

Version No. 055
Health Services Act 1988
Act No. 49/1988

Version incorporating amendments as at 12 August 1999

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Version No. 055
Health Services Act 1988

Act No. 49/1988

Version incorporating amendments as at 12 August 1999

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to make provision for the development of health services in Victoria, for the carrying on of hospitals and other health care agencies and related matters.

S. 1
amended by
No. 88/1994
s. 4.

2. Commencement

(1) Part 11 comes into operation on the day to be proclaimed.

(2) Section 196 is deemed to have come into operation on 1 October 1987.

(2A) Section 199 is deemed to have come into operation on 1 October 1987.

S. 2(2A)
inserted by
No. 1/1989
s. 4(a).

(3) The remainder of this Act comes into operation on a day or days to be proclaimed.

3. Definitions

(1) In this Act—

"**accounting records**" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and

S. 3
amended by
No. 46/1998
s. 7(Sch. 1)
(ILA s. 39B(1)).

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other documents as are necessary to explain the methods of calculations by which accounts are made up;

S. 3(1) def. of "authorised officer" amended by Nos 68/1996 s. 19(a), 46/1998 s. 7(Sch. 1).

"authorised officer" means a person appointed by the Secretary for the purposes of this Act;

"board" in relation to an agency means the committee of management or governing body (by whatever name called) of the agency;

S. 3(1) def. of "by-law" substituted by No. 53/1990 s. 4(a), amended by No. 99/1995 s. 5(a).

"by-law"—

- (i) in relation to a health service establishment or registered funded agency that is a corporation with articles of association, means the corporation's articles of association; and
- (ii) in relation to any other health service establishment or registered funded agency or a multi purpose service, means a principal regulatory instrument made by the establishment or agency or a multi purpose service but does not include rules made under a principal regulatory instrument;

S. 3(1) def. of "Chief General Manager" substituted by No. 46/1995 s. 4(a), repealed by No. 46/1998 s. 7(Sch. 1).

* * * * *

"community health centre" means an agency—

- (a) registered under Division 2 of Part 3;
and
- (b) in respect of which a declaration under section 45 is in force;

"day procedure centre" means premises where—

- (a) a major activity carried on is the provision of health services of a prescribed kind or kinds and for which a charge is made; and
- (b) persons to whom treatment of that kind or those kinds is provided are reasonably expected to be admitted and discharged on the same date—

but does not include a public hospital, denominational hospital or private hospital;

"denominational hospital" means—

- (a) a hospital listed in Schedule 2; or
- (b) premises occupied by such a hospital—
as the case requires;

"dentist" has the same meaning as in the **Dentists Act 1972**;

"Department" means the Department of Human Services;

S. 3(1) def. of "day procedure centre" amended by No. 99/1995 s. 12.

S. 3(1) def. of "Department" amended by Nos 42/1993 s. 19, 46/1998 s. 7(Sch. 1).

S. 3(1) def. of
"designated
public
hospital"
amended by
No. 68/1996
S. 3(1) def. of
"former
agency"
inserted by
No. 66/1998
s. 4.

"designated public hospital" means a public hospital or privately-operated hospital in respect of which a declaration under section 7 is in force;

"former agency" means—

- (a) a body that was at any time—
 - (i) a registered funded agency; or
 - (ii) a multi purpose service; or
 - (iii) a body declared to be a multi purpose service under section 115A(1) or deemed by force of section 115V(2) to have been so declared; or
 - (iv) an incorporated institution or a separate institution within the meaning of the **Hospitals and Charities Act 1958** or any corresponding previous enactment—

but the incorporation of which was cancelled or dissolved or which ceased to exist—

- (v) by force of an Order made under section 115A of this Act; or
- (vi) by force of section 115V(2) of this Act; or
- (vii) on its amalgamation or aggregation with another body by force of a provision of this Act or of the **Hospitals and Charities Act 1958** or any previous enactment corresponding to that Act; or

(b) the Cancer Institute or the Cancer Institute Board under Part II of the **Cancer Act 1958** as in force immediately before 14 May 1989;

"health service agreement" means an agreement entered into under section 26;

"health service establishment" means—

- (a) a day procedure centre; or
- * * * *
- * * * *

S. 3(1) def. of "health service establishment" amended by No. 88/1994 s. 5(a).

(d) a private hospital; or

(e) a supported residential service;

- * * * *

S. 3(1) def. of "hostel" substituted by No. 88/1994 s. 5(b), repealed by No. 73/1997 s. 4(a).

"interim funding statement" means a statement issued under section 27;

"metropolitan hospital" means—

- (a) a hospital listed in Schedule 3; or
 - (b) premises occupied by such a hospital—
- as the case requires;

S. 3(1) def. of "metropolitan hospital" inserted by No. 46/1995 s. 4(b).

"multi purpose service" means—

- (a) a body referred to in section 115V(2); or
- (b) a body declared under Part 4A to be a multi purpose service;

S. 3(1) def. of "multi purpose service" inserted by No. 99/1995 s. 5(b).

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s. 3

S. 3(1) def. of "medical practitioner" repealed by No. 23/1994 s. 118(Sch. 1 item 25.1(a)).

* * * * *

S. 3(1) def. of "nursing home" amended by No. 88/1994 s. 5(c), repealed by No. 73/1997 s. 4(a).

* * * * *

S. 3(1) def. of "private hospital" amended by Nos 68/1996 s. 19(c), 73/1997 s. 4(b).

"private hospital" means premises where persons are provided with health services of a prescribed kind or kinds and for which a charge is made and includes a privately-operated hospital but does not include—

- (a) a public hospital or denominational hospital; or
- (b) a day procedure centre; or
- (c) a residential care service;

S. 3(1) def. of "privately-operated hospital" inserted by No. 68/1996 s. 19(d).

"privately-operated hospital" means—

- (a) a hospital within the meaning of Part 3A listed in Schedule 4; or
- (b) premises occupied by such a hospital listed in Schedule 4—

as the case requires;

"proprietor" in relation to a health service establishment means—

- (a) in the case of a not-for-profit establishment, the authority or body of persons conducting the establishment; and

-
- (b) in any other case, the owner (whether a natural person or a corporation) of the business or undertaking carried on at the establishment;

"Public Advocate" means the Public Advocate appointed under section 14 of the **Guardianship and Administration Act 1986**;

S. 3(1) def. of "Public Advocate" amended by Nos 1/1989 s. 4(b), 52/1998 s. 311(Sch. 1 item 36.1).

"public hospital" means—

- (a) a hospital listed in Schedule 1; or
(b) except in Division 4 of Part 3, a metropolitan hospital; or
(c) premises occupied by a hospital listed in Schedule 1 or by a metropolitan hospital—

S. 3(1) def. of "public hospital" substituted by No. 46/1995 s. 4(c).

as the case requires;

"region" means a prescribed region of Victoria;

"registered funded agency" means—

- (a) a public hospital; or
(b) a denominational hospital; or
(c) a community health centre; or
(d) any other agency registered or deemed to be registered under Division 2 of Part 3; or
(e) a State funded residential care service;

S. 3(1) def. of "registered funded agency" amended by Nos 88/1994 s. 5(d), 73/1997 s. 4(c).

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S. 3(1) def. of "registered medical practitioner" inserted by No. 23/1994 s. 118(Sch. 1 item 25.1(b)).

"registered medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

S. 3(1) def. of "residential care service" inserted by No. 73/1997 s. 4(d).

"representative" has the same meaning as in Part IVA of the **Medical Practitioners Act 1970**;

"residential care service" means premises where accommodation and personal care or nursing care or both personal care and nursing care are provided to a person in respect of whom a residential care subsidy or a flexible care subsidy is payable under an Act of the Commonwealth;

S. 3(1) def. of "Secretary" inserted by No. 46/1998 s. 7(Sch. 1).

"Secretary" means the Secretary to the Department;

"senior available next of kin" has the same meaning as in the **Human Tissue Act 1982**;

"special or personal care" means—

- (a) assistance with one or more of the following—
 - (i) bathing, showering or personal hygiene;
 - (ii) toileting;
 - (iii) dressing or undressing;
 - (iv) meals; or
- (b) physical assistance for persons with mobility problems; or

- (c) assistance for persons who are mobile but require some form of supervision or assistance; or
- (d) assistance or supervision in dispensing medicine; or
- (e) the provision of substantial emotional support;

* * * * *

S. 3(1) def. of "state funded nursing home" repealed by No. 73/1997 s. 4(e).

"State funded residential care service" means premises in respect of which a declaration under section 6 is in force;

S. 3(1) def. of "State funded residential care service" inserted by No. 73/1997 s. 4(e).

"successor agency", in relation to a former agency, means a body that is by force of a provision of this Act or of the **Hospitals and Charities Act 1958** or any previous enactment corresponding to that Act—

S. 3(1) def. of "successor agency" inserted by No. 66/1998 s. 4.

- (a) the successor, or deemed to be the successor, of the former agency; or
- (b) deemed to be the same body as the former agency (whether for all purposes or for the purposes only of a trust in relation to the former agency)—

whether as a result of the body—

- (c) immediately succeeding the former agency; or
- (d) succeeding a body that had succeeded the former agency (immediately or

otherwise) and regardless of the body's position in any such chain of succession;

S. 3(1) def. of "supported residential service" amended by Nos 53/1990 s. 4(b), 73/1997 s. 4(f).

"supported residential service" means premises where—

(a) accommodation; and

(b) special or personal care—

are provided or offered for persons (other than members of the family of the proprietor of the premises) for fee or reward but does not include a residential care service or a State funded residential care service;

S. 3(1) def. of "trust" inserted by No. 66/1998 s. 4.

"trust", in relation to a body that is—

(a) aggregated or amalgamated with another body by force of a provision of this Act or of the **Hospitals and Charities Act 1958** or any previous enactment corresponding to that Act;

(b) declared to be a multi purpose service under section 115A(1) or deemed by force of section 115V(2) to have been so declared; or

(c) a former agency of such a body—

means—

(d) a gift, disposition or trust of property made or declared, or deemed to have been made or declared; or

(e) a trust fund created—

whether by deed, will or otherwise to, or in favour of, for the use of, or for the purposes of, the body or under its terms capable of

being given to, or applied in favour of, for the use of, or for the purposes of, the body;

"visitor" means a community (residential services) visitor appointed under Part 5.

- (2) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Human Services is changed, a reference in the definitions of "Department" and "Secretary" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 3(2)
inserted by
No. 46/1998
s. 7(Sch. 1).

4. Interpretation: health service establishment

A reference to the carrying on of a health service establishment is a reference to the provision of a health service by reason of the conducting of, or the carrying on of a business or undertaking at, the establishment.

5. Interpretation: day procedure centre

- (1) In determining for the purposes of this Act whether premises are a day procedure centre, the question whether a major activity carried on on the premises is the provision of health services of a prescribed kind or kinds shall be decided by the Secretary.
- (2) The decision of the Secretary under this section is final.

S. 5(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 5(2)
amended by
No. 46/1998
s. 7(Sch. 1).

5A. Interpretation: trust instruments

If the terms of an instrument creating a trust (as defined in section 3(1)) in relation to a former agency specify particular purposes of the agency for which the trust is created, then any reference to the purposes of the former agency is a reference

S. 5A
inserted by
No. 66/1998
s. 5.

to the purposes (if any) of the successor agency that correspond with, or are similar to, those specified purposes of the former agency.

S. 6
amended by
No. 73/1997
s. 5(1)(a)(2)
(ILA s. 39B(1)).

6. State funded residential care service

S. 6(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) The Secretary may, by notice published in the Government Gazette, declare premises to be a State funded residential care service if—

S. 6(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) in the opinion of the Secretary a business is carried on at those premises on a not-for-profit basis of providing accommodation to persons who—

S. 6(1)(a)(i)
amended by
No. 23/1994
s. 118(Sch. 1
item 25.2).

(i) require the exercise of nursing supervision and care with occasional attendance by a registered medical practitioner; and

S. 6(1)(a)(ii)
substituted by
No. 88/1994
s. 6, amended
by No.
73/1997
s. 5(1)(b).

(ii) are persons in respect of whom residential care subsidy under an Act of the Commonwealth are provided;

(b) the Government of Victoria provides funds directly or indirectly on a recurrent basis for the carrying on of that business.

S. 6(2)
inserted by
No. 73/1997
s. 5(2).

(2) Any premises in respect of which a declaration under this section was in force immediately before the commencement of section 5 of the **Health Services (Amendment) Act 1997** are deemed, on

that commencement, to be declared under this section to be a State funded residential care service.

7. Designated public hospital

- (1) The Secretary may, by notice published in the Government Gazette, declare a public hospital or privately-operated hospital, or any part of a public hospital or privately-operated hospital, to be a designated public hospital for the purposes of section 106 and Part 5 if the Secretary is satisfied that it is desirable so to do on account of the number of older or disabled persons or persons receiving chronic care in the public hospital or privately-operated hospital or part, being persons in respect of whom residential care subsidies under an Act of the Commonwealth are provided.
- (2) Where a public hospital or privately-operated hospital or any part of a public hospital or privately operated hospital is declared to be a designated public hospital, section 106 applies to that hospital or part as if it were a supported residential service.
- (3) If a privately-operated hospital or any part of a privately-operated hospital is declared to be a designated public hospital, section 106 applies to that hospital or part only to the extent to which it provides health services to public hospital patients.

S. 7(1)
amended by
Nos 88/1994
s. 7(1),
68/1996
s. 20(1),
73/1997
s. 6(1),
46/1998
s. 7(Sch. 1).

S. 7(2)
amended by
Nos 88/1994
s. 7(2),
68/1996
s. 20(2).

S. 7(3)
inserted by
No. 68/1996
s. 20(3).

8. Amendment of Schedules

Health Services Act 1988

Act No. 49/1988

s. 9

S. 8(1)
amended by
No. 46/1995
s. 5.

- (1) The Governor in Council, by Order published in the Government Gazette, may amend Schedule 1, 2 or 3 by—
- (a) adding the name of a hospital; or
 - (b) removing the name of a hospital; or
 - (c) amending the name of a hospital.

- (2) The Governor in Council must not remove the name of a hospital from Schedule 2 and add the name to Schedule 1 unless the hospital has ceased to be controlled by a religious denomination.

S. 8(3)
inserted by
No. 68/1996
s. 21.

- (3) The Governor in Council, by Order published in the Government Gazette, may amend Schedule 4 by—
- (a) adding the name of a hospital within the meaning of Part 3A; or
 - (b) removing the name of a hospital if it has ceased to be a hospital within the meaning of part 3A; or
 - (c) amending the name of a hospital.

9. Objectives

The objectives of this Act are to make provision to ensure that—

- (a) health services provided by health care agencies are of a high quality; and
- (b) an adequate range of essential health services is available to all persons resident in Victoria irrespective of where they live or whatever their social or economic status; and
- (c) public funds—
 - (i) are used effectively by health care agencies; and
 - (ii) are allocated according to need; and

- (d) health care agencies are accountable to the public; and
- (e) users of health services are provided with sufficient information in appropriate forms and languages to make informed decisions about health care; and
- (f) health care workers are able to participate in decisions affecting their work environment; and
- (g) users of health services are able to choose the type of health care most appropriate to their needs.

10. Principles applying to hostels, nursing homes and supported residential services

S. 10
amended by
No. 88/1994
s. 8.

It is the intention of the Parliament that the following principles be given effect in the administration of this Act with respect to residents in supported residential services—

- (a) residents are entitled to high quality health care and personal care, to their choice of registered medical practitioner or other provider of health services and to an informed choice of appropriate treatment;
- (b) residents should be provided with a sufficient level of nutrition, warmth, clothing and shelter in a home-like environment;
- (c) services should be provided in a safe physical environment and the residents' right to choose to participate in activities involving a degree of risk should be recognised;
- (d) residents should be treated with dignity and respect and are entitled to privacy;

S. 10(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 25.3).

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- (e) residents should be provided with and be encouraged to participate in activities appropriate to their interests and needs and to physical and social rehabilitation;
 - (f) residents are entitled to social independence including the right to choose and pursue friendships with members of either sex, to practise religion and cultural customs and to exercise rights as citizens;
 - (g) residents are entitled to the right to manage their own finances wherever possible;
 - (h) residents are entitled to freedom of choice to the extent that it does not unreasonably infringe the rights of others and the freedom to comment about the provision of health services.

11. Exemptions

S. 11(1A)
inserted by
No. 53/1990
s. 5(1).

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that any provisions of Part 3 or Part 4 specified in the Order do not have effect in relation to a specified person or agency or class of person or agency.
- (1A) The Governor in Council, by Order published in the Government Gazette, may declare that any or all of the provisions of this Act specified in the Order do not apply to a specified health service establishment or class of establishment.

