



Western Australia

Hospitals and Health Services Act 1927

As at 26 May 2016

Version 07-g0-02

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Hospitals and Health Services Act 1927

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Defined terms

Western Australia

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 purposes.

[Long title inserted by No. 33 of 1972 s. 3; amended by No. 53 of 1985 s. 14; No. 103 of 1994 s. 4; No. 69 of 1996 s. 40.]

Part I — Preliminary

1. Short title

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

[Section 1 amended by No. 33 of 1972 s. 4; No. 103 of 1994 s. 5.]

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;

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, in relation to the person in question;

hospital service provider means —

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

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

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 —

- (a) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* 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;

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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 organization and is not carried on for the purpose of private gain;

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.

- (1A) In the definition of **hospital** in subsection (1), illness includes mental illness (as defined in the *Mental Health Act 2014* 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.
- (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; 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. 26.]

3. Application of Act

- (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 a 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; No. 49 of 1994 s. 4; No. 69 of 1996 s. 42.]

4. Application of Act to hospitals where mentally ill treated

Where a hospital or part of a 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.

s. 4

[Section 4 inserted by No. 69 of 1996 s. 43; amended by No. 25 of 2014 s. 27.]

Part II — Administration

5. Minister to control general administration

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

5A. Minister's duties

- (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 by No. 33 of 1972 s. 8; amended by No. 103 of 1994 s. 7; No. 17 of 1996 s. 4.]

[6. Deleted by No. 28 of 1984 s. 51.]

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

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

- (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 duties, powers and functions 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 s. 11 and 12; No. 98 of 1985 s. 3; No. 17 of 2002 s. 4.]

7A. Minister's general powers

- (1) The Minister shall have general power —
 - (a) 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
 - (ba) 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
 - (bc) to conduct training and instruction in, and research into, the services referred to in paragraphs (ba) and (bb); and
 - (c) with the approval of the Treasurer of the State, to make payments to or on behalf of any religious or charitable

organization for the purpose of defraying the interest on moneys borrowed by that organization and expended or intended to be expended by that organization on a project approved by the Minister in connection with a private non-profit hospital or nursing home maintained by that organization; and

- (d) to make payments by way of subsidy in respect of the accommodation of any frail aged person; and
 - (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 the Commonwealth Act and to the relevant guidelines (if any) formulated under the Commonwealth Act in relation to health services for the purposes of such an agreement.
- (2) For the purposes of the performance or exercise of the duties, powers or functions imposed or conferred on the Minister by or under this Act the Minister may —
- (a) enter into contracts and make arrangements on such terms and conditions, which may include the payment of charges, as the Minister thinks fit; or
 - (b) make arrangements for the provision of services by an agency or agencies,

or both.

[Section 7A inserted by No. 33 of 1972 s. 12; amended by No. 85 of 1983 s. 4; No. 53 of 1985 s. 17; No. 73 of 1994 s. 4; No. 103 of 1994 s. 16; No. 17 of 1996 s. 5; No. 17 of 2002 s. 5.]

7B. Agencies, establishing etc.

- (1) The Governor may, by notice published in the *Gazette* —
 - (a) establish an agency or agencies; or

s. 7B

- (b) amalgamate 2 or more existing agencies and establish the amalgamated agency as an agency,

for the purposes of the performance or exercise of any duty, power or function conferred on the Minister by or under this Act.

- (2) In a notice under subsection (1) the Governor shall specify —
 - (a) the day on which the notice is to take effect, being, in the case of a notice under subsection (1)(a), a day not earlier than 30 days after the publication of the notice in the *Gazette*; and
 - (b) the corporate name by which the agency established by that notice is to be known; and
 - (c) the objects and powers of that agency; and
 - (d) subject to section 7C, the constitution of that agency,and on and from that day that agency is established by that corporate name.
- (3) An agency established under this section is to be taken to be expressly authorised by Parliament for the purposes of section 4(2) of the *State Trading Concerns Act 1916*.
- (4) The Governor may by notice published in the *Gazette* —
 - (a) abolish an agency; and
 - (b) specify the day on which that notice is to take effect.
- (5) For the purposes of subsection (1) or (4), the Governor may, on the recommendation of the Treasurer, by instrument in writing give such directions with respect to the agency or agencies, and any public authority, specified in the notice concerned as the Governor considers necessary or expedient including, without limiting the generality of this subsection, directions with respect to —
 - (a) the transfer, sale or disposal of real or personal property or moneys; and

- (b) the rights, obligations and liabilities of an agency or public authority; and
- (c) the transfer of all or some rights, obligations and liabilities from —
 - (i) a public authority to an agency; or
 - (ii) an agency to a public authority;and
- (d) the rights, interests and welfare of any person employed or engaged by an agency; and
- (e) the continuation by or against any agency or a public authority of any legal proceedings pending by or against the agency or public authority; and
- (f) despite section 55 of the *Financial Management Act 2006*, the person who is to be the accountable authority of an agency for the purposes of the report required by Part 5 of that Act with respect to the period from 1 July in a financial year to a day which —
 - (i) occurs in the same financial year; and
 - (ii) immediately precedes the day on which the notice referred to in subsection (1) or (4), as the case requires, takes effect;and
- (g) transitional and consequential arrangements generally with respect to that agency or those agencies and any public authority,

and those directions are to have effect on and from the date specified in that instrument.

