agreements as may be entered into by that board; and
- (b) by writing given to that board vary or revoke directions given to it under this subsection.

(4) Without limiting the generality of subsection (3), the Minister may give directions under that subsection —

- (a) prohibiting a board from entering into a particular approved agreement or approved agreements of any class or classes;
- (b) requiring a board to obtain his approval before entering into a particular approved agreement or approved agreements of any class or classes; or
- (c) with respect to, among other matters —
 - (i) the whole or any part of the recognized hospital concerned;
 - (ii) a particular kind of professional service or treatment; or
 - (iii) patients generally or patients of any class or classes.

(5) A board shall give effect to any directions given to it under subsection (3).

- (6) The board of a recognized hospital shall ensure that —
- (a) an in-patient of the recognized hospital, being an in-patient referred to in subsection (2) (a), is not referred; or
 - (b) a specimen taken from an in-patient referred to in paragraph (a) is not consigned,

to a medical practitioner in private practice (in this subsection called "**the private practitioner**") for the purpose of the rendering by the private practitioner to that in-patient or in respect of that specimen, as the case requires, of a professional service in respect of a prescribed item unless —

- (c) there is in force between the private practitioner and the board of the recognized hospital an approved agreement providing for the rendering by the private practitioner of a professional service of the kind in question; and
 - (d) the reference of that in-patient or the consignment of that specimen, as the case requires, and the rendering of that professional service are in accordance with the approved agreement referred to in paragraph (c).
- (7) The board of a recognized hospital shall ensure that —

- (a) an out-patient referred to in paragraph (b), or a patient referred to in subsection (2) (c), being an out-patient or patient, as the case requires, of or at the recognized hospital, is not referred; or
- (b) a specimen taken from an out-patient or patient referred to in paragraph (a) is not consigned,

to a medical practitioner for the purpose of the rendering by that medical practitioner on his own behalf to that outpatient or patient or in respect of that specimen, as the case requires, of a

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professional service at or in the recognized hospital in respect of a prescribed item unless —

- (c) there is in force between the medical practitioner and the board of the recognized hospital an approved agreement providing for the rendering by the medical practitioner of a professional service of the kind in question; and
- (d) the reference of that out-patient or patient or the consignment of that specimen, as the case requires, and the rendering of that professional service are in accordance with the approved agreement referred to in paragraph (c).

(8) The Minister may, if Commonwealth guidelines have been formulated, formulate guidelines by notice published in the *Gazette* for the purpose of giving effect to the Commonwealth guidelines and may by notice published in the *Gazette* vary or revoke any guidelines formulated under this subsection.

(9) An approved agreement shall, in addition to being in accordance with the Commonwealth guidelines, be in accordance with the State guidelines.

(10) Notwithstanding anything in this Act, the board of a recognized hospital —

- (a) has all the powers necessary for entering into and complying with an approved agreement; and
- (b) shall comply with every approved agreement entered into by it.

(11) This section shall have effect only while an agreement entered into by the Commonwealth with the State under section 23F of the Commonwealth Act is in force.

(12) Subject to subsection (13), a word or phrase to which a meaning is attributed by, or by virtue of its use in, any provision of the Commonwealth Act has the same meaning when it is used in this section.

(13) In this section —

“Commonwealth guidelines” means guidelines formulated under section 17 (4) (c) of the Commonwealth Act;

“medical practitioner” has the meaning given by section 3 of the *Medical Act 1894*;

“public in-patient” has the meaning given by regulations made under section 37;

“State guidelines” means guidelines formulated by the Minister under subsection (8).

[*Section 33A inserted by No. 85 of 1983 s. 8.*]

**Rights of private practice
otherwise than under approved
agreements referred to in section 33A**

33B. (1) Subject to section 33A and to any approved agreement within the meaning of section 17 of the Commonwealth Act in force in respect of him and to any exemption granted under subsection (5), a medical practitioner or dentist shall not render on his own behalf any professional service or treatment to a patient at or in a public hospital unless —

- (a) there is in force between the medical practitioner or dentist and the board of the public hospital an agreement (in this section called a **“private practice agreement”**) which —
 - (i) provides for the right (in this section called a **“right of private practice”**) of the medical

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practitioner or dentist to render on his own behalf a professional service or treatment of the kind in question; and

- (ii) in the case of an agreement to which a board constituted under section 15 is a party, is in accordance with such directions (if any) as are given under subsection (2) to that board;

and

- (b) the professional service or treatment rendered is rendered in accordance with the agreement referred to in paragraph (a).