S. 11(2)
amended by
No. 53/1990
s. 5(2).

- (2) An Order under this section is subject to such terms and conditions (if any) as are specified in the Order.
 - (3) An Order under this section has effect according to its tenor.
 - (4) A person to whom an Order under this section applies must comply with the terms and conditions (if any) to which the Order is subject.
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Health Services Act 1988

Act No. 49/1988

Penalty applying to this sub-section: 100 penalty units.

**PART 2—HEALTH SERVICES DEVELOPMENT
GUIDELINES**

12. *Preparation of draft guidelines*

The Minister, after consulting widely with any persons who may be affected, may prepare draft guidelines for all or any of the following—

- (a) the orderly development of health services in the whole or any part of Victoria;
- (aa) the adequacy of health services in any part of Victoria;
- (b) the improvement of the quality of health care and health facilities;
- (c) the improved distribution of health services and health facilities throughout Victoria or in any part of Victoria;
- (d) the avoidance of unnecessary and costly duplication of health services and health facilities;
- (e) the division of Victoria into areas for the purposes of delivery of health services.

S. 12(aa)
inserted by
No. 53/1990
s. 6.

13. *Notice of draft guidelines*

- (1) The Minister must cause a notice of draft guidelines prepared under section 12 to be published—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in Victoria; and
 - (c) if a guideline applies to a particular area of Victoria, in another newspaper circulating generally in that area.

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- (2) The notice must—
- (a) state where copies of the draft guidelines can be obtained; and
 - (b) specify a period of not less than 60 days after the date of the notice for making submissions to the Minister on the draft guidelines.

14. *Approval of guidelines*

- (1) If, after considering any submissions received, the Minister decides to proceed with the draft guidelines with or without amendments, the Minister may recommend to the Governor in Council that the guidelines be approved in the form recommended by the Minister.
- (2) The Governor in Council may—
 - (a) approve; or
 - (b) refuse to approve—the guidelines recommended by the Minister.

15. *Publication of approved guidelines*

The Minister must cause notice of any approved guidelines to be published in the Government Gazette.

16. *Operation of guideline*

An approved guideline—

- (a) has effect on and from the day on which it is published or if a later day is specified in the notice, that later day; and
- (b) unless sooner revoked, has effect for 3 years.

17. *Revocation of guideline*

- (1) The Governor in Council may revoke a guideline by notice published in the Government Gazette.

Health Services Act 1988

Act No. 49/1988

- (2) The revocation of a guideline has effect on and after the day specified in the notice, being a day not less than 30 days after the day on which the notice is published in the Government Gazette.
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PART 2A—PUBLIC HOSPITAL SERVICES PRINCIPLES

Pt 2A
(Heading and
s. 17AA)
inserted by
No. 46/1995
s. 6,
substituted by
No. 66/1998
s. 6.

17AA. *Public hospital services principles*

S. 17AA
inserted by
No. 46/1995
s. 6, amended
by No.
68/1996 s. 22,
substituted by
No. 66/1998
s. 6.

- (1) The principles contained in any agreement in force from time to time between the Commonwealth and Victoria with respect to the provision of public hospital services are established as guidelines for the delivery of public hospital services in Victoria.
- (2) Nothing in this Part—
 - (a) gives rise to, or can be taken into account in, any civil cause of action; and
 - (b) without limiting paragraph (a), operates to create in any person legal rights not in existence before the commencement of section 6 of the **Health Services (Further Amendment) Act 1998**.
- (3) In this Part, a reference to public hospital services includes a reference to services provided to public hospital patients by privately-operated hospitals.

PART 3—AGENCIES

Division 1—Public Funding

S. 17AB
inserted by
No. 68/1996
s. 23,
substituted by
No. 77/1997
s. 6.

17AB. *Definition*

In this Division, "agency" includes the Victorian Institute of Forensic Mental Health established by section 117B of the **Mental Health Act 1986** but does not include a privately-operated hospital.

S. 17A
inserted by
No. 112/1993
s. 4.

17A. *Power to fund agencies*

S. 17A(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) The Secretary may provide grants, payments, subsidies or other financial assistance to agencies from funds administered by the Secretary for that purpose on the terms and conditions that the Secretary considers appropriate.

S. 17A(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) As part of the financial assistance under subsection (1), the Secretary may fund, either wholly or in part, the provision of health services by an agency and the funding can be determined by reference to the nature and extent of the health service to be provided.

S. 18
amended by
No. 46/1998
s. 7(Sch. 1).

18. *Criteria for public funding of agencies*

In determining whether or not any grant, subsidy or other financial assistance should be given to an agency from money administered by the Secretary or determining what terms and conditions (if any) should be imposed, consideration must be given to the following—

(a) the arrangements made or to be made by the agency—

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- (i) for ensuring that it makes efficient use of its resources; and
 - (ii) for monitoring and improving the quality of health services provided by the agency; and
 - (iii) for making its services accessible to minority groups and disadvantaged people; and
 - (iv) for enabling users of its services to make informed decisions about health care; and
 - (v) for enabling its employees to participate in decisions about their work environment;
- (b) whether the provision of services of any kind by the agency is likely to result in more than adequate services of that kind becoming available in any area;
 - (c) whether the provision of services by the agency is consistent with any guidelines in force under Part 2;
 - (d) whether the agency has complied with any health service agreement or interim funding statement relating to it;
 - (e) if the agency has failed to comply with a health service agreement or interim funding statement, the reasons for non-compliance;
 - (ea) the terms of any agreement between the agency and the Secretary under which the agency is to provide health services, and the provision of those health services is to be funded in whole or in part by the Secretary;

S. 18(ea)
inserted by
No. 112/1993
s. 5, amended
by No.
46/1998 s.
7(Sch. 1).

Health Services Act 1988

Act No. 49/1988

s. 18A

S. 18(eb)
inserted by
No. 112/1993
s. 5.

- (eb) in the case of an agency which is a public hospital or a denominational hospital, whether it has complied with any direction given under section 42(1)(ia), and if it has failed to comply with that direction, the reasons for non-compliance;
- (f) any other relevant matters.

Pt 3 Div. 1A
(Heading and
ss 18A–18F)
inserted by
No. 112/1993
s. 6.

Division 1A—Case mix funding

S. 18A
inserted by
No. 112/1993
s. 6, amended
by No.
68/1996
s. 24(1).

18A. Definition

- (1) In this Division, "**case mix funding system**" means the system of funding health services provided by a public hospital or denominational hospital based on formulae that determine the relative weighting of particular classes of health services.
- (2) In this Division, "**public hospital**" includes a privately-operated hospital to the extent to which it provides health services to public hospital patients and references to patients must be construed as including public hospital patients in such a hospital.

S. 18A(2)
inserted by
No. 68/1996
s. 24(2).

S. 18B
inserted by
No. 112/1993
s. 6.

18B. Case mix auditors

S. 18B(1)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 12)).

- (1) The Secretary may engage—
- (a) a registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**; or

(b) a person with qualifications which, in the opinion of the Secretary are appropriate, and who belongs to a class of persons designated for the purpose of this paragraph by the Governor in Council by Order published in the Government Gazette—

S. 18B(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

to be a case mix auditor on any terms and conditions that the Secretary thinks fit, and the **Public Sector Management and Employment Act 1998** does not apply to any person in respect of an appointment under this sub-section.

(2) The Secretary may designate an authorised officer to be a case mix auditor.

S. 18B(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) The Secretary must issue to a case mix auditor a copy of his or her authorisation to act as a case mix auditor.

S. 18B(3)
amended by
No. 46/1998
s. 7(Sch. 1).

18C. Functions of case mix auditors

The function of a case mix auditor is to determine whether the case mix funding system is being effectively implemented by a public hospital or denominational hospital by—

S. 18C
inserted by
No. 112/1993
s. 6.

- (a) monitoring funding under the case mix formulae; and
- (b) detecting errors in the classification of patient data by random inspection of patient medical records; and
- (c) assisting a public hospital or denominational hospital to identify problems which may arise in the implementation and administration of case mix funding; and
- (d) providing information that does not identify patients or individuals to the Secretary for statistical purposes.

S. 18C(d)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 18D
inserted by
No. 112/1993
s. 6.

18D. Powers of case mix auditors

- (1) A case mix auditor may, at any reasonable time, enter the premises of a public hospital or denominational hospital for the purposes of ascertaining that the case mix funding system is being correctly implemented and may—
 - (a) inspect any relevant patient medical records or other relevant documents; and
 - (b) extract or copy information that does not identify individuals; and
 - (c) ask questions of any person employed in the public hospital or denominational hospital to determine whether case mix data are being correctly reported.
- (2) Sub-section (1) does not apply to any information or document relating to the proceedings of or prepared for the purposes of an approved quality assurance body declared under section 139 unless that information or document does not identify, either expressly or by implication, a particular individual or particular individuals.
- (3) A case mix auditor must produce a copy of his or her authorisation to act as a case mix auditor if requested to do so.

S. 18E
inserted by
No. 112/1993
s. 6.

18E. Confidentiality requirements

- (1) A person who is, or at any time has been, a case mix auditor must not, except to the extent necessary to perform any official duties or to perform or exercise any power or function under this Act, either directly or indirectly, make a record of or divulge or communicate to any person any information that is or was acquired by the person by reason of being, or having been, a case mix auditor or make use of any such information for any purpose other than the

performance of official duties or the performance or exercise of that function or power.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not preclude a person from—
- (a) producing a document to a court in the course of criminal proceedings; or
 - (b) divulging or communicating to a court in the course of any criminal proceedings any matter or thing coming under the notice of the person in the performance of official duties or in the performance or exercise of a power referred to in sub-section (1); or
 - (c) producing a document or divulging or communicating information that is expressly authorised or permitted by any Act to be produced, divulged or communicated; or
 - (d) producing a document or divulging or communicating information with the prior consent of the person to whom it relates, or if that person has died, with the consent of the senior available next of kin of that person.
- (3) In this section, "**court**" includes any board, tribunal or person authorised to receive evidence.

18F. Immunity

No civil or criminal proceedings lie against a case mix auditor for any thing done in the exercise of the powers under section 18D in good faith and with reasonable care.

S. 18F
inserted by
No. 112/1993
s. 6.

Division 2—Registration of Certain Agencies

19. Definition

In this Division, "**agency**" does not include—

- (a) a public hospital; or

Health Services Act 1988

Act No. 49/1988

s. 20

S. 19(b)
amended by
No. 68/1996
s. 25.

(b) a denominational hospital; or

S. 19(c)
inserted by
No. 68/1996
s. 25.

(c) a privately-operated hospital.

20. *Registration as condition of funding*

S. 20(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) The Secretary may determine that an agency shall not receive, or continue to receive, any grants, subsidies or other financial assistance from money administered by the Secretary for the purposes of health care unless it is registered under this Division.

S. 20(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) Before making a determination for the purposes of sub-section (1), the Secretary—

(a) must have regard to the following—

(i) the extent and nature of the health services provided by the agency;

(ii) whether the agency is likely to seek recurrent funding;

(iii) the extent to which the agency is funded from money administered by the Secretary or otherwise provided by the Government; and

S. 20(2)(a)(iii)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 20(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) if the agency is funded from money provided by the Government but not administered by the Secretary, must consult with any Department that provides significant grants, subsidies or other financial assistance to the agency.

S. 20(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) If the Secretary makes a determination for the purposes of sub-section (1)—

(a) the Secretary must give notice in writing of the determination to the agency; and

S. 20(3)(a) amended by No. 46/1998 s. 7(Sch. 1).

(b) the agency may apply to the Secretary in the prescribed form for registration under this Division.

S. 20(3)(b) amended by No. 46/1998 s. 7(Sch. 1).

21. Conditions of registration

(1) The Secretary must not register an agency under this Division unless the Secretary has approved the constitution, objects, purposes and by-laws of the agency.

S. 21(1) amended by No. 46/1998 s. 7(Sch. 1).

(2) The Secretary may refuse to register an unincorporated agency if he or she considers that, having regard to the services provided by the agency, the agency should be incorporated or should be managed by an incorporated body.

S. 21(2) amended by No. 46/1998 s. 7(Sch. 1).

22. Registration

(1) The Secretary—
(a) may register; or
(b) may refuse to register—

S. 22(1) amended by No. 46/1998 s. 7(Sch. 1).

an agency that has applied for registration under section 20(3)(b).

(2) The Secretary may at any time cancel the registration of a registered funded agency.

S. 22(2) amended by No. 46/1998 s. 7(Sch. 1).

(3) The Secretary must keep a register of registered funded agencies and must make the register available for inspection by the public during ordinary business hours.

S. 22(3) amended by No. 46/1998 s. 7(Sch. 1).

Division 3—Registered Funded Agencies

s. 24

Health Services Act 1988
Act No. 49/1988

S. 23
repealed by
No. 88/1994
s. 9.

* * * * *

24. Rules of registered funded agency

S. 24(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) A registered funded agency must not—

S. 24(1)(c)
amended by
No. 53/1990
s. 7(a).

- (a) change its name; or
- (b) change its objects or purposes; or
- (c) amend or alter its constitution; or

S. 24(1)(d)
inserted by
No. 53/1990
s. 7(b).

(d) make, amend or alter its by-laws—

without the approval in writing of the Secretary.

S. 24(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) If the Secretary directs a registered funded agency to amend or alter its constitution, objects, purposes or by-laws or make by-laws with respect to—

S. 24(2)(f)
amended by
No. 23/1994
s. 118(Sch. 1
item 25.4).

- (a) the management of the agency; or
- (b) the provision of services by the agency; or
- (c) the election of committees or office bearers of the agency; or
- (d) except in the case of an agency to which Division 7 applies, the auditing of financial statements of the agency; or
- (e) the disposition of any surplus assets on the dissolution of the agency; or
- (f) in the case of a public hospital, the procedures for appointing registered medical

practitioners and defining their clinical responsibilities; or

- (g) in the case of a community health centre or other agency registered under Division 2, the keeping of accounts and records, the qualifications of auditors and reporting to the Minister—

the agency must amend or alter its constitution, objects or purposes or by-laws or make by-laws accordingly.

- (3) A registered funded agency must not do or permit or suffer anything to be done that is inconsistent with its objects or is not otherwise authorised by or under this Act.
- (4) Sub-sections (1) and (2) do not apply to a denominational hospital.

25. Chief executive officer

- (1) Each registered funded agency must appoint a person as the chief executive officer (by whatever name called) and must cause any vacancy in the office of chief executive officer to be filled as soon as possible.
- (2) A registered funded agency must not appoint a person as chief executive officer unless the appointment of that person is approved by the Secretary.

S. 25(2)
amended by
No. 46/1998
s. 7(Sch. 1).

26. Health service agreements

- (1) A registered funded agency may enter into a health service agreement in respect of each financial year with the Secretary.
- (2) The terms of a health service agreement shall be in accordance with this Division and as agreed between the registered funded agency and the Secretary.

S. 26(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 26(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) An agreement shall be in respect of one year or such other period as is specified in the agreement.
- (4) An agreement may specify—
- (a) particulars of services to be provided by the agency, including particulars of the volume, scope and standard of services; and
 - (b) particulars of changes proposed in the provision of services by the agency, including particulars of building work to be undertaken or equipment to be acquired; and
 - (c) particulars of the organisation and management of the agency; and
 - (d) proposals of the agency for—
 - (i) ensuring the quality of services provided; and
 - (ii) handling complaints; and
 - (iii) enabling users of services to make informed decisions about the services; and
 - (iv) enabling its employees to participate in decisions about their work environment; and
 - (v) promoting industrial rights and the welfare of its employees; and
 - (vi) staff arrangements; and
 - (vii) keeping records and making reports; and
 - (viii) ensuring appropriate services are provided having regard to special needs of any ethnic or other minority groups; and

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- (e) limits or controls on expenditure or the entering into of contracts or agreements by the agency; and
- (f) the provision of grants, subsidies or other assistance to the agency from money administered by the Secretary for the purposes of health care; and
- (g) any other relevant matters.
- (5) If a registered funded agency or the Secretary becomes aware of any circumstances affecting or likely to affect its or his or her ability to comply with a health service agreement—
- (a) the agency or Secretary must inform the other party in writing; and
- (b) the other party must within six weeks respond in writing; and
- (c) where appropriate, the parties may amend the agreement.
- (6) A registered funded agency must make a copy of any health service agreement affecting it available for inspection by the public during ordinary business hours.
- (7) The Secretary must cause copies of any health service agreement in force under this section to be available for inspection by the public during ordinary business hours.