- (6) Part 5 of the *Financial Management Act 2006* applies to a person specified in a direction given under subsection (5)(f) as the accountable authority of an agency as if the period referred to in that subsection were a full financial year.

s. 7C

- (7) 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*.
- (8) 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.
- (9) 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.
- (10) In this section **public authority** means the Department or a body constituted or established under an Act administered by the Minister.

[Section 7B inserted by No. 103 of 1994 s. 17; amended by No. 57 of 1997 s. 74(3); No. 31 of 1997 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.]

7C. Agencies, constitution, nature etc. of

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

according to the terms of the notice under section 7B(1) establishing the agency.

- (2) Any act, matter or thing done in the name of, or on behalf of, the agency or with the authority of the agency by —
- (a) in the case of an agency constituted by the Minister, the Minister; or
 - (b) in the case of an agency constituted by an agency board, the agency board,
- is to be taken to be done by the agency.
- (3) An agency —
- (a) is a body corporate with perpetual succession and a common seal; and
 - (b) may sue and be sued in its corporate name; and
 - (c) subject to section 7D, is capable of acquiring, holding, leasing, mortgaging, charging and disposing of real and personal property.
- (4) Where an agency is constituted by an agency board, the notice under subsection (1) constituting the agency may —
- (a) provide that the provisions of the Schedule or such of the provisions of the Schedule as are specified in the notice, with such modifications (if any) as are specified, apply to the members of the agency board; and
 - (b) specify the duties of the members of the agency board to the agency; and
 - (c) provide that remuneration and travelling and other allowances may be paid to members of the agency board.
- (5) All courts and persons acting judicially shall take judicial notice of the common seal of an agency affixed to any document and shall presume that it was duly affixed to the document.
- (6) Regulations may be made under section 37 as to the execution of documents and use of the common seal of an agency or a facsimile of that seal in the State or elsewhere and the use of the

s. 7D

seal in the manner and circumstances so prescribed is to be taken to be the use of the seal of the agency.

- (7) Without affecting the generality of the powers that may be conferred on an agency under section 7B, a notice under that section may include among the powers of an agency any one or more of the following powers, namely —
- (a) the power to undertake commercial exploitation of any research undertaken by, or of any intellectual property rights belonging to, the agency for any purpose relating to the carrying on of the agency; and
 - (b) the power, with the approval of the Treasurer, to enter into a joint venture with another person or other persons if the objects or purposes of the joint venture include one or more objects or purposes that are incidental or conducive to the exercise of the powers of the agency.

[Section 7C inserted by No. 103 of 1994 s. 17; amended by No. 17 of 1996 s. 6.]

7D. Minister's powers with respect to agencies

- (1) An agency that is not constituted by the Minister is not, except with the approval of the Minister, empowered to —
- (a) acquire, hold, lease, mortgage, charge or dispose of any real property; or
 - (b) enter into any contract in which the amount to be paid or received under the contract exceeds the amount specified in guidelines issued by the Minister with respect to the agency.
- (2) Without affecting the operation of subsection (1), the Minister may give directions in writing to an agency that is not constituted by the Minister with respect to the performance of its functions, either generally or in relation to a particular matter, and the agency is to give effect to any such direction.
- (3) The text of any approval given for the purpose of subsection (1), and the text of any direction given under subsection (2), are to

be laid before each House of Parliament within 14 sitting days of that House after the giving of that approval or direction, as the case requires, and included in the annual report submitted by the accountable authority of the agency concerned under Part 5 of the *Financial Management Act 2006*.

- (4) Without affecting the powers of the Minister in relation to an agency constituted by the Minister, the Minister is entitled in relation to an agency which is not constituted by the Minister —
- (a) to have information in the possession of that agency; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (5) For the purposes of subsection (4)(a) and (b), the Minister may —
- (a) request an agency to furnish information to the Minister; and
 - (b) request the agency to give the Minister access to information; and
 - (c) for the purposes of paragraph (b), make use of the staff and facilities of the agency to obtain the information and furnish it to the Minister.
- (6) An agency is to comply with a request under subsection (5) and make its staff and facilities available to the Minister for the purposes of subsection (5)(c).
- (7) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person who receives any personal health service; or
 - (b) might enable the identity of any such person to be ascertained,
- unless that person has consented to the Minister having that information.
- (8) In subsections (4), (5) and (7) —

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document includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, or electronically or otherwise;

information means information specified, or of a description specified, by the Minister that relates to the functions of the agency in question.

[Section 7D inserted by No. 103 of 1994 s. 17; amended by No. 77 of 2006 Sch. 1 cl. 86(3).]

7E. Agencies, staff of

- (1) An agency may employ or engage such employees and other persons as it considers necessary to enable the agency to perform its functions.
- (2) If a person who is employed or engaged by an agency was before that employment or engagement entitled to any accrued or accruing entitlements under a superannuation arrangement by virtue of his or her employment immediately before being employed or engaged by the agency, that person may elect —
 - (a) to continue to be so entitled after taking up his or her employment or engagement with the agency; or
 - (b) to transfer those entitlements to another superannuation arrangement nominated by him or her,

and, if an election made under paragraph (a) is in relation to a superannuation arrangement under —

- (c) the *Superannuation and Family Benefits Act 1938*², that Act continues to apply to and in relation to that person as if the agency were a department, and the person continued to be an employee,

for the purpose of that Act and for that purpose only.