(2) The Minister may, after consultation with a board constituted under section 15 —

- (a) give to that board such directions in writing as he thinks fit in respect of such private practice agreements as may be entered into by that board; and
- (b) by writing given to that board vary or revoke directions given to it under this subsection.

(3) Without limiting the generality of subsection (2), the Minister may give directions under that subsection —

- (a) prohibiting a board from entering into a particular private practice agreement or private practice agreements of any class or classes;
- (b) requiring a board to obtain his approval before entering into a particular private practice agreement or private practice agreements of any class or classes;
- (c) with respect to, among other matters —
 - (i) the whole or any part of the public hospital concerned;

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- (ii) a particular kind of professional service or treatment; or
- (iii) patients generally or patients of any class or classes.

(4) A board shall give effect to any directions given to it under subsection (2).

(5) The Minister may by notice published in the *Gazette* —

- (a) exempt medical practitioners or dentists generally from complying with this section in relation to a public hospital specified in that notice during such period as is so specified; and
- (b) revoke an exemption granted under this subsection.

(6) Notwithstanding anything in this Act, a board —

- (a) has all the powers necessary for entering into and complying with a private practice agreement; and
- (b) shall comply with every private practice agreement entered into by it.

(7) In this section —

“**dentist**” has the meaning given by section 4 of the *Dental Act 1939*;

“**medical practitioner**” has the meaning given by section 3 of the *Medical Act 1894*.

[Section 33B inserted by No. 85 of 1983 s. 8.]

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Combined agreements

33C. Nothing in sections 33A and 33B prevents the combination of all 4 or any 2 or 3 of the agreements referred to in section 33A (2), (6) and (7), and in section 33B (1), into a combined agreement which complies with the requirements of section 33A, or of section 33A and 33B, as the case requires.

[Section 33C inserted by No. 85 of 1983 s. 8.]

Application of sections 33A to 33C

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

[Section 34 inserted by No. 53 of 1985 s. 26.]

Board may set apart hospitals for treatment of infectious diseases

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

[Section 34A inserted by No. 53 of 1985 s. 26.]

Receipts exempt from stamp duty

35. All receipts given by and on behalf of the Department or a board, and all declarations required or authorized by this Act, and any agreement entered into under and for the purposes of this Act, in relation to a public hospital shall be exempt from stamp duty.

[Section 35 amended by No. 53 of 1985 s. 27.]

Indemnity

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

[Section 35A inserted by No. 53 of 1985 s. 28.]

General penalty

36. Every person failing to observe any provision of this Act which he ought to have observed, or to do any act directed by this Act to be done, or doing any act forbidden to be done by this Act, shall be guilty of an offence and liable on summary conviction, if there is no other penalty provided under this Act for such offence, to a penalty not exceeding \$100.

[Section 36 amended by No. 33 of 1972 s. 29.]

Regulations and by-laws

37. (1) The Governor may make regulations for or with respect to any matter, whether general or to meet a particular case, that is requisite or expedient to give effect to the purposes of this Act.

(2) Without prejudice to the generality of subsection (1) the Governor may by regulation —

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

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

[(c) *deleted*]

[(d) *deleted*]

(e) without limiting his absolute discretion under section 15 (1) as to the appointment of persons to a board of a public hospital, prescribe —

(i) persons, bodies, or groups of persons from all or any of whom the Governor may direct that nominations be sought of persons for appointment to hospital boards;

(ii) the maximum number of persons nominated by a particular person, body, or group of persons who may hold office as members of the same hospital board at any one time,

and make provision —

(iii) for the holding of elections, where necessary, of persons to be nominated by persons, bodies, or groups of persons, and as to the qualifications of electors, and the procedures to be followed, at such elections;

(iv) as to the eligibility of persons for nomination by any person, body, or group of persons, for appointment to a hospital board, which may include provision for the Minister in a particular case to direct, for the purpose of ensuring that not more than one-half of the membership of the hospital board of a teaching hospital is made up of persons who are practitioners, that the person to be so nominated shall not be a practitioner;

- (v) for expenses incurred by a hospital board in connection with the nomination of any person for appointment to the hospital board in accordance with the regulations to be borne and paid out of the funds of the hospital board.