27. Interim funding statements

- (1) If the Minister is satisfied that a registered funded agency and the Secretary have failed to enter into a health service agreement, the Minister, after

Health Services Act 1988

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considering any submissions from the Secretary or the agency must issue a statement relating to a period ending not later than 30 June after the issue of the statement, specifying, in relation to that period—

- (a) the nature of any grant, subsidy or financial assistance provided or to be provided to the agency; and
 - (b) the terms and conditions of any such grant, subsidy or assistance; and
 - (c) the volume, scope and standard of services to be provided by the agency.
- (2) An interim funding statement relating to a registered funded agency issued under sub-section (1) is revoked upon the entering into of a health service agreement by the agency.
- (3) A registered funded agency must make a copy of any interim funding statement affecting it available for inspection by the public during ordinary business hours.
- (4) The Secretary must cause copies of any interim funding statement in force under this section to be available for inspection by the public during ordinary business hours.

S. 27(4)
amended by
No. 46/1998
s. 7(Sch. 1).

28. *Limits or controls on expenditure or entering into of contracts etc.*

S. 28(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary may in writing determine—
- (a) limits or controls on expenditure, or expenditure of a specified kind, by a specified registered funded agency or class of registered funded agency; and
 - (b) limits or controls on the entering into of contracts or agreements by a specified

registered funded agency or class of
registered funded agency—

and may, in writing, vary or revoke any such
determination.

- (2) A determination under sub-section (1) may be
made subject to conditions.
- (3) In making a determination under sub-section (1),
the Secretary must have regard to—
- (a) the record of the agency or agencies included
in the class of agency in management of
resources and the provision of health
services; and
 - (b) the extent to which the agency or agencies
included in the class of agency receives or
receive grants, subsidies or other assistance
from money administered by the Secretary or
otherwise provided by the Government; and
 - (c) the nature of the health services provided or
to be provided by the agency or agencies
included in the class of agency; and
 - (d) whether or not any relevant health service
agreement or interim funding statement is in
force.
- (4) The Secretary must cause a copy of a
determination under this section to be given to
each registered funded agency to which it applies.

S. 28(3)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 28(3)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 28(4)
amended by
No. 46/1998
s. 7(Sch. 1).

29. *Power to invest*

A registered funded agency may invest money in
any manner authorised by law for the time being
for the investment of trust funds.

30. *Approved borrowers and guarantees*

- (1) The Minister and the Treasurer may declare a registered funded agency to be an approved borrower for the purposes of this section.
- (2) An approved borrower may, with the approval of the Minister and the Treasurer, obtain financial accommodation, whether within or outside Victoria, secured or arranged in a manner and for a period approved by the Treasurer.
- (3) The due satisfaction of amounts payable by a registered funded agency as a result of or in connection with the provision to the registered funded agency of financial accommodation to which sub-section (2) applies including, without limiting the generality of the foregoing, the payment of the expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction, is guaranteed by the Government of Victoria.
- (4) An amount required by the Treasurer to satisfy a guarantee given under sub-section (3) shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly and any amount recovered by the Treasurer in respect of an amount so paid by the Treasurer shall be paid into the Consolidated Fund.

Division 4—Public Hospitals**31. *Incorporation***

Each public hospital, by operation of this Act—

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- (a) is a body corporate with perpetual succession; and
 - (b) shall have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of purchasing, taking, holding, selling, leasing, taking on lease, exchanging and disposing of real and personal property; and
 - (e) is capable of doing and suffering all acts and things which bodies corporate may by law do or suffer.

31A. *Public hospitals do not represent Crown*

A public hospital does not represent, and shall not be taken to be part of, the Crown.

S. 31A
inserted by
No. 53/1990
s. 8.

32. *Objects and functions of public hospitals*

The objects of a public hospital are—

- (a) in the case of a public hospital listed in Schedule 1 at the commencement of this section—the objects of the hospital as existing immediately before that commencement as altered or added to from time to time by the hospital with the approval of the Secretary; and
- (b) in any other case—as approved for the time being by the hospital and the Secretary.

S. 32(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 32(b)
amended by
No. 46/1998
s. 7(Sch. 1).

33. *Board of management*

- (1) There shall be a board of management of each public hospital.

Health Services Act 1988

Act No. 49/1988

S. 33(2A)
inserted by
No. 53/1990
s. 9.

- (2) The functions of the board of a public hospital are—
- (a) to oversee and manage the hospital; and
 - (b) to ensure that the services provided by the hospital comply with the requirements of this Act and the objects of the hospital.

(2A) The board of a public hospital has such powers as are necessary to enable it to carry out its functions, including the power to make, amend or revoke by-laws.

- (3) The board of a public hospital shall consist of—
- (a) not less than 6 and not more than 12 natural persons—
 - (i) in the case of the first board of a public hospital added to Schedule 1 after the commencement of this section, nominated by the Minister; and
 - (ii) in any other case, nominated by the Minister after consideration of a name or names submitted by the board; and
 - (b) if the hospital is associated with a university and is prescribed as a clinical school of that university, a natural person nominated by the Minister from a panel of three names submitted to the board by the council of the university.

(4) If the board does not submit a name or names for the purposes of sub-section (3)(a) within 60 days after receiving a request to do so from the Minister, the Minister may nominate a natural person or natural persons for the purposes of that sub-section.

(5) For the purposes of sub-section (3)(a)—

- (a) before the board submits a name or names, the board must cause a notice to be published in a newspaper circulating generally in the area where the hospital is situated inviting nominations for membership of the board; and
- (b) if more than one name is submitted, the board must list the names in order of its preference.
- (6) For the purposes of sub-section (3)(b), where the council of a university submits names to the board of a hospital, the board must give those names to the Minister, together with any recommendations.
- (7) The members of a board shall be appointed by the Governor in Council.
- (8) The number of registered medical practitioners appointed to a board must not exceed one quarter of the number of members of the board (excluding the members referred to in sub-section (3)(b)).
- * * * * *
- (10) In nominating a person or persons for appointment to a board, the Minister must ensure that both men and women are adequately represented on the board.
- (11) A member of a board is not, in respect of the office of member, subject to the **Public Sector Management and Employment Act 1998**.

S. 33(8)
amended by
No. 23/1994
s. 118(Sch. 1
item 25.5).

S. 33(9)
repealed by
No. 99/1995
s. 23.

S. 33(11)
amended by
No. 46/1998
s. 7(Sch. 1).

34. Terms and conditions of appointment

- (1) A member of a board of a public hospital holds office for the term, not exceeding three years,

Health Services Act 1988

Act No. 49/1988

specified in the instrument of appointment and is eligible for re-appointment.

S. 34(2)
substituted by
No. 68/1996
s. 26.

- (2) A member of a board is entitled to be paid—
- (a) expenses incurred in holding office as a member of the board; and
 - (b) such remuneration as is specified in the instrument of appointment.

S. 34(3)
inserted by
No. 68/1996
s. 26.

- (3) Despite sub-section (2)(b), a member of a board who is also a member of the Legislative Council or a member of the Legislative Assembly is not entitled to be paid remuneration as a member of the board.

35. *Removal and resignation*

- (1) A member of a board of a public hospital may resign by writing signed by that person and delivered to the Governor in Council.
- (2) The Governor in Council, on the recommendation of the Minister, may remove a member of a board from office.

36. *Annual meetings*

S. 36(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The chief executive officer of a public hospital must convene an annual meeting of the hospital to be held on or after 1 July and on or before 31 October (or, if the Secretary in writing approves a later date, on or before that later date) in each year.
- (2) The chief executive officer of the hospital must cause notice of the annual meeting to be published in a newspaper circulating generally in the area where the public hospital is situated giving notice—
 - (a) of the date, time and place of the meeting; and

-
- (b) that the meeting is open to the public.
- (3) At each annual meeting of a public hospital, the board—
- (a) must submit the report of operations and financial statements prepared in accordance with Part 7 of the **Financial Management Act 1994**;
 - (b) must report on the health services provided to the community in the preceding year and on health services proposed to be provided in the following year; and
 - (c) must report on such other matters as are prescribed.

S. 36(3)(a)
substituted by
No. 46/1995
s. 7.

37. Procedure of board

Subject to this Part, the procedure of a board of a public hospital is in the discretion of the board.

38. Membership of board not office of profit

A member of a board of a public hospital shall not be taken to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
- (b) make void the member's election to the Council or the Assembly; or
- (c) prevent the member continuing to be a member of the Council or the Assembly; or
- (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

39. Immunity

A member of a board of a public hospital is not liable to an action or other proceedings for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function or the exercise or purported exercise of any power conferred on the board.

40. Validity of acts or decisions

An act or decision of a board of a public hospital is not invalid by reason only of—

- (a) a defect or irregularity in or in connection with the appointment or election of a member of the board; or
- (b) a vacancy in the membership of the board.

Pt 3 Div. 4A
(Heading and
ss 40A–40L)
inserted by
No. 46/1995
s. 8.

Division 4A—Metropolitan Hospitals

S. 40A
inserted by
No. 46/1995
s. 8.

40A. Incorporation

- (1) Each metropolitan hospital, by operation of this Act—
 - (a) is a body corporate with perpetual succession; and
 - (b) shall have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of purchasing, taking, holding, selling, leasing, taking on lease, exchanging and disposing of real and personal property; and

(e) is capable of doing and suffering all acts and things which bodies corporate may by law do or suffer.

(2) A metropolitan hospital listed in Schedule 3 at the commencement of section 8 of the **Health Services (Metropolitan Hospitals) Act 1995** continues to be the same body after that commencement as it was before that commencement.

40B. Metropolitan hospitals do not represent Crown

A metropolitan hospital does not represent, and shall not be taken to be part of, the Crown.

S. 40B
inserted by
No. 46/1995
s. 8.

40C. Objects of metropolitan hospitals

The objects of a metropolitan hospital are—

S. 40C
inserted by
No. 46/1995
s. 8.

(a) in the case of a metropolitan hospital listed in Schedule 3 at the commencement of section 8 of the **Health Services (Metropolitan Hospitals) Act 1995**, the objects of the hospital as existing immediately before that commencement as altered or added to from time to time by the hospital with the approval of the Secretary; and

S. 40C(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) in any other case, as approved for the time being by the board of the hospital and the Secretary.

S. 40C(b)
amended by
No. 46/1998
s. 7(Sch. 1).

40D. Board of directors

(1) There shall be a board of directors of each metropolitan hospital.

S. 40D
inserted by
No. 46/1995
s. 8.

(2) The functions of the board of a metropolitan hospital are—

(a) to establish the objects of the hospital;

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- (b) to establish the organisational structure of the hospital;
 - (c) to appoint a person to fill a vacancy in the position of chief executive officer;
 - (d) to appoint senior management staff in consultation with the chief executive officer;
 - (e) to oversee the management of the hospital by the chief executive officer;
 - (f) to develop a business plan for the operation of the hospital; and
 - (g) to develop plans, strategies and budgets to ensure the provision of health services by the hospital and the long term financial viability of the hospital;
 - (h) to monitor the performance of the hospital;
 - (i) to monitor the performance of the chief executive officer of the hospital.
- (3) The board of a metropolitan hospital has such powers as are necessary to enable it to carry out its functions, including the power to make, amend or revoke by-laws.

S. 40E
inserted by
No. 46/1995
s. 8.

40E. *Directors*

- (1) The board of a metropolitan hospital shall consist of not less than 6 and not more than 9 persons appointed by the Governor in Council on the recommendation of the Minister.
- (2) The **Public Sector Management and Employment Act 1998** does not apply to a director of a board of a metropolitan hospital in respect of the office of director.

S. 40E(2)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 13)).

- (3) The board of a hospital that, on the commencement of section 8 of the **Health Services (Metropolitan Hospitals) Act 1995**, becomes a metropolitan hospital continues as the board of the metropolitan hospital until the appointment of a board under sub-section (1) of this section.
- (4) Sections 34, 35, 38, 39 and 40 continue to apply to a board that continues in existence under sub-section (3) and to the members of such a board.

40F. *Terms and conditions*

- (1) A director of a board of a metropolitan hospital holds office for the term, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.
- (2) A director of a board is entitled to be paid—
 - (a) expenses incurred in holding office as a director of the board; and
 - (b) such remuneration as is specified in the instrument of appointment.

S. 40F
inserted by
No. 46/1995
s. 8.

40G. *Removal and resignation*

- (1) A director of a board of a metropolitan hospital may resign by writing signed by that person and delivered to the Governor in Council.
- (2) The Governor in Council, on the recommendation of the Minister, may remove a director, or all directors, of a board from office.
- (3) The Minister must recommend the removal of a director of a board from office if the Minister is satisfied that—

S. 40G
inserted by
No. 46/1995
s. 8.

S. 40G(2)
amended by
No. 66/1998
s. 7(1).

S. 40G(3)
amended by
No. 66/1998
s. 7(2).

- (a) the director is physically or mentally unable to fulfil the role of a director of a board; or
- (b) the director has been convicted or found guilty of an offence, the commission of which, in the opinion of the Minister, makes the director unsuitable to be a director of a board; or
- (c) the director has been absent, without leave of the board, from all meetings of the board held during a period of 6 months; or
- (d) the director is an insolvent under administration within the meaning of the Corporations Law.

S. 40H
inserted by
No. 46/1995
s. 8.

40H. *Annual meetings*

S. 40H(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The board of a metropolitan hospital must ensure that the chief executive officer convenes an annual meeting of the hospital to be held on or after 1 July and on or before 31 October (or, if the Secretary in writing approves a later date, on or before that later date) in each year.
 - (2) Nothing in sub-section (1) requires an annual meeting of a metropolitan hospital to be held before the hospital has been a metropolitan hospital for 12 months.
 - (3) The chief executive officer of the hospital must cause notice of the annual meeting to be published in a newspaper circulating generally in the area where the metropolitan hospital is situated giving notice—
 - (a) of the date, time and place of the meeting; and
 - (b) that the meeting is open to the public.
-

-
- (4) At each annual meeting of a metropolitan hospital, the board—
- (a) must submit the report of operations and financial statements prepared in accordance with Part 7 of the **Financial Management Act 1994**; and
 - (b) must report on the health services provided to the community in the preceding year and on health services proposed to be provided in the following year; and
 - (c) must report on such other matters as are prescribed.

40I. Procedure of board

Subject to this Part, the procedure of a board of a metropolitan hospital is in the discretion of the board.

S. 40I
inserted by
No. 46/1995
s. 8.

40J. Immunity

A director of a board of a metropolitan hospital is not liable to an action or other proceedings for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function or the exercise or purported exercise of any power conferred on the board.

S. 40J
inserted by
No. 46/1995
s. 8.

40K. Validity of acts or decisions

An act or decision of a board of a metropolitan hospital is not invalid by reason only of—

S. 40K
inserted by
No. 46/1995
s. 8.

- (a) a defect or irregularity in or in connection with the appointment or election of a director of the board; or
- (b) a vacancy in the directorship of the board.

S. 40L
inserted by
No. 46/1995
s. 8.

40L. *Advisory committees*

The board of a metropolitan hospital—

- (a) must appoint an advisory committee consisting of such number of representatives of the community nominated by the board as the board determines; and
- (b) must appoint an advisory committee consisting of such number of persons nominated by the board as the board determines, being persons qualified in the provision of health services; and
- (c) may appoint such other advisory committees as it determines.

Division 5—Public Hospitals and Denominational Hospitals

41. *Powers and duties*

- (1) The powers of a public hospital or denominational hospital include all such powers as are necessary to enable the hospital to carry out its objects and do all things it is required or permitted to do under this Act and, without limiting the generality of the foregoing, power—
 - (a) to undertake commercial exploitation of any research or intellectual property rights undertaken by or belonging to the hospital for any purpose relating to the carrying on of the hospital; and
 - (b) to be a member of or form or participate in the formation of a company, association, trust or partnership, the objects or purposes of which include one or more objects or purposes that are incidental or conducive to the exercise of any other powers of the hospital; and

- (c) 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 hospital; and
 - (d) in the case of a denominational hospital, to do such other things as are consistent with this Act and are conferred on the hospital under its constitution.
- (2) The board of a public hospital or denominational hospital must not dismiss or suspend any registered medical practitioner employed or engaged by the hospital unless the board—
- (a) where there has been an allegation against the registered medical practitioner, inquires into any matter alleged; and
 - (b) gives the registered medical practitioner an opportunity to be heard.

S. 41(2)
amended by
No. 23/1994
s. 118(Sch. 1
item 25.6).

42. Hospital must comply with directions of Secretary

- (1) The Secretary, for the purpose of carrying out functions and powers under this Act or for carrying out the objectives of this Act, may in writing give directions to a public hospital or denominational hospital in relation to all or any of the following matters—
- (a) the purposes which the hospital should serve or refrain from serving and those to which it should give priority;
 - (b) the manner in which and extent to which the hospital should provide training for persons engaged or intending to engage in health care;
 - (c) the number and type of persons which the hospital should employ or from whom it

S. 42(1)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 14)).

should obtain services and their conditions of employment or service;

- (d) the number and types of patients the hospital should treat;
- (e) the facilities which the hospital should employ or should refrain from employing;
- (f) the extent to which and the conditions on which the hospital should make use of facilities or services provided by another hospital or should allow another hospital to make use of its facilities or services;
- (g) the manner in which, and extent to which, the admission of patients, patient care and treatment should be co-ordinated between hospitals, registered funded agencies and health service establishments;
- (h) the accounts and records which should be kept by the hospital and the returns and other information which should be supplied to the Secretary;
- (i) the inspection of its facilities and its accounts and records by the Secretary;
- (ia) the carrying out of audits for case mix funding purposes;
- (j) on to be taken or avoided to enable the State to comply with the terms of any agreement made between it and the Commonwealth of Australia or any other State.