- (3) An agency may by arrangement with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, or the relevant employer, as the case requires, make use, either part-time or full-time of —

- (a) the services of staff employed in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
 - (b) any facilities of a department of the Public Service or of a State agency or instrumentality.
- (4) An arrangement under subsection (3) is to be made on such terms and conditions as the agency, the relevant employing authority or employer and the Public Sector Commissioner agree.
- (5) In this section ***superannuation arrangement*** means the scheme for accrued or accruing benefits under the *Superannuation and Family Benefits Act 1938*², a superannuation scheme under the *State Superannuation Act 2000* or any other superannuation scheme approved by the Minister for the purposes of this section.

[Section 7E inserted by No. 103 of 1994 s. 17; amended by No. 43 of 2000 s. 48(1); No. 39 of 2010 s. 89.]

7F. Agencies, funds of

- (1) The funds available for the purpose of enabling an agency to perform its functions consist of —
 - (a) moneys from time to time appropriated by Parliament; and
 - (b) any other moneys lawfully received by, made available to, or payable to, the agency.
- (2) An account called the (*name of agency*) Account is to be established for the relevant agency —
 - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

s. 7G

- (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds referred to in subsection (1) are to be credited.

- (3) The funds standing to the credit of an agency in an account referred to in subsection (2) are to be applied in payment of —
 - (a) interest on and repayments of moneys advanced to the agency; and
 - (b) in the case of an agency constituted by an agency board, any remuneration and travelling and other allowances payable to the members of that agency board; and
 - (c) any other expenditure lawfully incurred by the agency in the performance of its functions.

[Section 7F inserted by No. 103 of 1994 s. 17; amended by No. 77 of 2006 Sch. 1 cl. 86(4).]

7G. Agencies, borrowing etc. powers

- (1) An agency may, with the prior approval of the Treasurer in writing and on such terms and conditions as the Treasurer approves —
 - (a) borrow moneys; and
 - (b) obtain financial accommodation,

with or without the guarantee of the Treasurer given under section 7H.

- (2) Any moneys borrowed by an agency under subsection (1) may be raised as one loan or as several loans and in such manner as the Treasurer approves, but the amounts of any moneys so borrowed and of any financial accommodation obtained under that subsection shall not in any one financial year exceed in the aggregate such amount as the Treasurer approves.

[Section 7G inserted by No. 103 of 1994 s. 17.]

7H. Agencies, State guarantees for

- (1) 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).
- (2) 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.
- (3) 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.
- (5) 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.
- (6) 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.]

7I. *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 each agency and its operations.

[Section 7I inserted by No. 103 of 1994 s. 17; amended by No. 77 of 2006 Sch. 1 cl. 86(5).]

8. *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.

9. *Inquiries into public hospitals*

- (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.]

10. Visiting and inspecting hospitals, Executive Director's powers for

- (1) Any person authorised by the Executive Director for that purpose may —
 - (a) visit any hospital; and
 - (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; and
 - (b) the medical practitioner of the patient shall 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 be notified of the intention to conduct the examination.

[Section 10 amended by No. 28 of 1984 s. 52; No. 53 of 1985 s. 19; No. 73 of 1994 s. 4.]

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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- (b) 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. 53.]

12. Endowment lands for public hospitals; hospital sites

- (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 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.

12A. Superannuation schemes etc. for public hospital staff

- (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.
- (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 (3).
- (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; No. 73 of 1994 s. 4.]

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

Part III — Local administration

[14. Deleted by No. 33 of 1972 s. 17.]

15. Hospital boards, appointment and nature of etc.

- (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 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 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. Hospital boards, re-organizing

- (1) The Governor may by notice published in the *Government Gazette* (the **relevant notice**) re-organize hospital boards.
- (2) For the purposes of subsection (1) the Governor may do either one or both of the following —
 - (a) where a board (the **original board**) is constituted in relation to 2 or more public hospitals, constitute a separate board (the **additional board**) in relation to any one or more of those hospitals;
 - (b) where a board (the **former board**) is constituted in relation to one or more public hospitals, amalgamate the former board with one or more other boards to form a new board (the **amalgamated board**).
- (3) Whenever the Governor exercises the power conferred by subsection (1), the Governor —
 - (a) may amend the corporate name assigned to an original board;
 - (b) shall assign a corporate name to an additional board or an amalgamated board,in the relevant notice and shall specify in that notice the public hospital or hospitals in relation to which the boards so named are constituted.
- (4) For the purposes of subsection (1), the Governor may by instrument in writing give such directions as the Governor considers necessary or convenient including, without limiting the generality of the foregoing, directions with respect to —
 - (a) the transfer, sale or disposal of real or personal property or moneys vested in, acquired by, or under the control of, any board specified in the relevant notice;
 - (b) the rights, obligations and liabilities of any board specified in the relevant notice;

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- (c) the transfer of some or all of the rights, obligations and liabilities of any board specified in the relevant notice;
- (d) the rights, interests and welfare of any person employed or engaged by any board specified in the relevant notice;
- (e) the continuation by or against any board specified in the relevant notice of any legal proceedings pending by or against that board;
- (f) despite section 55 of the *Financial Management Act 2006*, the person who is to be the accountable authority of a board for the purposes of the report required by Part 5 of that Act with respect to the period from 1 July in a financial year to a day which —
 - (i) occurs in the same financial year; and
 - (ii) immediately precedes the day on which the relevant notice takes effect,

and those directions are to have effect on and from the day specified in that instrument.

- (5) For the purposes of subsection (1), the Governor may, in an instrument under subsection (4), direct that a reference to a board in any instrument, contract or legal proceedings made or commenced before the coming into operation of the direction concerned is to be read and construed as a reference to the board specified in that direction, and that direction is to have effect accordingly.
- (6) 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.