(2a) Notwithstanding anything in this Act the Governor may make regulations under this section prescribing charges to be made by a public hospital in respect of any service whether hospital or medical provided by or in the public hospital whether provided by the hospital or by some other person or organisation.

(2b) Regulations made under this section relating to charges to be made by a public hospital in respect of services rendered by or in the hospital shall be valid and have effect notwithstanding that the services include medical services normally provided by a medical practitioner and other professional services provided by or on behalf of the hospital.

(2c) Notwithstanding anything in this Act for the purposes of legal proceedings for the recovery of any charges prescribed by the regulations it is hereby declared that any service referred to in the regulations has been validly provided by the public hospital by or in which it was so provided.

(2d) Notwithstanding anything in this Act, the Governor may make regulations under this section giving effect to —

- (a) any agreement entered into by the Commonwealth with the State under section 23F of the Commonwealth Act and in particular —

- (i) ensuring that care and treatment of a kind specified in any such agreement will be available to all eligible persons (not being persons to whom a declaration made under section 6 (2) of the Commonwealth Act applies in the relevant circumstances) without charge as public patients; and

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(ii) prescribing charges specified by any such agreement to apply,

in recognized hospitals in the State; and

(b) any approved agreement within the meaning of section 17 (4) of the Commonwealth Act.

(2e) In subsection (2d) —

“eligible persons” and **“recognized hospitals”** have the meanings respectively given by the Commonwealth Act.

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

(a) providing for the detention, discipline and the maintenance of good conduct of patients and for the conduct of persons having care of patients in a public hospital conducted for the reception or treatment of persons suffering from an infectious disease or any portion of a public hospital set apart for that purpose;

(b) controlling the conduct of visitors and other persons;

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

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

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

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

is evidence of that fact.

(3) Regulations may be made under this section —

- (a) so as to apply —
 - (i) at all times or at a specified time or at specified times;
 - (ii) throughout the State or in a specified part or specified parts of the State; and

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- (iii) generally or in a particular class of case or in particular classes of cases;
- (aa) defining classes of patient and classes of service;
- (ab) adopting for the purposes of referring to a class of patient or class of service any definition in any law of the Parliament of the Commonwealth;
- (ac) so as to discriminate between classes of patient and classes of service and according to the circumstances in which a service is provided and in respect of the class of patient to whom it is provided;
- (ad) prescribing that no charges are payable in respect of any class of service, any class of patient and any public hospital or class of public hospital;
- (ae) 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;
- (af) 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;
- (b) so as to require a matter affected by them to be —
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;
- (c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority;

- (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
- (e) so as to impose a penalty not exceeding \$50 for any breach of the regulations.

(4) In subsection (3) “**specified**” means specified in the regulations.

[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.]

Review of Act

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

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

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(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.]

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SCHEDULE

[Section 15]

**CONSTITUTIONAL PROVISIONS FOR
HOSPITAL BOARDS**

Tenure of office

1. (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.

Disqualification

2. 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*;
- (b) is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (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.

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Deputies

3. (1) 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 Act.

(2) Any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member.

Validity of proceedings

4. (1) A vacancy among the membership shall not invalidate the proceedings of any meeting.

(2) 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.

Quorum

5. To constitute a meeting there must be not less than one half of the members present.

Chairman

6. (1) The Chairman shall when present, preside at all meetings.

(2) Where the Chairman is expected to be absent from 2 or more consecutive meetings or if he is ill or otherwise incapacitated, the members present at any meeting may elect one of their number acting Chairman during such absence, illness or incapacity.

(3) In the absence of the Chairman, and where no acting Chairman has been elected, the Deputy Chairman or Vice Chairman, if any, shall preside and in default the members who are present at the meeting may elect one of their number to preside at that meeting.

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Interest

7. (1) A member who has a direct or indirect pecuniary interest in any matter that is before the meeting for consideration shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the members present at the meeting and such disclosure shall be recorded in the record of the meeting.

(2) A member who has disclosed his interest in any matter may take part in the consideration or discussion, but shall not vote.