S. 42(1)(h) amended by No. 46/1998 s. 7(Sch. 1) (as amended by No. 12/1999 s. 3(Sch. 1 item 14)).

S. 42(1)(i) amended by No. 46/1998 s. 7(Sch. 1) (as amended by No. 12/1999 s. 3(Sch. 1 item 14)).

S. 42(1)(ia) inserted by No. 112/1993 s. 7.

- (2) A direction may be given generally or in relation to public hospitals, denominational hospitals or a specified hospital or class of hospitals.
- (3) The Secretary must give a copy of a direction under this section to each public hospital or denominational hospital to which it applies.
- (4) The board of a public hospital or denominational hospital must comply with a direction under this section that applies to that hospital.
- (5) A direction applying to a hospital under this section has effect despite anything to the contrary in any health service agreement or interim funding statement having effect in relation to that hospital.

S. 42(3)
amended by
No. 46/1998
s. 7(Sch. 1).

43. Companies (Victoria) Code not to apply

The **Companies (Victoria) Code** does not apply to a public hospital or denominational hospital, other than a denominational hospital that is a company or recognised company within the meaning of that Code.

44. Trustees' power to transfer certain property

- (1) The trustees of any real or personal property held on trust for the general purposes of a residential care service may enter into agreements to enable the whole or any part of that real or personal property to vest in a public hospital or denominational hospital.
- (2) An agreement entered into under sub-section (1) has no effect unless it has been approved by the Governor in Council.

S. 44(1)
amended by
No. 73/1997
s. 6(2).

Division 6—Community Health Centres

45. Community health centres

Health Services Act 1988

Act No. 49/1988

S. 45(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) If the Secretary is satisfied—
- (a) that an agency registered under Division 2 is an agency that serves a particular area; and
 - (b) that in the circumstances it is appropriate so to do—

the Secretary may, by notice published in the Government Gazette, declare—

- (c) the agency to be a community health centre; and
- (d) the area specified in the notice to be the area served by the community health centre.

S. 45(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The Secretary may, by notice published in the Government Gazette—
- (a) after consultation with a community health centre, vary the area specified to be the area served by the centre; or
 - (b) revoke the declaration of an agency as a community health centre.

S. 46
amended by
Nos 53/1990
s. 10(1),
23/1994
s. 118(Sch. 1
item 25.7),
substituted by
No. 17/1997
s. 3.

46. Board of management

- (1) There shall be a board of management of each community health centre.
- (2) The board of a community health centre shall consist of not less than 7 and not more than 9 natural persons aged 18 years or more.
- (3) The members of the board shall be appointed by the Governor in Council on the nomination of the Minister and, except in the case of the first members, shall be so nominated after consultation with the board.
- (4) The **Public Sector Management and Employment Act 1998** does not apply to a member of a board in respect of the office of member.

S. 46(4)
amended by
No. 46/1998
s. 7(Sch. 1).

47. Terms and conditions of appointment

- (1) A member of a board of a community health centre holds office for the term, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.
- (2) The term of office of a member must be fixed so that, as nearly as possible, one third of the membership of the board is or becomes vacant each year.
- (3) A person appointed to fill a vacancy on a board which arises otherwise than by expiry of a member's term of office holds office for the remainder of that member's term.

S. 47
amended by
No. 53/1990
s. 10(2)(3),
substituted by
No. 17/1997
s. 3.

48. Resignation and removal

- (1) A member of a board of a community health centre may resign by writing delivered to the Governor in Council.
- (2) The Governor in Council, on the recommendation of the Minister, may remove a member of a board from office.

S. 48
substituted by
No. 17/1997
s. 3.

49. Validity of acts or decisions

An act or decision of a board of a community health centre is not invalid by reason only of—

- (a) a defect or irregularity in or in connection with the appointment of a member of the board; or
- (b) a vacancy in the membership of the board.

S. 49
substituted by
No. 17/1997
s. 3.

S. 50
amended by
No. 1/1989
s. 4(1),
substituted by
No. 17/1997
s. 3.

50. Procedure of the board

- (1) A majority of members of the board for the time being constitutes a quorum of the board.
- (2) Subject to this Division, the procedure of a board of a community health centre is in the discretion of the board.

S. 51
amended by
No. 53/1990
s. 10(4),
substituted by
No. 17/1997
s. 3.

51. Transitional

A member of a board of a community health centre holding office immediately before the commencement of section 3 of the **Health Services (Community Health Centres) Act 1997** ceases to hold office on that commencement.

Pt 3 Div. 7
(Heading and
ss 52–56)
repealed by
No. 31/1994
s. 4(Sch. 2
item 40), new
Pt 3 Div. 7
(Heading and
ss 52–57B)
inserted by
No. 68/1996
s. 27.

Division 7—Transitional Management Agreements

New s. 52
inserted by
No. 68/1996
s. 27.

52. Definitions

In this Division—

"administrator", in relation to a public hospital, means the administrator appointed under section 55(3);

"manager" means a party to an agreement with the Minister under section 53(1), other than the public hospital that is the subject of that agreement.

53. Minister may enter into transitional management agreements

New s. 53
inserted by
No. 68/1996
s. 27.

- (1) The Minister may, for and on behalf of the Crown, enter into an agreement with a person or body and a specified public hospital for the management by that person or body of that public hospital.
- (2) The Minister may only enter into an agreement under sub-section (1) in relation to a public hospital providing services that are to be replaced by services to be provided by a privately-operated hospital in accordance with an agreement previously entered into by the Minister under section 69B(1) or being then entered into by him or her.
- (3) The Minister must obtain the written approval of the Treasurer before entering into an agreement under sub-section (1).
- (4) Nothing in this section—
 - (a) limits, or takes away, any other power of the Minister, whether under this or any other Act or otherwise, to enter into agreements for the provision of health services; or
 - (b) limits, or takes away, any power of the Secretary under this Act to enter into health service agreements.

S. 53(4)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

54. Matters to be included in agreement

New s. 54
inserted by
No. 68/1996
s. 27.

- (1) An agreement under section 53(1) may—
 - (a) provide for the management and operation of the hospital;
 - (b) provide for the maintenance and repair of the hospital;
 - (c) provide for the services to be provided by the manager to hospital patients;

- (d) provide for the fees, costs and charges to be paid to the manager;
- (e) provide for objectives and performance standards in relation to the manager's operations under the agreement;
- (f) provide for consultation by the manager, as specified in the agreement, with a body representative of community views identified, or appointed or selected in the manner specified, in the agreement;
- (g) provide for the submission of periodic reports in relation to the manager's operations under the agreement;
- (h) provide for the extent of indemnities by parties to the agreement;
- (i) deal with financial arrangements;
- (j) specify liabilities, risks and insurances;
- (k) deal with the handover to the privately-operated hospital that is to replace the hospital as a service provider;
- (l) leave any matter to be determined, approved or dispensed with by a specified person or body;
- (m) provide for the assignment to the Minister, the Crown or any other person of any right or interest;
- (n) provide for the creation of any security over property;
- (o) provide for the Minister to delegate powers and functions under the agreement;
- (p) provide for sub-contracting;
- (q) provide for the suspension of obligations under the agreement in specified

circumstances, except the obligation referred to in paragraph (h);

- (r) provide for the Minister, the Crown or any other person or body to take over, or nominate any other person or body to take over, rights or obligations under the agreement or any other agreement or under any transaction;
- (s) provide for rights of access to the hospital;
- (t) contain any other provisions that are not inconsistent with this Act or the regulations.

55. *Appointment of administrator*

- (1) If the Minister proposes to enter into an agreement under section 53(1) with respect to a public hospital, the Minister may appoint an administrator to enter into the agreement for and on behalf of the public hospital.
- (2) A public hospital is bound by an agreement entered into by an administrator for and on its behalf in accordance with sub-section (1) to the same extent as if it had been entered into by the public hospital under its official seal.
- (3) If an agreement is entered into under section 53(1) with respect to a public hospital, the Minister must before the coming into effect of that agreement appoint an administrator of the hospital for the period and subject to the terms and conditions specified in the instrument of appointment.
- (4) An administrator appointed under sub-section (3) may be the same person as was appointed administrator under sub-section (1) in relation to the public hospital or may be a different person.

New s. 55
inserted by
No. 68/1996
s. 27.

New s. 56
inserted by
No. 68/1996
s. 27.

56. Consequences of agreement

- (1) On the coming into effect of an agreement under section 53(1)—
 - (a) the members of the board of management of the public hospital that is the subject of the agreement cease to hold office; and
 - (b) except as otherwise provided by the agreement, the administrator has and may exercise all the powers and is subject to all the duties of the board of the hospital under, and comprises that board for the purposes of, this Act and the by-laws; and
 - (c) sections 33(3) to (10), 34 and 35 cease to apply in relation to the board of that hospital and continue not to so apply during the period of appointment of the administrator.
- (2) Despite anything to the contrary in Division 8 of Part 3, that Division does not apply to a public hospital that is the subject of an agreement under section 53(1) while the agreement continues in force.
- (3) A public hospital continues to be the same body after as before the coming into effect of an agreement under section 53(1) with respect to it.

New s. 57
inserted by
No. 68/1996
s. 27.

57. Right of intervention in management

- (1) The Minister may intervene in the management of a hospital that is the subject of an agreement under section 53(1) if he or she considers that it is necessary to do so for the protection of the health or safety of patients receiving or requiring services at the hospital.
- (2) If the Minister intervenes in the management of a hospital, he or she may appoint the administrator appointed under section 55(3) to manage the hospital until the Minister determines that the

health or safety of patients receiving or requiring services at the hospital no longer requires the administrator to manage the hospital.

- (3) If an administrator is appointed under sub-section (2), then for the period of that appointment—
- (a) the manager must act in relation to the management or operation of the hospital in accordance with the directions of the administrator; or
 - (b) the manager must as directed by the administrator, cease to act in relation to the management or operation of the hospital completely or to the extent specified in the direction.

Penalty: 50 penalty units.

- (4) A person engaged or employed by the manager to act in relation to the management or operation of the hospital must comply with the directions of the administrator in doing so.

Penalty: 50 penalty units.

- (5) An administrator appointed under sub-section (2) has and may carry out or exercise for the period of the appointment all of the functions or powers of the manager, in relation to the management or operation of the hospital, under this Act or the regulations or the agreement under section 53(1).
- (6) Without limiting sub-section (5), the administrator has power to do anything necessary for the protection of the health or safety of patients receiving or requiring health services at the hospital.
- (7) The Secretary must provide the administrator with any assistance necessary to the carrying out of his or her functions or exercise of his or her powers under this section.

**S. 57(7)
amended by
No. 46/1998
s. 7(Sch. 1).**

s. 58A

- (8) Nothing in this section limits, or takes away, any function or power conferred on a person (including a person on whom a function or power is conferred by this section), whether under this or any other Act or otherwise including the agreement under section 53(1).

S. 57A inserted by No. 68/1996 s. 27.

57A. Re-establishment of board of management

- (1) Members may again be appointed in accordance with Division 4 to a board of management of the public hospital that is the subject of an agreement under section 53(1) if the agreement is terminated or the obligations of the manager under the agreement are suspended.
- (2) On the re-establishment under sub-section (1) of the board of management, the appointment of the administrator is revoked.
- (3) Nothing in sub-section (2) limits, or takes away, any power of the Minister under section 41 of the **Interpretation of Legislation Act 1984** in relation to the appointment of the administrator.

S. 57B inserted by No. 68/1996 s. 27.

57B. Closure

The public hospital that is the subject of an agreement under section 53(1) may be closed in accordance with section 62 on the termination or expiry of the agreement.

Division 8—Censure etc.

S. 57 repealed by No. 88/1994 s. 10.

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58. Powers of Minister

Health Services Act 1988

Act No. 49/1988

(1) If the Minister is satisfied that a registered funded agency—

- (a) is inefficiently or incompetently managed; or
- (b) is failing to provide an effective health service; or
- (c) has negligently failed to comply with a health service agreement or interim funding statement; or
- (d) in the case of a public hospital or denominational hospital has failed to comply with a direction of the Secretary—

S. 58(1)(d)
amended by
No. 46/1998
s. 7(Sch. 1).

the Minister may do any one or more of the following—

- (e) censure the agency in accordance with section 59;
 - (f) except in the case of a denominational hospital—
 - (i) direct that the admission of patients to the agency be suspended in accordance with section 60; or
 - (ii) recommend to the Governor in Council that an administrator of the agency be appointed in accordance with section 61; or
 - (iii) recommend to the Governor in Council that the agency be closed in accordance with section 62.
- (2) If the Minister is of the opinion that the closure of a registered funded agency is desirable for the purposes of implementing a scheme for the improvement of any local or State-wide health service, the Minister may recommend to the Governor in Council that the agency be closed in accordance with section 62.

59. Censure

- (1) If the Minister proposes to censure a registered funded agency, the Minister—
 - (a) must give notice in writing to the agency of his or her proposal; and
 - (b) must consider any submissions, whether oral or in writing, made to the Minister by the agency within 7 days after the giving of the notice; and
 - (c) may consider any other submissions and any matters the Minister considers appropriate—
before deciding whether or not to censure the agency.
- (2) If the Minister decides to censure the agency, the Minister must—
 - (a) give notice in writing of the censure to the agency; and
 - (b) cause to be tabled in each House of the Parliament within 7 sitting days of the House after the notice is given to the agency—
 - (i) a copy of the notice; and
 - (ii) a report of the circumstances leading to the censure; and
 - (iii) a copy of any written submissions made by the agency.

60. Suspension of admissions

- (1) If the Minister decides that the admission of patients or any class of patients to a registered funded agency should be suspended, the Minister—
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- (a) may in writing direct the agency to suspend such admissions forthwith or on and after a specified date; and
 - (b) must consider any submissions, whether oral or in writing, made to the Minister by the agency within 7 days after the giving of the direction and may consider any other submissions and any matters the Minister considers appropriate; and
 - (c) must decide whether or not the suspension should be withdrawn or confirmed and, if confirmed, the period for which the suspension should operate; and
 - (d) must give notice of his or her decision to the agency.
- (2) Sub-section (1) does not apply to a denominational hospital.

61. *Appointment of administrator*

- (1) If the Minister proposes that a registered funded agency should be administered by an administrator, the Minister—
- (a) must give notice in writing to the agency of his or her proposal; and
 - (b) must consider any submissions, whether oral or in writing, made to the Minister by the agency within 7 days after the giving of the notice; and
 - (c) may consider any other submissions and any other matters the Minister considers appropriate—
- before deciding whether or not to recommend the appointment of an administrator.
- (2) If the Minister decides to recommend the appointment of an administrator, the Governor in
-

Council, on the recommendation of the Minister, may appoint an administrator of the agency for such period and subject to such terms and conditions as are specified in the appointment.

- (3) An administrator of an agency appointed under this section has and may exercise all the powers and is subject to all the duties of the board of the agency.
- (4) On the appointment of an administrator, the members of the board of the agency cease to hold office.
- (5) If the Minister recommends to the Governor in Council that the appointment of the administrator of an agency should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
- (6) If a notice is published under sub-section (5) in relation to an agency—
 - (a) members of the board of the agency shall be elected or appointed in accordance with this Part, the regulations or the rules of the agency, as the case requires; and
 - (b) on the date specified in the notice—
 - (i) the appointment of the administrator is revoked; and
 - (ii) the board of the agency is re-established.
- (7) This section does not apply to a denominational hospital.

62. Closure

Health Services Act 1988

Act No. 49/1988

- (1) If the Minister proposes that a registered funded agency should be closed, the Minister must cause a report of the proposal to be prepared and made available to persons who request it.
- (2) A report under sub-section (1) must include—
 - (a) a statement of the circumstances giving rise to the proposal; and
 - (b) a statement of any other available options in relation to continuing the services of the agency.
- (3) If a report under sub-section (1) relates to a registered funded agency that is an incorporated association under the **Associations Incorporation Act 1981** or a company within the meaning of the **Companies (Victoria) Code**, the Minister must cause a copy of the report to be given to the Registrar of Incorporated Associations or the Commissioner for Corporate Affairs, as the case requires.
- (4) The Minister, after consideration of any submissions made on a report under sub-section (1) within 90 days after the report is made available to interested persons—
 - (a) must decide whether or not to recommend the closure of the agency; and
 - (b) must give notice in writing of his or her decision to—
 - (i) the agency; and
 - (ii) in a case to which sub-section (3) applies, to the Registrar of Incorporated Associations or the Commissioner for Corporate Affairs, as the case requires.
- (5) The Governor in Council, on the recommendation of the Minister, may by Order published in the

Government Gazette direct that the registered funded agency be closed on and after the date fixed in the Order.