- (7) Without limiting subsection (6), a statement in an instrument executed by a board that any estate or interest in land or other 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.
- (9) 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.]

17. 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

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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, or the improvement of any land held by the board, 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; No. 74 of 2003 s. 146(2); No. 8 of 2009 s. 13.]

17A. Hospital boards etc., State guarantees for

- (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 charged to the Consolidated Account, 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 organization for expenditure on a project in connection with a private, non-profit hospital or nursing home maintained or to be maintained by that organization, 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; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]

18. Hospital boards, functions of

- (1) A board —
 - (a) is responsible for —
 - (i) the control, management, and maintenance of the public hospital or hospitals for which it is or has been appointed; and
 - (ii) providing health services under any agreement entered into by the Commonwealth with the State under the Commonwealth Act that relates to that hospital or those hospitals; and
 - (iii) providing any other health service approved by the Minister;
 - and
 - (b) may perform or exercise such other duties, powers and functions for the purposes of this Act as may 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.

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- (1b) 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.
- (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 in relation to a particular patient.
- (2a) 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.
- (2b) 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.
- (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; 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).]

[18A.] *Deleted by No. 61 of 2004 s. 13.]*

19. Hospital boards, staff of

- (1) A board may, for the purpose of the performance of its functions —
 - (a) employ or engage employees and other persons; and
 - (b) engage persons, whether or not natural persons, to perform functions on its behalf.

- (1a) Where under subsection (1)(b) a board engages a person to perform on its behalf in respect of a hospital the functions described in section 18(1) and the board is an SES organization or a non-SES organization under the *Public Sector Management Act 1994* the board —
- (a) is not required to appoint a chief executive officer under section 44 of that Act or to have a chief employee as mentioned in that Act; and
 - (b) without limiting subsection (1)(b), may engage the person, notwithstanding that the person is a body corporate, to perform functions under any written law of such a chief executive officer or chief employee, as the case may require, as if the person were the holder of that office.
- (2) A board may also from time to time employ or engage 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) Persons so employed or engaged may be remunerated out of the revenues of the board.
- (4) A person who is entrusted or is intended to be entrusted with moneys shall not enter on his duties under this section until and unless he shall have given adequate security for the faithful discharge of his duties, and it shall be the duty of such person 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 employed or engaged under subsection (1)(a) and who is a member of the Senior Executive Service (within the meaning of the *Public Sector Management Act 1994*) an inconsistency between this Act and that Act, that Act shall prevail.

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[Section 19 amended by No. 113 of 1987 s. 32; No. 17 of 1996 s. 8.]

20. Hospital boards may appoint collectors of public donations

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.

21. Hospital boards, expenditure powers of

- (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 the amount specified in guidelines issued by the Minister 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 hospital services and health services;

- (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 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 Minister, can more effectively or economically be provided to the hospital by the Minister or that person or organization rather than by the board;
- (h) the funding of services for public patients provided by private hospitals and non-government providers of health services.

(2A) In subsection (1)(h) —

public patient has the meaning given in section 3(1) of the Commonwealth Act.

- (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; No. 103 of 1994 s. 10; No. 19 of 2010 s. 51; No. 44 of 2012 s. 33.]

22. By-laws for public hospitals

- (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) subject to section 31, 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;

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- (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;
- (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 authorising 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.
- (1a) In paragraph (da) of subsection (1) —

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

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

- (2) Subject to any by-laws made under subsection (1)(da), every fine referred to in subsection (1)(i) shall be recoverable on summary conviction.
- (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; No. 103 of 1994 s. 11; No. 17 of 1996 s. 9; No. 19 of 2010 s. 51.]

23. 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

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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.

24. *Financial Management Act 2006 and Auditor General Act 2006, application of*

- (1) 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.
- (2) 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.
- (3) 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).]

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

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

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.]

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.]

26B. Licence to conduct private hospital

- (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 CEO —
 - (a) that he or she has attained the age of 18 years; and
 - (b) that he or she is a person of good character and repute and a fit and proper person to conduct a private hospital; and
 - (c) that he or she has sufficient material and financial resources available to him or her to comply with the requirements of this Act; and
 - (d) that he or she understands fully the duties and obligations imposed on him or her in relation to the conduct of a private hospital under this Act and otherwise.
- (3) Subject to this Act, 2 or more persons constituting a firm who desire to obtain a licence to conduct a private hospital shall satisfy the CEO —
 - (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 CEO —
- (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; and
 - (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; amended by No. 28 of 2006 s. 264.]

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 —

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

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- (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; amended by No. 28 of 2006 s. 264.]

26D. Licence, grant and conditions of etc.

- (1) Where the CEO 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 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 —
 - (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 CEO.
- (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 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;

- (b) 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.
- (7) The CEO 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; amended by No. 28 of 2006 s. 264.]

26DA. Private hospital not to treat etc. mentally ill unless licence 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.
- (2) 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 Act.
- (3A) The CEO cannot endorse a licence unless the Chief Psychiatrist recommends the endorsement.
- (3) An application may be made to the CEO for an endorsement under this section —
 - (a) on the application for a licence; or
 - (b) 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 26O 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.

- (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.]

26F. Licence, cancelling etc.