Undisclosed interests

8. (1) Where a member in the opinion of the Chairman has a material pecuniary interest in any matter, the Chairman may call upon the member to disclose the nature of his interest and, in default of any such disclosure, may thereupon determine that such an interest exists.

(2) Every determination that a member is interested in any matter shall be recorded in the record of proceedings of the meeting at which it is made.

(3) Where the Chairman determines that a member has an undisclosed interest in any matter before the meeting for consideration that member may take part in the consideration or discussion but shall not vote.

Voting

9. (1) At any meeting all members present who have not declared an interest shall vote on any question submitted.

(2) All questions shall be decided by a majority.

(3) Each member, including the member presiding, shall have a deliberative vote only.

(4) In the case of an equality of votes the question shall be declared to be negatived.

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Records

10. 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.

Meetings

11. 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.

Committees and Co-option

12. (1) 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.

(2) 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.

Disputes

13. 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.

Conduct of proceedings

14. Subject to this Act the proceedings may be regulated in such manner as the members think fit.

[Schedule inserted by No. 33 of 1972 s. 31; amended by No. 71 of 1976 s. 4; No. 24 of 1990 s. 123.]

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NOTES

^{1.} This reprint is a compilation as at 22 April 1993 of the *Hospitals Act 1927* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Hospitals Act 1927</i>	23 of 1927	23 December 1927	1 January 1928 (see section 1 of Act No. 23 of 1927)	
<i>Hospitals Act Amendment Act 1948</i>	9 of 1948	11 November 1948	11 November 1948	
<i>Hospitals Act Amendment Act 1953</i>	16 of 1953	20 November 1953	20 November 1953	
<i>Hospitals Act Amendment Act 1955</i>	51 of 1955	9 December 1955	9 December 1955	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance: 21 December 1965	
<i>Hospitals Act Amendment Act 1969</i>	89 of 1969	17 November 1969	17 November 1969	
<i>Hospitals Act Amendment Act 1972</i>	33 of 1972	16 June 1972	30 June 1972 (see <i>Gazette</i> 30 June 1972 p.2098)	

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Table of Acts — *continued*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Hospitals Act Amendment Act 1973</i>	10 of 1973	25 May 1973	25 May 1973	
<i>Hospitals Act Amendment Act 1975</i>	104 of 1975	1 December 1975	1 December 1975	
<i>Hospitals Act Amendment Act 1976</i>	71 of 1976	6 October 1976	6 October 1976	
<i>Hospitals Amendment Act 1980</i>	64 of 1980	26 November 1980	8 July 1983 (see <i>Gazette</i> 8 July 1983 p.2475)	
<i>Hospitals Amendment Act 1981</i>	43 of 1981	26 August 1981	1 September 1981 (see section 2)	
<i>Acts Amend- ment (Statutory Designations) and Validation Act 1981, section 4</i>	63 of 1981	13 October 1981	13 October 1981	
<i>Hospitals Amendment Act 1982</i>	84 of 1982	15 November 1982	15 November 1982	
<i>Hospitals Amendment Act 1983</i>	85 of 1983	22 December 1983	Sections 3, 4, 5, 6, 7, 8 and 9: 1 February 1984 (see <i>Gazette</i> 20 January 1984 p.120) Balance: 22 December 1983 (see section 2(1))	

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Table of Acts — *continued*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Health Legislation Amendment Act 1984, Part X</i>	28 of 1984	31 May 1984	1 July 1984 (see section 2)	
<i>Acts Amendment (Hospitals) Act 1985, Part III</i>	53 of 1985	5 November 1985	23 January 1987 (see <i>Gazette</i> 23 January 1987 p.179)	Section 31 savings and transitional ²
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)	
<i>Guardianship and Administration Act 1990, section 123</i>	24 of 1990	7 September 1990	20 October 1992 (see section 2 and <i>Gazette</i> 2 October 1992 p.4811)	

The *Hospitals Act 1927* was affected by the *Hospital Fund Act 1930* and the *Narrogen Hospital Act 1932*.

² Section 31 of Act No. 53 of 1985 reads as follows —

Savings and transitional

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

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

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

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

3. Now see *Workers' Compensation and Rehabilitation Act 1981*.