- (6) If an Order is published under sub-section (5)—
- (a) in the case of an agency that is an incorporated association, the Order has effect as if it were an order of the Supreme Court for the winding up of the association under Part VIII of the **Associations Incorporation Act 1981**; and
 - (b) in the case of an agency that is a company within the meaning of the **Companies (Victoria) Code**, the Order has effect as if it were an order of the Supreme Court for the winding up of the company under Part XII of the Code; and
 - (c) in the case of an agency that is incorporated in any other manner, the Order has effect in the manner specified in the Order; and
 - (d) in any other case—
 - (i) the agency shall be closed subject to and in accordance with the directions contained in the Order; and
 - (ii) the property of the agency becomes the property of the Crown and may be dealt with or disposed of accordingly; and
 - (iii) the liabilities of the agency become liabilities of the Crown.
- (7) This section does not apply to a denominational hospital.

Division 9—Amalgamation of Registered Funded Agencies

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S. 63
repealed by
No. 88/1994
s. 11.

64. Proposal for amalgamation

- (1) If the Secretary considers that the provision of health services by two or more registered funded agencies (none of which is a denominational hospital) may be more effective if the agencies were amalgamated, the Secretary must cause to be prepared a report outlining proposals and options for the more effective provision of health services, including the proposal for amalgamation.
- (2) A proposal for amalgamation under sub-section (1) may be made in respect of—
 - (a) two or more registered funded agencies of the kind mentioned in a paragraph of sub-section (3); or
 - (b) a combination of two or more agencies of any kind mentioned in sub-section (3).
- (3) For the purposes of sub-section (2), the kinds of registered funded agencies are—
 - (a) an agency which is an unincorporated body;
 - (b) an agency which is incorporated under this Act;
 - (c) an agency which is an incorporated association under the **Associations Incorporation Act 1981**;
 - (d) an agency which is a company within the meaning of the **Companies (Victoria) Code**.
- (4) The Secretary must cause copies of each report under sub-section (1)—
 - (a) to be given to each registered funded agency

S. 64(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 64(4)
amended by
No. 46/1998
s. 7(Sch. 1).

concerned; and

(b) to be made available on request to members of the public.

S. 64(5)
amended by
No. 46/1998
s. 7(Sch. 1).

(5) Any person may make submissions to the Secretary on the report before the expiration of the period specified in the report (not being less than 60 days after a copy is given to each registered funded agency concerned).

S. 64(6)
amended by
No. 46/1998
s. 7(Sch. 1).

(6) If, after considering any submissions made to the Secretary on the report during the period referred to in sub-section (5), the Secretary considers the proposal for amalgamation should be implemented in whole or in part, the Secretary must advise the Minister accordingly.

S. 64(7)
amended by
No. 46/1998
s. 7(Sch. 1).

(7) The Secretary must not advise the Minister to implement the proposal for amalgamation in whole or in part unless the Secretary is satisfied that the amalgamation is likely to result in the more effective provision of health services having regard to—

(a) the possible benefits to Victoria in the form of improved health services throughout Victoria or in any part of Victoria; and

(b) the possible economic consequences of amalgamation.

S. 64(8)
inserted by
No. 46/1995
s. 9, amended
by No.
46/1998 s.
7(Sch. 1).

(8) During the year beginning on the day on which section 9 of the **Health Services (Metropolitan Hospitals) Act 1995** comes into operation, the Secretary must not cause to be prepared a report under sub-section (1), or give advice to the Minister under sub-section (6), in relation to a proposal for the amalgamation of a metropolitan hospital with another registered funded agency.

64A. *Voluntary amalgamations*

- (1) The governing bodies of 2 or more registered funded agencies (including denominational hospitals) may agree to amalgamate under this Division only if—
 - (a) the bodies and the agencies are authorised to do so by any Acts or other documents creating them and the amalgamation is made in accordance with those Acts or other documents; and
 - (b) apart from this Division, there is no law of the Commonwealth or the State under which they could amalgamate.
- (2) The agencies must submit the agreement to the Secretary.
- (3) The Secretary, must not advise the Minister to approve an agreement under sub-section (4), unless the Secretary is satisfied that—
 - (a) the amalgamation will result in the provision of better health services throughout Victoria or in any part of Victoria; and
 - (b) the amalgamation is otherwise in the public interest.
- (4) The Minister, on the Secretary's advice, may approve the agreement.

S. 64A
inserted by
No. 112/1993
s. 8.

S. 64A(2)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 64A(3)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 64A(4)
amended by
No. 46/1998
s. 7(Sch. 1).

65. *Governor in Council may order amalgamation*

- (1) The Governor in Council, on the recommendation of the Minister made after receiving advice from the Secretary under section 64(6) or section 64A, may by Order published in the Government

S. 65(1)
amended by
Nos 112/1993
s. 9(1),
46/1998 s.
7(Sch. 1).

Health Services Act 1988

Act No. 49/1988

Gazette direct that two or more registered funded agencies be amalgamated.

- (2) Where an Order is made under sub-section (1)—
- (a) on a date specified in the Order—
 - (i) the incorporation of each registered funded agency to which the Order relates that is an incorporated body shall be cancelled; or
 - (ii) each registered funded agency to which the Order relates that is an unincorporated body shall cease to exist—as the case requires; and
 - (b) on that date a new registered funded agency of the kind specified in the Order having a board or committee of management constituted as specified in the Order shall come into existence by operation of the Order as if on that date—
 - (i) it had been incorporated under this Act; or
 - (ii) a certificate of incorporation had been granted under the **Associations Incorporation Act 1981**; or
 - (iii) an unincorporated body had been formed; and
 - (c) on that date, the property of each registered funded agency that is the subject of the Order vests in the new registered funded agency without the necessity for any conveyance, transfer or assignment and so vests subject to—
 - (i) any trust; and
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- (ii) any restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant, contract or liability—
to which the property was subject immediately before that date; and
- (d) on that date, all debts and liabilities, whether certain or contingent, of a registered funded agency that is the subject of the Order existing at that date become the debts and liabilities of the new registered funded agency; and **S. 65(2)(d) amended by No. 66/1998 s. 8(1).**
- (e) on and from that date, each registered funded agency to which the Order relates must be taken, for the purposes of any trust in relation to that agency, not to have had its incorporation cancelled or to have ceased to exist and the new registered funded agency must be taken to be the same body as that agency for those purposes; and **S. 65(2)(e) inserted by No. 66/1998 s. 8(1).**
- (f) without limiting the effect of paragraph (e), on and from that date, an instrument creating a trust in relation to— **S. 65(2)(f) inserted by No. 66/1998 s. 8(1).**
- (i) a registered funded agency to which the Order relates; or
- (ii) a former agency of which such a registered funded agency is the successor agency—
continues to have effect according to its tenor as if the trust were in relation to the new registered funded agency.
- (3) An Order under sub-section (1) may include such other provisions not inconsistent with this Division as are necessary or expedient, including— **S. 65(3) amended by No. 112/1993 s. 9(2).**

Health Services Act 1988

Act No. 49/1988

s. 65

S. 65(3)(a)
inserted by
No. 112/1993
s. 9(2).

(a) provisions giving effect to any agreement under section 64A; and

S. 65(3)(b)
inserted by
No. 112/1993
s. 9(2).

(b) provisions relating to the construction of references in documents to any amalgamated denominational hospitals.

(4) An Order under sub-section (1) must declare the new registered funded agency to be either a public hospital or an incorporated association if the Order relates to the amalgamation of two or more agencies all of which are agencies of any of the following kinds—

(a) a public hospital;

(b) an incorporated association under the **Associations Incorporation Act 1981**;

S. 65(4)(c)
amended by
No. 112/1993
s. 9(3).

(c) a company within the meaning of the **Companies (Victoria) Code**; or

S. 65(4)(d)
inserted by
No. 112/1993
s. 9(3).

(d) a denominational hospital referred to in section 64A that is a body corporate.

S. 65(5)
inserted by
No. 112/1993
s. 9(4).

(5) In the case of a denominational hospital, an Order under sub-section (1) has effect despite anything to the contrary in any Act or subordinate instrument.

S. 65(6)
inserted by
No. 66/1998
s. 8(2).

(6) Sub-section (2), as amended by section 8(1) of the **Health Services (Further Amendment) Act 1998**, has effect with respect to—

(a) an Order made under sub-section (1) before the commencement of that section of that Act; and

(b) an instrument of a kind referred to in sub-section (2)(f) of this section—

in the same way as it would if it had been in force as so amended at the time when the Order was made and must be taken to have always had that effect on and from that time.

Division 9A—Aggregation of Metropolitan Hospitals

Pt 3 Div. 9A
(Heading and
ss 65A–65O)
inserted by
No. 46/1995
s. 10.

65A. Definitions

S. 65A
inserted by
No. 46/1995
s. 10.

In this Division—

"aggregated hospital", in relation to an Order under section 65C, means a metropolitan hospital the incorporation of which is cancelled under the Order;

"effective date", in relation to an Order under section 65C, means the date on which the aggregation is effected, being a date specified in the Order;

"instrument" means a document and an oral agreement;

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective;

"new hospital", in relation to an Order under section 65C, means the metropolitan hospital that comes into existence under the Order;

"old instrument" means an instrument subsisting immediately before the effective date of an Order under section 65C—

- (a) to which an aggregated hospital was a party; or
- (b) that was given to or in favour of an aggregated hospital; or

(c) that refers to an aggregated hospital; or

(d) under which—

(i) money is, or may become, payable to or by an aggregated hospital; or

(ii) other property is to be, or may become liable to be, transferred to or by an aggregated hospital;

"property" means a legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"transferred aggregated hospital employee" means a person who, by reason of section 65L(1), is regarded as being employed by a new hospital with effect from the effective date of an Order under section 65C.

S. 65A def. of "transferred aggregated hospital employee" amended by No. 99/1995 s. 20(a).

S. 65B inserted by No. 46/1995 s. 10.

65B. *Extra-territorial operation*

It is the intention of the Parliament that the operation of this Division should, as far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;

- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Division, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

65C. Aggregation

- (1) If the Minister considers that the provision of health services by 2 or more metropolitan hospitals may be more effective if the hospitals were aggregated, the Minister may recommend that an Order be made under sub-section (2).
- (2) The Governor in Council, by Order published in the Government Gazette, may, on the recommendation of the Minister, direct that 2 or more metropolitan hospitals be aggregated.
- (3) An Order under sub-section (2), may not be made on or after the first anniversary of the date on which section 10 of the **Health Services (Metropolitan Hospitals) Act 1995** comes into operation.
- (4) If an Order is made under sub-section (2), on a date specified in the Order—
 - (a) the incorporation of each metropolitan hospital to which the Order relates is cancelled;
 - (b) a new hospital with the name specified in the Order comes into existence;
 - (c) Schedule 3 is amended—
 - (i) by the omission of the name of each metropolitan hospital the incorporation of which is cancelled by the Order; and

S. 65C
inserted by
No. 46/1995
s. 10.

- (ii) by the addition of the name of the new hospital, in the appropriate alphabetical position.
- (5) The board of a metropolitan hospital that comes into existence under an Order under sub-section (2) consists of the persons (being not less than 6 and not more than 9) named in the Order and, for the purposes of Division 4A, the Order constitutes the instrument of appointment and may include terms and conditions of appointment.
- (6) If an Order under sub-section (2) specifies by-laws of the metropolitan hospital that comes into existence under the Order, the by-laws have effect as if made by the board of the hospital.
- (7) The Governor in Council, in an Order under sub-section (2) or in another Order published in the Government Gazette on the recommendation of the Minister, may appoint a person to act as the first chief executive officer of a new metropolitan hospital that comes into existence in accordance with this section.
- (8) A person appointed to act as chief executive officer of a metropolitan hospital appointed in accordance with sub-section (7) is deemed to have been appointed by the board of the hospital.
- (9) An Order under sub-section (2) may include such other provisions not inconsistent with this Division as are necessary or expedient.

S. 65D
inserted by
No. 46/1995
s. 10.

65D. *New metropolitan hospital to be successor in law*

On the coming into existence of a metropolitan hospital under an Order under section 65C—

- (a) all property and rights of the aggregated hospitals, wherever located, vest in the new hospital; and

(b) all liabilities of the aggregated hospitals, wherever located, become liabilities of the new hospital; and

(c) the new hospital becomes the successor in law of the aggregated hospitals; and

S. 65D(c)
amended by
No. 66/1998
s. 9(1).

(d) on and from the effective date of the Order, an aggregated hospital to which the Order relates must, for the purposes of any trust in relation to that hospital, be taken not to have had its incorporation cancelled and the new hospital must be taken to be the same body as the aggregated hospital for those purposes.

S. 65D(d)
inserted by
No. 66/1998
s. 9(1).

65E. Substitution of party to agreement

Where, under section 65D, the rights and liabilities of an aggregated hospital under an agreement vest in, or become liabilities of, the new hospital—

S. 65E
inserted by
No. 46/1995
s. 10.

(a) the new hospital becomes, on the effective date of the Order, a party to the agreement in place of the aggregated hospital; and

(b) on and after the effective date of the Order, the agreement has effect as if the new hospital had always been a party to the agreement.

65F. Old instruments

(1) Each old instrument continues to have effect according to its tenor on and after the effective date of an Order under section 65C as if a reference in the instrument to an aggregated hospital were a reference to the new hospital.

S. 65F
inserted by
No. 46/1995
s. 10.
amended by
No. 66/1998
s. 9(2) (ILA
s. 39B(1)).

Health Services Act 1988

Act No. 49/1988

s. 65G

S. 65F(2)
inserted by
No. 66/1998
s. 9(2).

- (2) Without limiting the effect of sub-section (1), on and from the effective date of an Order under section 65C, an instrument creating a trust in relation to—
- (a) an aggregated hospital to which the Order relates; or
 - (b) a former agency of which such an aggregated hospital is the successor agency—
- continues to have effect according to its tenor as if the trust were in relation to the new hospital.

S. 65FA
inserted by
No. 66/1998
s. 10.

65FA. *Trusts in relation to aggregated hospitals*

Sections 65D and 65F, as amended by section 9 of the **Health Services (Further Amendment) Act 1998**, have effect with respect to—

- (a) an Order made under section 65C before the commencement of that section of that Act; and
- (b) an instrument of a kind referred to in section 65F(2)—

in the same way as they would if they had been in force as so amended at the time when the Order was made and must be taken to have always had that effect on and from that time.

S. 65G
inserted by
No. 46/1995
s. 10.

65G. *Proceedings*

If, immediately before the effective date of an Order under section 65C, proceedings (including arbitration proceedings) to which an aggregated hospital was a party were pending or existing in any court or tribunal, then, on and after the publication of the Order, the new hospital is substituted for the aggregated hospital as a party to the proceedings and has the same rights in the proceedings as the aggregated hospital had.

65H. Interests in land

Without prejudice to the generality of this Division and despite anything to the contrary in any other Act or law, if, immediately before the effective date of an Order under section 65C, an aggregated hospital is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that date—

- (a) the new hospital is to be taken to be the registered proprietor of that interest in land; and
- (b) the new hospital has the same rights and remedies in respect of that interest as the aggregated hospital had.

S. 65H inserted by No. 46/1995 s. 10.

65I. Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Division.

S. 65I inserted by No. 46/1995 s. 10.

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S. 65I(2)(3) repealed by 85/1998 s. 24 (Sch. item 32).

65J. Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Division or in respect of any act or transaction connected with or necessary to be done by reason of this Division, including a transaction entered into or an instrument made, executed, lodged or given.

S. 65J inserted by No. 46/1995 s. 10.

65K. Evidence

- (1) Documentary or other evidence that would have

S. 65K inserted by No. 46/1995 s. 10.

been admissible for or against the interests of an aggregated hospital if an Order had not been made under section 65C, is admissible for or against the interests of the new hospital.

- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of an aggregated hospital and to entries made in those books of account before the effective date of an Order under section 65C.
- (3) In sub-section (2), "**books of account**" has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

S. 65L
inserted by
No. 46/1995
s. 10.

65L. *Transfer of aggregated hospital staff to new hospital*

- (1) A person who, immediately before the effective date of an Order under section 65C, was an employee of an aggregated hospital is to be regarded as—
 - (a) having been employed by the new hospital with effect from that date; and
 - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before that date, as an employee of the aggregated hospital; and
 - (c) having accrued an entitlement to benefits, in connection with that employment by the new hospital, that is equivalent to the entitlement that the person had accrued, as an employee of the aggregated hospital immediately before that date.
- (2) The service of a transferred aggregated hospital employee as an employee of the new hospital is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the effective date of the Order

under section 65C, as an employee of the aggregated hospital.