- (1) Where the CEO 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; or
 - (b) the premises of a private hospital or any portion thereof are no longer suitable to be used as a private hospital; or
 - (c) a licence holder does not comply with this Act or the terms or conditions imposed by the CEO 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 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

s. 26H

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.]

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.
- (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 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 —
 - (a) specify standards to be observed and procedures to be followed in relation to the construction, establishment and maintenance of private hospitals;

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- (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 Standards Australia, the British Standards Institution or other body specified in the guidelines.

[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 —

- (a) conduct or manage, or by any means hold out that the person conducts or manages, a private hospital unless —
 - (i) the person is the holder of a licence; or
 - (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
- (b) conduct or manage, or by any means hold out that that person conducts or manages, a private hospital unless —
 - (i) the premises are premises that are approved as a private hospital under this Part; or
 - (ii) the premises are 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
- (c) build, alter or extend a private hospital unless —

- (i) the CEO has approved of the building, alteration or extension, as the case requires; or
- (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.

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.]

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

s. 26N

26N. Application for licence and licence, forms of

- (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 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.]

26O. 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.
- (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 CEO, 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 26O 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 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. 30.]

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

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.]

Part IIIC — Collection of information about health services

[Heading inserted by No. 61 of 2004 s. 14.]

26R. Purpose for collecting information

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

- (a) the management of public hospitals; and
- (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.

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

26S. CEO may require hospital service provider to give information

- (1) The CEO may direct a 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 hospital service provider; and
 - (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 hospital service provider must comply with the direction.
- (6) A direction may be given in relation to information obtained by the hospital service provider before the commencement of this Part.
- (7) A particular direction may be given to one or more named hospital service providers, one or more classes of hospital service providers, or all 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.]

26T. No liability for notification etc. or disclosure

A hospital services provider that complies with a direction given under section 26S incurs no civil or criminal liability as a result, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.

[Section 26T inserted by No. 61 of 2004 s. 14.]

Part IV — General

27. Local governments may fund etc. public hospitals

- (1) A local government 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.
- (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.
- (2) 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.
- [(3) deleted]*
- (4) 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

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

- (5) 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.
- (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; No. 14 of 1996 s. 4; No. 19 of 2010 s. 51.]

[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
- (b) 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.

[Section 29 amended by No. 19 of 2010 s. 51.]

[30. Deleted by No. 33 of 1972 s. 26.]

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31. Who may be admitted to public hospital

- (1) A person is to be admitted as a patient to a public hospital if in the opinion of a medical or other officer in charge the person requires treatment of the kind provided by the hospital.
- (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; No. 103 of 1994 s. 12.]

31A. Treatment of seamen in public hospital, liability for

- (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 an injury for which the member is entitled to compensation under the provisions of the *Workers' Compensation and Injury Management Act 1981*, the provisions 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 specific amount is so agreed upon, shall be a debt recoverable in any court of competent jurisdiction.

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- (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.
- (7) 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 by No. 33 of 1972 s. 27; No. 17 of 1996 s. 10; No. 26 of 1999 s. 86; No. 28 of 2003 s. 119(2).]

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

34. Medicare Principles and Commitments, effect of

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

Principle 1:	Eligible persons must be given the choice to receive public hospital services free of charge as public patients.
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Explanatory Note 1:	Hospital services include in-patient, out-patient, emergency services (including
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primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards.

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

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

Universality of services

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

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

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

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

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

Equity in service provision

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

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

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

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

Information about service provision

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

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

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

Efficiency and quality in service provision

Commitment 2: **The Commonwealth and the States are**

committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery.

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

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

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

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

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

- (5) In this section —

- (a) ***eligible person*** and ***public patient*** have the same meanings as they have in the Commonwealth Act; and
- (b) ***Commonwealth Minister*** has the same meaning as Commonwealth Minister for Health has in section 27(4) of the Commonwealth Act.

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

[Section 34 inserted by No. 17 of 1996 s. 11; amended by No. 19 of 2010 s. 51.]

34A. Infectious diseases, hospitals for treatment of

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.]

35. Receipts by Department and boards exempt from duty under *Duties Act 2008*

All receipts given by and on behalf of the Department or a board, and all declarations required or authorised 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 duty under the *Duties Act 2008*.

[Section 35 amended by No. 53 of 1985 s. 27; No. 12 of 2008 Sch. 1 cl. 16.]

35A. 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.

[Section 35A inserted by No. 53 of 1985 s. 28; amended by No. 103 of 1994 s. 13; No. 28 of 2006 s. 264.]

35B. Minister, board and agency not required to be registered

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 by No. 103 of 1994 s. 14.]

35C. Agreements with Minister etc., performances bonds in

- (1) Where an agreement is made for the purposes of this Act between a person (the *contractor*) and —
 - (a) the Minister; or
 - (b) a board or an agency board; or
 - (c) the Minister for Works or the State Supply Commission acting on behalf of the Minister, a board or an agency board,

the agreement may include a performance bond.

- (2) A performance bond is a provision by which the contractor acknowledges that the contractor is bound in a specified sum if the contractor fails to observe and perform the terms, conditions and provisions of the agreement.
- (3) The contractor is liable to pay to the Minister, a board or an agency board as a debt the amount of any such bond if the contractor fails to observe and perform the terms, conditions and provisions of the agreement, and that debt may be recovered by proceedings in a court of competent jurisdiction.
- (4) In any proceedings to recover an amount referred to in subsection (3) —

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- (a) the amount is to be taken to be a genuine pre-estimate of the damage suffered and recoverable by the Minister, the board or the agency board, as the case may be, in respect of any non-observance or non-performance by the contractor; and
 - (b) the contractor cannot plead and evidence is not admissible to show —
 - (i) that the damage so suffered and recoverable was less than that amount; or
 - (ii) that the amount or any part of it is a penalty or penal damages;and
 - (c) the amount cannot be reduced or called in question by the court.
- (5) This section applies notwithstanding any rule of law to the contrary.
- (6) In subsection (1) —

Minister for Works means the body corporate created by section 5 of the *Public Works Act 1902*;

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

[Section 35C inserted by No. 17 of 1996 s. 12.]