- (3) A transferred aggregated hospital employee is not entitled to receive any payment or other benefit by reason only by having ceased to be an employee of the aggregated hospital because of this Division.
- (4) A certificate purporting to be signed by the chief executive officer of the new hospital certifying that a person named in the certificate was, with effect from the effective date of the Order under section 65C, employed, by virtue of this section by the new hospital is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

S. 65L(4)
amended by
No. 99/1995
s. 20(b).

65M. Future terms and conditions of transferred employees

Nothing in section 65L prevents—

S. 65M
inserted by
No. 46/1995
s. 10.

- (a) any of the terms and conditions of employment of a transferred aggregated hospital employee from being altered by or under any law, award or agreement with effect from any time after the effective date of the Order under section 65C; or
- (b) a transferred aggregated hospital employee from resigning, or the termination of a transferred aggregated hospital employee's employment, at any time after the effective date of the Order in accordance with the then existing terms and conditions of the employee's employment by the new hospital.

S. 65M(a)
amended by
No. 99/1995
s. 20(c).

65N. Validity of things done under this Division

Nothing effected by this Division or suffered under this Division—

S. 65N
inserted by
No. 46/1995
s. 10.

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) is subject to compliance with or is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or right or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligee wholly or in part from any obligation.

Health Services Act 1988

Act No. 49/1988

Nothing done under this Division gives rise to any cause or right of action or application before any court or tribunal.

Division 10—Compulsory Acquisition of Land

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S. 66
repealed by
No. 73/1997
s. 6(3).

67. Acquisition

- (1) The Minister may purchase or compulsorily acquire land for the purposes of a registered funded agency if, after inquiry and report by the Secretary, the Minister considers it necessary or desirable to do so.

S. 67(1)
substituted by
No. 75/1994
s. 14(1),
amended by
No. 46/1998
s. 7(Sch. 1).

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S. 67(2)
repealed by
No. 75/1994
s. 14(2)(a).

- (3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Health Services Act 1988** is the special Act; and
- (b) the Minister is the Authority.

S. 67(3)(b)
amended by
No. 75/1994
s. 14(2)(b).

- (4) The agency—
- (a) in the case of a disputed claim—
- (i) must pay the undisputed amount to the Victorian Civil and Administrative Tribunal or the Supreme Court (as the case requires); and

S. 67(4)(a)(i)
amended by
Nos 91/1994
s. 25(a),
52/1998
s. 311(Sch. 1
item 36.2).

Health Services Act 1988

Act No. 49/1988

s. 68

S. 67(4)(a)(ii)
amended by
No. 91/1994
s. 25(b).

- (ii) must pay to the Minister within the period specified by the Minister, any further amount which the Tribunal or the Court orders to be paid to the claimant; and
- (b) in any other case, must pay to the Minister before the acquisition is made any amount required to pay compensation under this Division.

S. 68
amended by
No. 75/1994
s. 14(3).

68. *Acquired land to vest in the Crown*

Any land acquired under this Act by the Minister—

- (a) vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that section; and
- (b) may be dealt with as unalienated land of the Crown.

69. *Power to reserve and grant land to agency*

Any land vested in the Crown under this Division—

- (a) may be reserved in accordance with the **Crown Land (Reserves) Act 1978**; and
 - (b) subject to such terms (if any) and subject to such covenants, conditions, exceptions and reservations as the Governor in Council thinks fit, may be vested by the Governor in Council in the registered funded agency for its purposes.
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**PART 3A—PUBLIC HOSPITAL PATIENT SERVICES
AGREEMENTS**

Pt 3A
(Heading and
ss 69A–69I)
inserted by
No. 68/1996
s. 28.

Division 1—Definitions

69A. Definitions

In this Part—

"contractor" means a party to an agreement with the Minister under section 69B(1);

"hospital" means any premises where persons are provided with or offered health services as public hospital patients in accordance with an agreement with the Minister under section 69B(1);

"sub-contractor" means a sub-contractor of a contractor or of a sub-contractor.

S. 69A
inserted by
No. 68/1996
s. 28.

Division 2—Agreements

69B. Minister may enter into public hospital patient services agreements

S. 69B
inserted by
No. 68/1996
s. 28.

- (1) The Minister may, for and on behalf of the Crown—
 - (a) enter into an agreement with a person or body for the provision by that person or body of health services to public hospital patients from premises which, under the agreement, will be required to become a privately-operated hospital; or
 - (b) enter into an agreement with a person or body which is ancillary to an agreement entered into under paragraph (a), including an agreement with any person or body providing financial accommodation (within the meaning of the **Borrowing and**

Investment Powers Act 1987) or a guarantee in respect of an agreement entered into under paragraph (a).

- (2) The Minister must obtain the written approval of the Treasurer before entering into an agreement under sub-section (1).
- (3) Nothing in this section—
- (a) limits, or takes away, any other power of the Minister, whether under this or any other Act or otherwise, to enter into agreements for the provision of health services; or
 - (b) limits, or takes away, any power of the Secretary under this Act to enter into health service agreements.

S. 69B(3)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 69C
inserted by
No. 68/1996
s. 28.

69C. *Matters that may be included in agreement*

- (1) An agreement under section 69B(1)(a) may provide for—
- (a) the design, construction, commissioning and ownership of the hospital;
 - (b) the management and operation of the hospital;
 - (c) the maintenance and repair of the hospital;
 - (d) the services to be provided by the contractor to public hospital patients;
 - (e) the fees, costs and charges to be paid to the contractor;
 - (f) objectives and performance standards in relation to the provision of health services;
 - (g) consultation by the contractor, as specified in the agreement, with a body representative of
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- community views identified, or appointed or selected in the manner specified, in the agreement;
- (h) the submission of periodic reports in relation to the contractor's operations under the agreement;
 - (i) the extent of indemnities by parties to the agreement;
 - (j) the office the holder of which is to be the principal officer for the purposes of the application of the **Freedom of Information Act 1982** to the contractor as a provider of health services to public hospital patients;
 - (k) the office the holder of which is to be the principal officer for the purposes of the application of the **Ombudsman Act 1973** to the contractor as a provider of health services to public hospital patients.
- (2) An agreement under section 69B(1), including an agreement under section 69B(1)(a), may contain—
- (a) a provision dealing with financial arrangements;
 - (b) a provision specifying liabilities, risks and insurances;
 - (c) a provision leaving any matter to be determined, approved or dispensed with by a specified person or body;
 - (d) a provision providing for the assignment to the Minister, the Crown or any other person of any right or interest;
 - (e) a provision providing for the creation of any security over property;
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- (f) a provision providing for the Minister to delegate powers and functions under the agreement;
 - (g) a provision providing for sub-contracting;
 - (h) a provision requiring the provision by the contractor of a performance bond;
 - (i) a provision providing for the suspension of obligations under the agreement in specified circumstances, except the obligations referred to in sub-section (1)(i), (j) and (k);
 - (j) a provision providing for—
 - (i) the Minister, the Crown or any other person or body to take over, or nominate any other person or body to take over, rights or obligations under the agreement or any other agreement or under any transaction;
 - (ii) the transfer of land to the Minister, the Crown or any other person or body in the circumstances set out in the agreement;
 - (k) a provision providing for rights of access to the hospital;
 - (l) any other provisions that are not inconsistent with this Act or the regulations.

S. 69D
inserted by
No. 68/1996
s. 28.

69D. Agreement to run with land

- (1) An agreement entered into under section 69B(1) under which the owner of land covenants to transfer that land to the Minister, the Crown or any other person or body in the circumstances set out in the agreement must be under seal and must bind the owner of the land to those covenants.
 - (2) Sections 181, 182 and 183 of the **Planning and Environment Act 1987** apply to that agreement
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as if a reference in those sections to the responsible authority were a reference to the transferee of the land.

- (3) Land which is transferred to the Minister or the Crown in accordance with an agreement under section 69B(1) is deemed to be unalienated land of the Crown freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.
- (4) No compensation is payable by the Crown in respect of the transfer of land to the Minister or the Crown in accordance with an agreement under section 69B(1) except compensation (if any) which is expressly provided for in that agreement.

69E. Rights of access

S. 69E
inserted by
No. 68/1996
s. 28.

- (1) A contractor or sub-contractor must give the Minister, the Secretary and any authorised officer free and unfettered access at all times, together with any assistants and equipment that the Minister, the Secretary or authorised officer considers necessary—
 - (a) to the hospital; and
 - (b) to all public hospital patients receiving health services at the hospital; and
 - (c) to all documents in the possession of the contractor or sub-contractor relating to the provision of health services to public hospital patients at the hospital—

S. 69E(1)
amended by
No. 46/1998
s. 7(Sch. 1).

for the purpose of ensuring compliance with this Act or the regulations or the agreement under section 69B(1).

Penalty: 50 penalty units.

- (2) A contractor or sub-contractor must give an administrator appointed under section 69F free and unfettered access at all times, together with any assistants and equipment that the administrator considers necessary—
- (a) to the hospital; and
 - (b) to all public hospital patients receiving health services at the hospital; and
 - (c) to all documents in the possession of the contractor or sub-contractor relating to the provision of health services to public hospital patients at the hospital—

for the purpose of enabling the administrator to carry out his or her functions and exercise his or her powers under that section.

Penalty: 50 penalty units.

- (3) Nothing in this section limits, or takes away, any function or power conferred on a person (including a person on whom a function or power is conferred by this section), whether under this or any other Act or otherwise including the agreement under section 69B(1).

S. 69F
inserted by
No. 68/1996
s. 28.

69F. *Right of intervention in management*

- (1) The Minister may intervene in the management of a hospital if he or she considers that it is necessary to do so for the protection of the health or safety of public hospital patients receiving or requiring services at the hospital.
- (2) If the Minister intervenes in the management of a hospital, he or she may appoint an administrator

to manage the hospital until the Minister determines that the health or safety of public hospital patients receiving or requiring services at the hospital no longer requires the appointment of an administrator.

- (3) If an administrator is appointed under sub-section (2), then for the period of that appointment—
- (a) the contractor or a sub-contractor must act in relation to the management or operation of the hospital in accordance with the directions of the administrator; or
 - (b) the contractor or a sub-contractor must as directed by the administrator, cease to act in relation to the management or operation of the hospital completely or to the extent specified in the direction.

Penalty: 50 penalty units.

- (4) A person engaged or employed by the contractor or a sub-contractor to act in relation to the management or operation of the hospital must comply with the directions of the administrator in doing so.

Penalty: 50 penalty units.

- (5) An administrator appointed under sub-section (2) has and may carry out or exercise for the period of the appointment all of the functions or powers of the contractor or any sub-contractor, in relation to the management or operation of the hospital, under this Act or the regulations or the agreement under section 69B(1).
- (6) Without limiting sub-section (5), the administrator has power to do anything necessary for the protection of the health or safety of public hospital patients receiving or requiring health services at

the hospital in accordance with the agreement under section 69B(1).

S. 69F(7)
amended by
No. 46/1998
s. 7(Sch. 1).

- (7) The Secretary must provide the administrator with any assistance necessary to the carrying out of his or her functions or exercise of his or her powers under this section.
- (8) Nothing in this section limits, or takes away, any function or power conferred on a person (including a person on whom a function or power is conferred by this section), whether under this or any other Act or otherwise including the agreement under section 69B(1).

S. 69G
inserted by
No. 68/1996
s. 28.

69G. Application of FOI Act

- (1) The **Freedom of Information Act 1982** applies to a contractor or a sub-contractor in its capacity as a provider of health services to public hospital patients at the hospital in accordance with an agreement under section 69B(1) or a sub-contract agreement as if—
- (a) the contractor or sub-contractor were an agency within the meaning of that Act; and
 - (b) the holder of the office specified in the agreement under section 69B(1) or in the sub-contract agreement for the purposes of the application of the **Freedom of Information Act 1982** were the principal officer of that agency; and
 - (c) the Minister were the responsible Minister of that agency; and
 - (d) the persons employed by the contractor or sub-contractor were officers of that agency.
- (2) Nothing in this section applies the **Freedom of Information Act 1982** to a contractor or sub-contractor—

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- (a) in any capacity other than that mentioned in sub-section (1); or
 - (b) with respect to any period during which health services were not actually being provided by the contractor or sub-contractor to public hospital patients at the hospital.

69H. Investigation of administrative actions

S. 69H
inserted by
No. 68/1996
s. 28.

- (1) The **Ombudsman Act 1973** applies to a contractor or a sub-contractor in its capacity as a provider of health services to public hospital patients at the hospital in accordance with an agreement under section 69B(1) or a sub-contract agreement as if—
 - (a) the contractor or sub-contractor were a public statutory body within the meaning of that Act; and
 - (b) the holder of the office specified in the agreement under section 69B(1) or in the sub-contract agreement for the purposes of the application of the **Ombudsman Act 1973** were the principal officer of that public statutory body; and
 - (c) the persons employed by the contractor or sub-contractor were employees of that public statutory body.
- (2) Nothing in this section applies the **Ombudsman Act 1973** to a contractor or sub-contractor—
 - (a) in any capacity other than that mentioned in sub-section (1); or
 - (b) with respect to any period during which health services were not actually being provided by the contractor or sub-contractor to public hospital patients at the hospital.

Health Services Act 1988

Act No. 49/1988

s. 69I

S. 69I
inserted by
No. 68/1996
s. 28.

69I. *Application of Land Act*

Section 137 of the **Land Act 1958** does not apply to a proposed lease of Crown land for the purpose of a hospital.

PART 4—HEALTH SERVICE ESTABLISHMENTS

Division 1—Approval in Principle

70. Application¹

- (1) A person may apply to the Secretary for approval in principle of—
- (a) the use of particular land or premises as a specified kind of health service establishment; or
 - (b) premises proposed to be constructed for use as a health service establishment of a particular kind; or
 - (ba) alterations or extensions to premises used or proposed to be used as a health service establishment; or
 - (c) a variation of the registration of a health service establishment being either or both of the following—
 - (i) an alteration in the number of beds to which the registration relates;
 - (ii) in the case of a day procedure centre or private hospital, a variation—
 - (A) of the kinds of prescribed health services that may be carried on on the premises; or
 - (B) of the number of beds that may be used for specified kinds of prescribed health services.

S. 70(1) amended by No. 46/1998 s. 7(Sch. 1).

S. 70(1)(a) substituted by No. 53/1990 s. 11.

S. 70(1)(b) substituted by No. 99/1995 s. 14(1).

S. 70(1)(ba) inserted by No. 99/1995 s. 14(1).

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- (2) An application under sub-section (1)—
- (a) must be in the prescribed form; and
 - (b) must be accompanied by the prescribed fee.
- (3) A person making application for approval in principle must, at the time of the application, give notice in writing of the application to any other person who has an interest in the land as owner or lessee.
- (4) An applicant for approval in principle must give the Secretary—

S. 70(4)
amended by
Nos 99/1995
s. 14(2)(a)(b),
46/1998
s. 7(Sch. 1).

S. 70(4)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 70(4)(b)
inserted by
No. 99/1995
s. 14(2)(b),
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) any further information relating to the application that the Secretary requests including information about any proposed proprietor of and, if the proposed proprietor is a body corporate, any director or officer of the body corporate who may exercise control over the health service establishment to which the application relates; and
- (b) any design sketches and construction drawings, plans or specifications relating to the premises proposed to be constructed, altered or extended that the Secretary requests.

71. Criteria for grant of approval in principle

S. 71(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) In determining whether to grant or refuse to grant approval in principle relating to a health service establishment, the Secretary must consider—
- (a) in the case of an application for approval of the use of land or premises—
 - (i) any relevant guidelines under Part 2; and

- (ii) the suitability of the location of the land or premises for the carrying on of the establishment having regard to the availability of other community services and the safety and amenity of the environment; and
- (iii) whether the carrying on of an establishment may result in more than adequate health services of any kind becoming available in an area as defined in the guidelines under Part 2; and
- (iv) if design sketches have been supplied, whether the design of the premises to be constructed, or of the alterations or extensions, are satisfactory having regard to the type of health service establishment to be carried on in the premises; and

S. 71(1)(a)(iv) inserted by No. 99/1995 s. 14(3)(a).

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S. 71(1)(b) repealed by No. 99/1995 s. 14(3)(b).

- (c) in the case of an application for variation of the registration of the health service establishment—
 - (i) any relevant guidelines under Part 2; and
 - (ii) the suitability of the location of the land or premises for the carrying on of the establishment having regard to the availability of other community services and the safety and amenity of the environment; and

Health Services Act 1988

Act No. 49/1988

s. 71

S. 71(1)(c)(iii)
amended by
No. 99/1995
s. 14(3)(c).

(iii) whether variation of the registration may result in more than adequate health services of any kind becoming available in an area as defined in the guidelines under Part 2; and

S. 71(1)(c)(iv)
inserted by
No. 99/1995
s. 14(3)(c).

(iv) if design sketches have been supplied, whether the design of the premises to be constructed, or of the alterations or extensions, are satisfactory having regard to the type of health service establishment to be carried on in the premises.

S. 71(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) The Secretary must not grant approval in principle for the use of land or premises as a health service establishment or for the variation of the registration of a health service establishment if the Secretary considers that the person who is or is likely to be the proprietor of the establishment or, if the person is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the establishment—

(a) is not a fit and proper person to be such a proprietor, or to be a proprietor of the establishment if the registration is varied, or to exercise such control; or

(b) is not likely to have, or to continue to have, the financial capacity to carry on the establishment, or to carry on the establishment if the registration is varied.

S. 71(3)
inserted by
No. 99/1995
s. 14(4),
amended by
No. 46/1998
s. 7(Sch. 1).

(3) If construction drawings, plans or specifications have been supplied, in determining whether to grant or refuse to grant approval in principle relating to a health service establishment, the Secretary must consider whether the standard and style of construction work proposed is satisfactory

having regard to the type of health service establishment to be carried on in the premises.

72. Decision on application

- (1) The Secretary must decide whether to grant (whether or not subject to conditions) or to refuse to grant an application under section 70.
- (2) The Secretary must give notice in writing to the applicant of his or her decision within the period determined under section 104.

S. 72(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 72(2)
amended by
No. 46/1998
s. 7(Sch. 1).

73. Certificate of approval in principle

If the Secretary approves an application under section 70, he or she must issue a certificate of approval in principle stating—

- (a) the name of the person to whom it is issued; and
 - (b) any conditions to which it is subject; and
 - (c) in the case of the approval of land or premises—
 - (i) the kind of establishment for which the approval is granted; and
 - (ii) the number of beds (if any) for which the approval is granted; and
 - (iii) if the approval relates to use of land or premises for a day procedure centre or private hospital—
 - (A) the kinds of health care; and
 - (B) the number of beds for particular kinds of prescribed health services—
- for which the approval is granted; and

S. 73
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 15(a)).

Health Services Act 1988

Act No. 49/1988

s. 74

S. 73(d)
repealed by
No. 99/1995
s. 14(5).

* * * * *

S. 73(f)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 15(a)).

(e) in the case of the approval in principle of a variation of registration, particulars of the variation; and

(f) the period during which the approval continues in force (being one year or, if the Secretary considers it appropriate that the period be longer or shorter, the period specified by the Secretary).

74. *Transfer or variation of certificate*

S. 74(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary, on the application of the person who is the holder for the time being of a certificate of approval in principle relating to a health service establishment may—
- (a) vary the certificate or any condition to which it is subject; or
 - (b) approve the transfer of the certificate to another person.

(2) Sections 70 and 71 apply to an application for variation or transfer of a certificate as if the application were an application for approval in principle.

S. 74(3)
inserted by
No. 53/1990
s. 12,
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) The person who is the holder for the time being of a certificate of approval in principle must produce the certificate to the Secretary for endorsement by the Secretary of the particulars of—
- (a) the variation of the certificate or variation of any condition to which it is subject; or
 - (b) the transfer of the certificate to that person.

75. *Revocation of certificate*

- (1) If the Secretary is satisfied that—
- (a) a person to whom an approval in principle relates has ceased to be a fit and proper person to carry on, or to have the financial capacity to carry on, an establishment of the kind to which the approval relates; or
 - (b) where an approval in principle relates to a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the body corporate has ceased to be a fit and proper person to exercise control over an establishment of the kind to which the approval relates—
- the Secretary, by notice in writing given to the person or body corporate, may revoke the certificate.

S. 75(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) Except as provided in sub-section (1) or section 76, the Secretary cannot revoke a certificate of approval in principle.

S. 75(2)
amended by
Nos 99/1995
s. 14(6),
46/1998
s. 7(Sch. 1).

76. Voluntary revocation of certificate

- (1) If a certificate of approval in principle relating to a health service establishment has been issued, the proprietor of the establishment may apply to the Secretary for revocation of the certificate.
- (2) On an application under sub-section (1), the Secretary must, by notice in writing given to the proprietor, revoke the certificate.

New s. 76
inserted by
No. 99/1995
s. 15,
amended by
No. 46/1998
s. 7(Sch. 1).

S. 76(2)
amended by
No. 46/1998
s. 7(Sch. 1).

* * * * *

Pt 4 Div. 2
(Heading and
ss 76–81)
amended by
No. 53/1990
ss 13, 14(1)(2),
repealed by
No. 99/1995
s. 14(7).²

Division 3—Registration

82. Application

S. 82(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) A person who intends to be the proprietor of a health service establishment may apply to the Secretary for registration of premises as a health service establishment of a particular kind.
- (2) An application under sub-section (1)—
 - (a) must be in the prescribed form; and
 - (b) must be accompanied by the prescribed fee.
- (3) An applicant for registration must give the Secretary any further information relating to the application that the Secretary requests.

S. 82(3)
amended by
No. 46/1998
s. 7(Sch. 1).

83. Criteria for registration

S. 83(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) In determining whether to register or refuse to register premises as a health service establishment, the Secretary must consider—
 - (a) any relevant guidelines under Part 2; and
 - (b) whether the carrying on of the establishment may result in more than adequate health services of any kind becoming available in the area; and
 - (c) whether the applicant—
 - (i) is a fit and proper person to carry on the establishment; and
 - (ii) has and is likely to continue to have the financial capacity to carry on the establishment;
 - (d) if the applicant is a body corporate, whether each director or other officer of the body

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- corporate who exercises or may exercise control over the body corporate is a fit and proper person to carry on or exercise control over the establishment;
- (e) the suitability of the location of the premises for the carrying on of the establishment having regard to the availability of other community services and the safety and amenity of the environment; and
 - (f) the suitability of the design and construction of the premises for the particular kind of establishment; and
 - (g) the suitability of the fittings and equipment of the premises for the particular kind of establishment; and
 - (h) whether the proposed arrangements for the management and staff of the establishment are suitable; and
 - (i) whether appropriate arrangements have been or will be made for maintaining the quality of health services provided by the establishment; and
 - (j) whether appropriate arrangements have been or will be made for evaluating, monitoring and improving the quality of health services provided by the establishment; and
 - (k) if the applicant is not the owner in fee simple of the premises, whether the arrangements under which the premises are or are to be occupied are satisfactory for the proper carrying on by the proprietor of the establishment; and
 - (l) whether all conditions to which the approval in principle is subject have been met.
- S. 83(1)(k) amended by No. 99/1995 s. 16(1).
- S. 83(1)(l) inserted by No. 99/1995 s. 16(1).
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s. 84

S. 83(2)
amended by
Nos 99/1995
s. 16(2)(a)(b),
46/1998
s. 7(Sch. 1).

- (2) The Secretary must not refuse to register premises as a health service establishment on any ground that is inconsistent with any approval in principle in force under Division 1.

84. Decision on application

S. 84(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary must decide whether to register (whether or not subject to conditions) or to refuse to register premises to which an application under section 82 relates.

S. 84(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The Secretary must notify the applicant of his or her decision within the period determined under section 104.

85. Certificate of registration

S. 85
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 15(b)).

If the Secretary decides to register premises to which an application under section 82 relates, he or she must issue a certificate of registration stating—

- (a) the kind of health service establishment that may be carried on on the premises; and
- (b) the name of the proprietor; and
- (c) any conditions to which the registration is subject; and

S. 85(d)(e)
repealed by
No. 88/1994
s. 12.

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- (f) the number of beds (if any) to which the registration relates; and

- (g) if the premises are registered as a day procedure centre or private hospital—

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- (i) the kinds of prescribed health services that may be carried on on the premises; and
 - (ii) the number of beds that may be used for specified kinds of prescribed health services; and
 - (h) the period for which the registration is granted (being two years or, if the Secretary considers it appropriate that the period be longer or shorter, the period specified by the Secretary).

S. 85(h)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 15(b)).

86. *Change of directors etc.*

If a person ceases to be, or is appointed as, a director of or other officer having control of a proprietor that is a body corporate, the proprietor must within 30 days after the change occurs give the Secretary particulars of the change.

Penalty: 50 penalty units.

S. 86
amended by
No. 46/1998
s. 7(Sch. 1).

87. *Annual fees*

- (1) The proprietor of a registered health service establishment must—
 - (a) not later than 7 days after the date of issue of the certificate of registration of the establishment or, if the registration has been renewed, of renewal of registration; and
 - (b) not later than 7 days after each anniversary of that date—pay to the Secretary the prescribed annual fee payable in respect of establishments of that class.
- (2) If the proprietor of a registered health service establishment fails to comply with sub-section (1), the proprietor is liable to pay—

S. 87(1)
amended by
No. 46/1998
s. 7(Sch. 1).

-
- (a) the prescribed annual fee payable in respect of establishments of that class; and
 - (b) an additional fee of one half of the prescribed annual fee.

88. *Renewal of registration*

S. 88(1)
amended by
Nos 53/1990
s. 15(1),
46/1998
s. 7(Sch. 1).

- (1) The proprietor of a health service establishment registered under this Division may apply to the Secretary for the renewal of the registration of the establishment before the expiration of the registration.

- (2) An application under sub-section (1)—
 - (a) must be in the prescribed form; and
 - (b) must be accompanied—

S. 88(2)(b)
substituted by
No. 53/1990
s. 15(2).

- (i) if the application is made at least three months before the expiration of the registration, by the prescribed fee; or
- (ii) if the application is made within the period of three months before the expiration of the registration, by the prescribed fee and an additional fee of one half of the prescribed fee.

- (3) A person making application for renewal of the registration of a health service establishment must, at the time of the application, give notice in writing of the application to any other person who has an interest in the land as owner or lessee.

S. 88(4)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) The proprietor must give to the Secretary any further information relating to the application that the Secretary requests.

S. 88(5)
amended by
No. 46/1998
s. 7(Sch. 1).

- (5) A health service establishment in respect of which an application is made under this section, is deemed to continue to be registered under this Division despite the expiry of its registration until
-

the Secretary makes a decision in relation to the application.

89. Criteria for renewal of registration

S. 89
amended by
No. 46/1998
s. 7(Sch. 1).

In determining whether to renew or refuse to renew the registration of a health service establishment, the Secretary must consider whether—

- (a) the quality of the health services provided at the establishment since it was last registered is satisfactory; and
- (b) the proprietor—
 - (i) is a fit and proper person to continue to be the proprietor of the establishment; and
 - (ii) has and is likely to continue to have the financial capacity to carry on the establishment; and
- (c) if the proprietor is a body corporate, each director or other officer of the body corporate who exercises or may exercise control over the body corporate is a fit and proper person to continue to exercise or to have power to exercise control over the establishment; and
- (d) the establishment is carried on in conformity with any Act or law relating to or affecting the carrying on of health service establishments; and
- (e) the conditions to which the registration is subject have been complied with; and
- (f) in the case of a supported residential service, the arrangements relating to residential statements have been satisfactory.

S. 89(f)
amended by
No. 53/1990
s. 18(a).

90. Decision on application

S. 90(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary must decide whether to approve (whether or not subject to conditions) or to refuse to approve an application under section 88 for renewal of the registration of a health service establishment.

S. 90(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The Secretary must notify the proprietor of his or her decision within the period determined under section 104.

91. Certificate of renewal

S. 91
amended by
No. 46/1998
s. 7(Sch. 1).

If the Secretary renews the registration of a health service establishment, he or she must issue a certificate of renewal of registration stating—

- (a) the name of the proprietor; and
- (b) any conditions to which the renewal is subject; and
- (c) the period for which the renewal is granted (being two years or, if the Secretary considers it appropriate that the period be longer or shorter, the period specified by the Secretary).

92. Variation of registration

S. 92(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The proprietor of a health service establishment registered under this Division may apply to the Secretary for the variation of the registration of the establishment.
- (2) An application under sub-section (1)—
- (a) must be in the prescribed form; and
 - (b) must be accompanied by the prescribed fee; and
 - (c) may be an application for—

-
- (i) change of the kind of establishment to which the registration applies; or
 - (ii) transfer of the certificate to another person who intends to become the proprietor of that establishment; or
 - (iii) variation of any condition to which the registration is subject; or
 - (iv) an alteration in the number of beds to which the registration relates; or
 - (v) if the registration relates to a day procedure centre or private hospital, for variation—
 - (A) of the kinds of prescribed health services that may be carried on on the premises; or
 - (B) of the number of beds that may be used for specified kinds of prescribed health services.
- (3) A person making application for variation of the registration of a health service establishment must, at the time of making the application, give notice in writing of the application to any other person who has an interest in the land as owner or lessee.
- (4) The proprietor must give to the Secretary any further information relating to the application that the Secretary requests.

93. Criteria for variation of registration

- (1) In determining whether to vary or to refuse to vary the registration of a health service establishment, the Secretary must consider any

relevant criteria that the Secretary would be required to consider in determining any application under this Part.

S. 93(2)
amended by
Nos 99/1995
s. 17(a)–(c),
46/1998
s. 7(Sch. 1).

- (2) If an application under section 92 relates to any matter for which an approval in principle under Division 1 is in force, the Secretary must not refuse to vary the registration on any ground inconsistent with that approval in principle.

94. Decision on application

S. 94(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary must decide whether to approve (whether or not subject to conditions) or to refuse to approve an application under section 92 for the variation of the registration of a health service establishment.

S. 94(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The Secretary must give notice in writing to the proprietor of his or her decision within the period determined under section 104.

95. Variation of registration without application

S. 95
amended by
No. 46/1998
s. 7(Sch. 1).

If the Secretary considers that the registration of a health service establishment should be varied by—

- (a) altering the number of beds for which it is registered; or
- (b) in the case of a day procedure centre or private hospital—
 - (i) altering the kinds of prescribed health services; or
 - (ii) altering the number of beds for kinds of prescribed health services—for which it is registered; or
- (c) altering or adding to the conditions of registration—

the Secretary may, after consultation with the proprietor, vary the registration accordingly by giving to the proprietor notice in writing of his or her decision.

95A. Cancellation of registration

S. 95A
inserted by
No. 99/1995
s. 13.

- (1) The proprietor of a health service establishment registered under this Division may apply to the Secretary for the cancellation of the registration of the establishment.
- (2) A person making application under sub-section (1) must, at the time of the application, give notice in writing of the application to any other person who has an interest in the land as owner or lessee.
- (3) If an application is made under sub-section (1)—
 - (a) the Secretary must cancel the registration of the health service establishment; and
 - (b) the proprietor must produce the certificate of registration to the Secretary for cancellation.

S. 95A(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 95A(3)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 95A(3)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

96. Endorsement of certificate of registration

If the Secretary varies the registration of a health service establishment—

- (a) the proprietor must produce the certificate of registration to the Secretary for endorsement; and
- (b) the Secretary must cause the certificate to be endorsed with particulars of the variation, including any conditions to which it is subject.

S. 96
amended by
No. 46/1998
s. 7(Sch. 1).

S. 96(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 96(b)
amended by
No. 46/1998
s. 7(Sch. 1).

97. Legal personal representatives

S. 97(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) If a proprietor of a health service establishment dies, a person who is, or persons who are, named as, or intends or intend to make application to become, the legal personal representative or representatives of the proprietor may, within 28 days after the death or such longer period as the Secretary allows, make application to the Secretary to carry on the establishment until the expiration of the period of one year after the death.

S. 97(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) The Secretary must grant an application under sub-section (1) unless he or she has any reason to believe that if the applicant, or any of the applicants, were to make an application for variation of the registration of the establishment to transfer the certificate to the applicant or applicants, the Secretary would refuse the application.

(3) The granting of an application under this section has effect as the variation of the certificate of registration for the period to which the application relates.

Division 4—Censure etc.

S. 98
repealed by
No. 88/1994
s. 13.

* * * * *

S. 99
amended by
No. 88/1994
s. 14(a).

99. Powers of Minister—supported residential services

If the Minister is satisfied that the proprietor of a supported residential service—

S. 99(a)
amended by
No. 88/1994
s. 14(b).

(a) has failed to carry on the service in accordance with this Act, the regulations or

any conditions applying to the registration of the service; or

- (b) has been convicted of an offence against this Act or the regulations; or

S. 99(b) amended by Nos 53/1990 s. 17(1), 88/1994 s. 14(b).

- (ba) in the case of a proprietor who is a natural person, has ceased to be a fit and proper person to carry on the service; or

S. 99(ba) inserted by No. 53/1990 s. 17(1).

- (bb) in the case of a proprietor who is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the service has ceased to be or is not a fit and proper person to carry on or exercise control over the service—

S. 99(bb) inserted by No. 53/1990 s. 17(1), amended by No. 88/1994 s. 14(b).

the Minister may do either or both of the following—

- (c) censure the proprietor in accordance with section 100;
- (d) direct that the admission of patients to the service be suspended in accordance with section 101.