36. General penalty

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 \$1 000.

[Section 36 amended by No. 33 of 1972 s. 29; No. 61 of 2004 s. 15.]

37. Regulations and by-laws

- (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; and
 - (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), (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 organization.
- (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 any agreement entered into by the Commonwealth with the State under the Commonwealth Act in relation to the provision of health services and in particular —

- (a) 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
- (b) prescribing charges specified by any such agreement to apply,

in recognized hospitals in the State.

- (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) 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;

- (d) 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;
 - (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; and
 - (ii) throughout the State or in a specified part or specified parts of the State; and
 - (iii) generally or in a particular class of case or in particular classes of cases;

and

- (aa) defining classes of patient and classes of service; and
- (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; and
- (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; and
- (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; and
- (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; and
- (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; and
- (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;

and

- (c) so as to confer on a specified person or body or a 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

- (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; No. 73 of 1994 s. 4; No. 17 of 1996 s. 13; No. 28 of 2006 s. 264; No. 19 of 2010 s. 51.]

38. Review of Act

- (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 fifth 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 CEO, the Executive Director and authorised persons under this Act;
- (d) the need for the continuation of the boards of public hospitals and any other committee or body established or constituted under or for the purposes of this Act;
- (e) such other matters as appear to the Minister to be relevant.

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

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

Schedule — Constitutional provisions for hospital boards

[s. 15]

[Heading inserted by No. 33 of 1972 s. 31; amended by No. 19 of 2010 s. 4.]

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.]

cl. 3

3. Deputies

- (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.

[Clause 3 inserted by No. 33 of 1972 s. 31.]

4. Validity of proceedings

- (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.

[Clause 4 inserted by No. 33 of 1972 s. 31.]

5. Quorum

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.]

5A. 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.]

6. Chairman

- (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.

[Clause 6 inserted by No. 33 of 1972 s. 31.]

7. Members with pecuniary interests

- (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.

[Clause 7 inserted by No. 33 of 1972 s. 31.]

8. Undisclosed pecuniary interests

- (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.

[Clause 8 inserted by No. 33 of 1972 s. 31.]

cl. 9

9. Voting

- (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.

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

10. 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.]

11. 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.]

12. Committees

- (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.

[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.]

14. 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

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

Compilation table

Short title	Number and year	Assent	Commencement
<i>Hospitals Act 1927</i> ⁴	23 of 1927 (18 Geo. V No. 23)	23 Dec 1927	1 Jan 1928 (see s. 1)
<i>Hospitals Act Amendment Act 1948</i>	9 of 1948 (12 Geo. VI No. 9)	11 Nov 1948	11 Nov 1948
<i>Hospitals Act Amendment Act 1953</i>	16 of 1953 (2 Eliz. II No. 16)	20 Nov 1953	20 Nov 1953
<i>Hospitals Act Amendment Act 1955</i>	51 of 1955 (4 Eliz. II No. 51)	9 Dec 1955	9 Dec 1955
Reprint of the <i>Hospitals Act 1927</i> approved 14 Aug 1961 in Volume 15 of Reprinted Acts (includes amendments listed above)			
<i>Decimal Currency Act 1965</i>	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))
<i>Hospitals Act Amendment Act 1969</i>	89 of 1969	17 Nov 1969	17 Nov 1969
<i>Hospitals Act Amendment Act 1972</i>	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 <i>Hospitals Act 1927</i> approved 11 Dec 1972 (includes amendments listed above)			
<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 Dec 1975	1 Dec 1975
<i>Hospitals Act Amendment Act 1976</i>	71 of 1976	6 Oct 1976	6 Oct 1976
<i>Hospitals Amendment Act 1980</i>	64 of 1980	26 Nov 1980	8 Jul 1983 (see s. 2 and <i>Gazette</i> 8 Jul 1983 p. 2475)

Short title	Number and year	Assent	Commencement
<i>Hospitals Amendment Act 1981</i>	43 of 1981	26 Aug 1981	1 Sep 1981 (see s. 2)
<i>Acts Amendment (Statutory Designations) and Validation Act 1981 s. 4</i>	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Hospitals Amendment Act 1982</i>	84 of 1982	15 Nov 1982	15 Nov 1982
<i>Hospitals Amendment Act 1983</i>	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)
<i>Health Legislation Amendment Act 1984 Pt. X</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Acts Amendment (Hospitals) Act 1985 Pt. III</i>	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)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Guardianship and Administration Act 1990 s. 123</i>	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
Reprint of the <i>Hospitals Act 1927</i> as at 22 Apr 1993 (includes amendments listed above)			
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Health Services Integration) Act 1994 Pt. 2</i>	49 of 1994	10 Oct 1994	10 Oct 1994 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)

Hospitals and Health Services Act 1927

Short title	Number and year	Assent	Commencement
<i>Hospitals Amendment Act 1994</i>	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)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Hospitals and Health Services Amendment Act 1996</i>	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)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Mental Health (Consequential Provisions) Act 1996</i> Pt. 10	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 32	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 74(3) ⁵	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> 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 Hospitals and Health Services Act 1927 as at 15 Oct 1999 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 18	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> 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)
<i>Hospitals and Health Services Amendment Act 2002</i> ⁶	17 of 2002	8 Jul 2002	8 Jul 2002 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Equality of Status) Act 2003 s. 119</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 67 and 146(2)</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Workers' Compensation Reform Act 2004 s. 161</i>	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)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 63 Subdiv. 1⁷</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Health Legislation Amendment Act 2004 Pt. 4</i>	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 <i>Workers' Compensation Reform Act 2004</i>)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 9 Div. 6⁸</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Hospitals and Health Services Amendment Act 2006</i>	45 of 2006	4 Oct 2006	4 Oct 2006 (see s. 2)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 86</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Duties Legislation Amendment Act 2008 Sch. 1 cl. 16</i>	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Medical Practitioners Act 2008 Sch. 3 cl. 27</i>	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)			

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 13	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 43	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> 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)
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> 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)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 16 and 27	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
Reprint 7: The Hospitals and Health Services Act 1927 as at 27 Jan 2012 (includes amendments listed above)			
<i>National Health Funding Pool Act 2012</i> Pt. 7	44 of 2012	20 Nov 2012	15 Dec 2012 (see s. 2(b) and <i>Gazette</i> 14 Dec 2012 p. 6195)
<i>Mental Health Legislation Amendment Act 2014</i> 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)

^{1a} 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
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 48(2) ⁹	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Hospitals and Health Services Amendment Act 2013</i> 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))
<i>Health Services Act 2016</i> Pt. 20 Div. 1 ¹¹	11 of 2016	26 May 2016	To be proclaimed (see s. 2(b))

² 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.

³ 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).

⁴ Now known as the *Hospitals and Health Services Act 1927*; short title changed (see note under s. 1).

⁵ 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.

⁶ 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*.
- (2) 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.

⁷ 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.

⁸ 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.

⁹ 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*,”;
 - (c) in section 12A(1) by deleting “contributors for the purposes of the *Superannuation and Family Benefits Act 1938*.” and inserting instead —

“

Members of a superannuation scheme continued
by section 29(c) or (d) of the *State
Superannuation Act 2000*.

”.

¹⁰ On the date as at which this compilation was prepared, the *Hospitals and Health Services Amendment Act 2013* s. 3-7 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Hospitals and Health Services Act 1927*.

4. Section 7A amended

After section 7A(2) insert:

(3) 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:

persons

6. Sections 20A and 20B inserted

After section 19 insert:

20A. Hospital board may perform employment-related functions on behalf of agency

(1) In this section and section 20B —

board, in relation to a public hospital, means —

- (a) the hospital board constituted under this Act in relation to that hospital; or
- (b) if the hospital is controlled by the Minister under section 7, the Minister;

employing agency, in relation to a health service staff member, means the agency that employs or engages the health service staff member;

employment-related functions includes recruitment, selection, appointment, transfer, secondment, classification, training and

development, performance management, discipline, redeployment, redundancy and termination of employment or engagement;

health service staff member means a person who —

- (a) is employed or engaged by an agency; and
 - (b) pursuant to an arrangement between the agency and a board of a public hospital, works in or in connection with the public hospital.
- (2) A board of a public hospital, or a delegate of the board, may perform for and on behalf of an employing agency the employment-related functions of the employing agency in relation to —
- (a) persons to be employed or engaged as health service staff members in or in connection with the public hospital; and
 - (b) health service staff members in or in connection with the public hospital.
- (3) The board has power to do all things that are necessary or convenient to be done for or in connection with the performance of the employment-related functions.

20B. Modifications for purposes of *Workers' Compensation and Injury Management Act 1981* Part IV Division 2

- (1) In this section —
- injury or hearing loss*** means an injury suffered by a health service staff member, or a noise induced hearing loss suffered by a health service staff member that is not an injury, in respect of which compensation has been paid or is payable under the WCIM Act by or on behalf of an employing agency, or would have been so payable but for section 22 of that Act;
- WCIM Act*** means the *Workers' Compensation and Injury Management Act 1981*.
- (2) For the purposes of the application of the WCIM Act Part IV Division 2 —
- (a) the awarding of damages against a board of a public hospital independently of the WCIM Act in respect of an injury or hearing loss suffered by a health service staff member is to be taken to be the awarding of damages against the employing agency of the health service staff member; and
 - (b) any negligence or other tort by the board of the public hospital that caused the injury or hearing loss is to be taken to be the negligence or other tort of the employing agency; and

- (c) any prohibition under that Division against the awarding of damages in respect of the injury or hearing loss is to be taken to be a prohibition against the awarding of the damages against either or both of the employing agency and the board of the public hospital; and
- (d) any conditions or limitations that apply under that Division in relation to the awarding of damages in respect of the injury or hearing loss, or to the amount of the damages, are to be taken to be conditions or limitations that apply to the awarding of the damages against either or both of the employing agency and the board of the public hospital or to the amount of the damages.

7. Section 35D inserted

After section 35C insert:

35D. Delegation by board or agency

- (1) A board may, in writing, delegate to —
 - (a) a public service officer who is employed in, or seconded to, the Department; or
 - (b) a person who is employed or engaged by the board or an agency,any power or duty of the board under another provision of this Act.
- (2) An agency may, in writing, delegate to —
 - (a) a public service officer who is employed in, or seconded to, the Department; or
 - (b) a person who is employed or engaged by the agency or a board,any power or duty of the agency under another provision of this Act.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (5) This section does not limit the ability of a board or agency to perform a function through an officer or agent.

¹¹ On the date as at which this compilation was prepared, the *Health Services Act 2016* Pt. 20 Div. 1 had not come into operation. It reads as follows:

**Part 20 — Hospitals and Health Services
legislation amended**

Division 1 — *Hospitals and Health Services Act 1927* amended

259. Act amended

This Division amends the *Hospitals and Health Services Act 1927*.

260. Long title replaced

Delete the long title and insert:

**An Act to provide for the control and regulation of private
hospitals and private psychiatric hostels and for related
purposes.**

261. Section 1 replaced

Delete section 1 and insert:

1. Short title

This is the *Private Hospitals and Health Services Act 1927*.

262. Section 2 amended

- (1) In section 2(1) delete the definitions of:

agency

agency board

board

Commonwealth Act

day hospital facility

Executive Director

hospital

hospital service

hospital service provider

nursing post

practitioner

public hospital

teaching hospital

- (2) In section 2(1) insert in alphabetical order:

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 premises,

reside and are treated or cared for;

public hospital has the meaning given in the *Health Services Act 2016* section 8(6) and —

- (a) includes a hospital declared to be a public hospital under the *Health Services Act 2016* section 8(7); and
- (b) does not include a hospital declared not to be a public hospital under the *Health Services Act 2016* section 8(8).

- (3) In section 2(1) in the definition of *private non-profit hospital* delete “a hospital” and insert:

a private hospital

- (4) Delete section 2(1A).
- (5) Delete section 2(3) and (4).

263. Section 3 amended

- (1) In section 3(1) delete “and any public hospital”.
- (2) Delete section 3(2).
- (3) 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

- (4) Delete section 3(4) and (5).

264. 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

265. Sections 5A and 7 deleted

Delete sections 5A and 7.

266. Section 7A replaced

Delete section 7A and insert:

7A. 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.

267. Sections 7B to 9 deleted

Delete sections 7B to 9.

268. Section 10 replaced

Delete section 10 and insert:

10. Visiting and inspecting private hospitals

- (1) Any person authorised by the CEO for that purpose may —
 - (a) visit any private hospital; and
 - (b) inspect every part of any private hospital, including any outbuildings or premises 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 must not be made except on complaint to the CEO; and
 - (b) 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
 - (c) 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.

269. Section 11 amended

In section 11(a) delete “duties, or the visitation or inspection of any public hospital; or” and insert:

duties; or

270. Sections 12 and 12A deleted

Delete sections 12 and 12A.

271. Part III deleted

Delete Part III.

272. Section 26P amended

In section 26P delete the definitions of:

mental illness

private psychiatric hostel

273. Part IIIC heading replaced

Delete the heading to Part IIIC and insert:

Part IIIC — Information

274. Section 26R amended

In section 26R:

- (a) delete “collect” and insert:

collect, use or disclose

- (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:

private

Note: The heading to amended section 26S is to read:

CEO may direct private hospital service provider to give information

276. 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.

277. Sections 27 to 35 deleted

Delete sections 27 to 35.

278. Section 35A replaced

Delete section 35A and insert:

35A. Protection from personal liability

- (1) 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.
- (2) 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.
- (3) 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.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

279. Sections 35B, 35C and 36 deleted

Delete sections 35B, 35C and 36.

280. Section 37 amended

- (1) Delete section 37(2) to (2g).
- (2) Delete section 37(3)(aa) to (af).

Note: The heading to amended section 37 is to read:
Regulations

281. 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.

¹² On the date as at which this compilation was prepared, the *Health Services Act 2016* Pt. 20 Div. 2 had not come into operation. It reads as follows:

**Part 20 — Hospitals and Health Services
legislation amended**

**Division 2 — *Hospitals and Health Services Amendment Act 2013*
repealed**

283. *Hospitals and Health Services Amendment Act 2013* repealed

The *Hospitals and Health Services Amendment Act 2013* is repealed.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
additional board	16(2)
agency	2(1)
agency board	2(1)
amalgamated board	16(2)
board	2(1)
body corporate	26A
CEO	2(1)
Commonwealth Act	2(1)
Commonwealth Minister	34(5)
day hospital facility	2(1)
Department	2(1)
document	7D(8)
eligible person	34(5)
eligible persons	37(2e)
Executive Director	2(1)
former board	16(2)
hospital	2(1)
hospital service	2(1)
hospital service provider	2(1)
illness	2(1a)
infectious disease	2(1)
information	7D(8)
licence	26A
mental illness	26P
Minister for Works	35C(6)
nursing home	2(1)
nursing post	2(1)
officer or servant of the board	22(1a)
original board	16(2)
personal information	26S(8)
practitioner	2(1)
private hospital	2(1)
private non-profit hospital	2(1)
private psychiatric hostel	26P
public authority	7B(10)
public hospital	2(1)
public patient	21(2A), 34(5)
recognized hospitals	37(2e)
relevant notice	16(1)

Defined terms

resident.....	26P
services	18(2b)
specified	22(1a), 37(4)
State Supply Commission	35C(6)
superannuation arrangement	7E(5)
teaching hospital	2(1)
the contractor	35C(1)
waiting times.....	34(2)