S. 99(d) amended by Nos 53/1990 s. 18(b), 88/1994 s. 14(b).

100. *Censure*

- (1) If the Minister proposes to censure the proprietor of a supported residential service, the Minister must—

S. 100(1) amended by No. 88/1994 s. 14(a).

- (a) give notice in writing to the proprietor of his or her proposal; and
- (b) consider any submissions, whether oral or in writing, made to the Minister by the proprietor within 7 days after the giving of the notice—

before deciding whether or not to censure the proprietor.

- (2) If the Minister decides to censure the proprietor, the Minister must—
- (a) give notice in writing of the censure to the proprietor; and
 - (b) cause to be tabled in each House of the Parliament within 7 sitting days of the House after the notice is given to the proprietor—
 - (i) a copy of the notice; and
 - (ii) a report of the circumstances leading to the censure; and
 - (iii) a copy of any written submissions made by the proprietor.

101. *Suspension of admissions*

S. 101(1)
amended by
No. 88/1994
s. 14(a).

- (1) If the Minister decides that the admission of patients to a supported residential service should be suspended, the Minister—

S. 101(1)(a)
amended by
No. 88/1994
s. 14(b).

- (a) may in writing direct the proprietor of the service to suspend admissions forthwith or on and after a specified date; and
- (b) must—
 - (i) consider any submissions, whether oral or in writing, made to the Minister by the proprietor within 7 days after the giving of the direction; and
 - (ii) decide whether or not the suspension should be withdrawn or confirmed and if confirmed, the period for which the suspension should operate; and
 - (iii) give notice of his or her decision to the proprietor.

(2) An order to suspend admissions has effect forthwith or on and after the specified date, as the case requires, and continues in force until—

(a) if an application is made to the Victorian Civil and Administrative Tribunal and that Tribunal determines that the order cease to have effect—the date fixed by the Tribunal; or

(b) the Minister revokes the order.

S. 101(2)(a) amended by No. 52/1998 s. 311(Sch. 1 item 36.3).

(3) A proprietor of a supported residential service must comply with a direction under sub-section (1).

S. 101(3) amended by No. 88/1994 s. 14(a).

Penalty applying to this sub-section: 100 penalty units.

102. *Revocation of registration of health service establishment*

(1) If the Minister is satisfied that the proprietor of a health service establishment—

(a) has failed to carry on the establishment in accordance with this Act, the regulations or any conditions of registration; or

(b) is not likely to continue to carry on the establishment in accordance with this Act, the regulations or any conditions applying to the registration of the establishment; or

(c) has been convicted of an offence against this Act or the regulations; or

S. 102(1)(c) amended by No. 53/1990 s. 17(2).

(ca) in the case of a proprietor who is a natural person, has ceased to be a fit and proper person to carry on the establishment; or

S. 102(1)(ca) inserted by No. 53/1990 s. 17(2).

(cb) in the case of a proprietor who is a body corporate, any director or other officer of the

S. 102(1)(cb) inserted by No. 53/1990 s. 17(2).

body corporate who exercises or may exercise control over the establishment has ceased to be or is not a fit and proper person to carry on or exercise control over the establishment—

the Minister may give notice in writing to the proprietor—

- (d) revoking the registration on the expiration of 28 days after the day on which the notice is given; or
 - (e) in a case to which paragraph (a) or (b) applies stating an intention to revoke the registration unless within a period (not being less than 28 days) specified in the notice satisfactory arrangements are made to remedy any failure to comply, or to be able to continue to comply, with this Act, the regulations or any conditions of registration.
- (2) In determining whether to give a notice under subsection (1), the Minister must consider—
- (a) the conduct of the proprietor; and
 - (b) the seriousness of any breaches of this Act, the regulations or any conditions applying to registration; and
 - (c) whether any such breaches could have been avoided by the exercise of reasonable care; and
 - (d) any circumstances that may prevent the proprietor from being able to continue to carry on the health service establishment in accordance with this Act, the regulations or any conditions of registration.

103. *Appointment of administrator of supported residential service*

Health Services Act 1988
Act No. 49/1988

- (1) If—
- S. 103(1)**
amended by
No. 88/1994
s. 14(b).
- (a) the Minister revokes, or serves notice of intention to revoke, the registration of a supported residential service; or
- S. 103(1)(a)**
amended by
No. 88/1994
s. 14(a).
- (b) the proprietor of a supported residential service does not apply for renewal of registration; or
- S. 103(1)(b)**
amended by
No. 88/1994
s. 14(a).
- (c) the Secretary refuses to approve an application for renewal of the registration—
- S. 103(1)(c)**
amended by
No. 46/1998
s. 7(Sch. 1).
- the Minister—
- (d) after consultation with the proprietor, unless, reasonable efforts to consult the proprietor have been unsuccessful; and
- (e) if he or she is satisfied that it is necessary to appoint an administrator to ensure that health services continue to be provided to residents of the establishment in accordance with this Act or the regulations, whether or not by the relocation of the residents—
- may, in writing, appoint a person to be the administrator of the service.
- (2) The Minister may appoint an administrator of a supported residential service at the request of the proprietor.
- S. 103(2)**
amended by
No. 88/1994
s. 14(a).
- (3) The appointment of an administrator under this section has effect—
- (a) if the administrator is appointed at the request of the proprietor, for the period agreed by the Minister and the proprietor; and

Health Services Act 1988

Act No. 49/1988

s. 103

(b) in any other case, for the period not exceeding 90 days determined by the Minister.

S. 103(4)
amended by
No. 88/1994
s. 14(a)(b).

(4) A person appointed under this section as administrator of a supported residential service may enter the service and do such things as are necessary or desirable to maintain the provision of health services to residents of the service.

S. 103(5)
amended by
No. 88/1994
s. 14(a)(b).

(5) If a person is appointed as administrator of a supported residential service any contract, agreement or arrangement for the provision of equipment or services for the purposes of carrying on the service continues in force despite the appointment.

S. 103(6)
amended by
No. 88/1994
s. 14(a)(b).

(6) If a person is appointed as administrator of a supported residential service, a person must not, without the consent of the administrator, remove from the service any equipment or other property (whether or not owned by the proprietor) which is reasonably necessary for the proper and efficient functioning of the service.

Penalty: 100 penalty units.

S. 103(7)
amended by
No. 46/1998
s. 7(Sch. 1).

(7) A person who suffers loss as a result of—
(a) the appointment of an administrator; and
(b) the operation of sub-section (5) or (6)—
is entitled to be paid such compensation as the Minister, on the recommendation of the Secretary, determines.

S. 103(8)
amended by
No. 46/1998
s. 7(Sch. 1).

(8) Any liability of the Secretary under this section shall be paid from the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

(9) A person who is or has been the proprietor of a supported residential service of which an administrator has been appointed is liable to pay to the Secretary the amount determined by the Secretary as the amount of costs incurred—

S. 103(9)
amended by
Nos. 88/1994
s. 14(a),
46/1998
s. 7(Sch. 1).

- (a) in connection with the appointment of the administrator; or
- (b) by the administrator in connection with the carrying on of the establishment.

Division 5—General

104. Notification of decisions by Chief General Manager

(1) Where, under this Part, the Secretary is required to give notice of a decision within the period determined under this section, the Secretary must give the notice—

S. 104(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) within 60 days after receiving the application to which the decision relates, being an application in accordance with the requirements of this Part; or
- (b) if the Secretary has requested the applicant to give further information, within 28 days after the information last requested is given to the Secretary—

S. 104(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

whichever is the later.

(2) If—

S. 104(2)
amended by
No. 46/1998
s. 7(Sch. 1).

Health Services Act 1988

Act No. 49/1988

s. 105

S. 104(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) the Secretary has made two or more requests for further information from the applicant;
and

(b) not less than four months have elapsed since the applicant made the application—

the applicant may give notice in writing to the Secretary requiring that a decision be made.

S. 104(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) If the Secretary does not make a decision within 28 days after a request is made under sub-section (2), the Secretary shall be deemed to have refused the application.

105. *Directions of Secretary*

S. 105(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) The Secretary may in writing direct the proprietor of a health service establishment to comply with a prescribed standard relating to establishments of that kind or to the type of health care provided in the establishment.

(2) The proprietor of an establishment to whom a direction under sub-section (1) applies must comply with the direction.

Penalty: 50 penalty units.

106. *Residential statements*

S. 106(1)
amended by
Nos 53/1990
s. 18(c)(i)(ii),
68/1996
s. 29(1)(a).

(1) The proprietor of a supported residential service must cause to be prepared in consultation with the resident and where appropriate, his or her relative or guardian, a written statement in an appropriate language of the nature of health services to be provided to that resident in the service, including nursing care, personal care and rehabilitation and other programs.

Penalty: 2 penalty units.

S. 106(2)
amended by
No. 68/1996
s. 29(1)(b).

(2) The statement prepared under sub-section (1) must include the prescribed information as well as

the statement of matters referred to in that sub-section.

Penalty: 2 penalty units.

- (3) The statement prepared under this section must be given to the resident within 30 days after he or she becomes a resident and, if appropriate, to any relative or guardian of the resident or to any other person having an interest in the care of the resident.

Penalty: 2 penalty units.

- (4) If any dispute arises between the proprietor and a resident or guardian or relative of a resident of a supported residential service, the Secretary may offer assistance in the resolution of the dispute.

S. 106(4) amended by Nos 53/1990 s. 18(d), 46/1998 s. 7(Sch. 1).

107. Sick residents of supported residential services

- (1) If the proprietor of a supported residential service is, or ought reasonably to be, aware that a resident of the service is in need of more health care than can be provided at the service, the proprietor—

S. 107 amended by Nos 88/1994 s. 15(1)(2), 68/1996 s. 29(2), 13/1998 s. 4(1)(2)(ILA s. 39B(1)).

(a) must take all reasonable steps to ensure that the appropriate health care is provided to the resident; and

(b) if unsuccessful in securing the provision of that care, must notify the Secretary without delay of the needs of the resident.

S. 107(1)(b) amended by No. 46/1998 s. 7(Sch. 1) (as amended by No. 12/1999 s. 3(Sch. 1 item 15(c)).

Penalty: 600 penalty units or 5 years imprisonment or both.

- (2) An offence against sub-section (1) is an indictable offence.

S. 107(2) inserted by No. 13/1998 s. 4(2).

s. 108B

S. 108
amended by
No. 46/1998
s. 7(Sch. 1).

108. Medical examination or further care

If the Secretary—

- (a) receives a notice from a proprietor under section 107; or
- (b) receives a report from an authorised officer that a resident of a supported residential service appears to be in need of health care that the service is unable to provide—

S. 108(b)
amended by
No. 88/1994
s. 15(1).

the Secretary—

- (c) cause the resident to be medically examined; and
- (d) if the Secretary considers that further care should be provided, make appropriate arrangements for the provision of that care.

S. 108(d)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 108A
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(1)(a)(b)).

108A. Privacy, dignity and security of residents

- (1) The proprietor of a supported residential service must, in accordance with the regulations, take reasonable steps to ensure that residents are treated with dignity and respect and with regard to their entitlement to privacy.

Penalty: 240 penalty units.

- (2) The proprietor of a supported residential service must not accommodate a resident in any room of the service other than a bedroom.

Penalty: 240 penalty units.

S. 108B
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 13(1)(2)).

108B. Personal hygiene of residents

- (1) The proprietor of a supported residential service must, in accordance with the regulations, take reasonable steps to ensure that the personal hygiene of all residents is maintained at the best practicable level.

Penalty: 600 penalty units or 5 years imprisonment or both.

- (2) The proprietor of a supported residential service must ensure that all residents who require services or assistance to maintain personal hygiene are provided with an adequate range of services and assistance for that purpose.

Penalty: 600 penalty units or 5 years imprisonment or both.

- (3) In this section, "**personal hygiene**" includes—
- (a) clean and healthy hair, skin and nails; and
 - (b) good oral and dental hygiene; and
 - (c) management of or control over incontinence.
- (4) An offence against sub-section (1) or (2) is an indictable offence.

108C. Medication for residents

- (1) The proprietor of a supported residential service must, in accordance with the regulations, take reasonable steps to maintain adequate standards of storage, distribution and administration of residents' medication.

Penalty: 600 penalty units or 5 years imprisonment or both.

- (2) An offence against sub-section (1) is an indictable offence.

108D. Suitable nutrition for residents

The proprietor of a supported residential service must ensure that food and beverages of adequate nutritional value and variety are supplied to residents in a form appropriate to the individual health needs of residents and in accordance with the regulations.

S. 108C
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 13(3)(4)(ILA
s. 39B(1)).

S. 108D
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(2)).

Penalty: 240 penalty units.

S. 108E
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(3)).

108E. *Mobility and sensory function of residents*

- (1) The proprietor of a supported residential service must take reasonable steps to provide any assistance which is required to facilitate mobility and sensory function of residents.

Penalty: 120 penalty units.

- (2) The proprietor of a supported residential service must take reasonable steps to ensure that any equipment used to facilitate mobility and sensory function of residents is maintained in good working order.

Penalty: 120 penalty units.

S. 108F
inserted by
No. 73/1997
s. 8 (as
amended by
Nos 13/1998
s. 14(4),
52/1998
s. 311(Sch. 1
item 37)).

108F. *Notification of certain matters to next of kin etc.*

- (1) The proprietor of a supported residential service must ensure that the next of kin of a resident and a resident's guardian (if any) is informed as soon as practicable of—

- (a) any significant sign of deterioration in the health status of the resident; or
- (b) any injury to the resident; or
- (c) any incident involving the resident; or
- (d) any intention to discharge the resident or terminate his or her residency; or
- (e) any proposal to relocate the resident to another bedroom within the service.

Penalty: 120 penalty units.

- (2) The proprietor of a supported residential service must ensure that a resident's administrator is informed as soon as practicable of any intention to discharge the resident or terminate his or her residency.

Penalty: 120 penalty units.

- (3) The proprietor of a supported residential service must ensure that a resident's medical practitioner is informed as soon as practicable of any significant sign of deterioration in the health status of the resident.

Penalty: 120 penalty units.

- (4) The proprietor of a supported residential service must ensure that a resident's administrator (if any) or next of kin of a resident are informed as soon as practicable of the death of the resident.

Penalty: 120 penalty units.

- (5) In this section—

"incident" means any risk taking behaviour by a resident which threatens the safety of the resident or other residents or staff;

"resident's administrator" means the resident's attorney appointed under an enduring power of attorney to administer the resident's property or a person appointed by a court or board as the administrator of the resident's property;

"resident's guardian" means the resident's guardian appointed under the **Guardianship and Administration Act 1986** or appointed by a court.

108G. Procedures for resident complaints

- (1) The proprietor of a supported residential service must institute and operate a system, in accordance with the regulations, to receive and deal with complaints from residents or complaints made on

S. 108G
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(5)).

behalf of residents.

Penalty: 120 penalty units.

- (2) The proprietor of a supported residential service must take all reasonable steps to ensure that a resident is not adversely affected because a complaint has been made by the resident or on behalf of the resident.

Penalty: 120 penalty units.

S. 108H
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(6)).

108H. Duties in respect of resident's financial records

- (1) If the proprietor of a supported residential service manages or controls the money or other assets of a resident, the proprietor must—

- (a) keep a record of the authority for that management or control; and
- (b) maintain an accurate and up to date record of—
 - (i) any money or other assets of the resident which the proprietor manages or controls; and
 - (ii) any expenditure by the proprietor of any money on behalf of the resident; and
 - (iii) any disposal of money or other assets on behalf of the resident; and
- (c) ensure that the records kept under paragraph (b) individually itemise each asset held and each transaction made on behalf of the resident.

Penalty: 240 penalty units.

- (2) The proprietor of a supported residential service who manages or controls the money or other assets of a resident must provide the resident with

a statement at least once every 6 months setting out—

- (a) any income received and expenditure incurred on behalf of a resident since the previous statement; and
- (b) the current status of any assets held or liabilities incurred on behalf of the resident.

Penalty: 240 penalty units.

(3) The proprietor of a supported residential service must ensure that—

- (a) all expenses and fees charged to a resident are individually itemised and explained to the resident or if a resident's administrator is appointed, that administrator; and
- (b) a receipt is issued for all assets held and all moneys received by the proprietor on behalf of a resident.

Penalty: 240 penalty units.

(4) The proprietor of a supported residential service must permit a resident or, if a resident's administrator is appointed, that administrator to have access to the resident's financial records held by the proprietor.

Penalty: 240 penalty units.

(5) In this section "**resident's administrator**" has the same meaning as it has in section 108F.

108I. Maintenance and cleanliness of supported residential service

- (1) The proprietor of a supported residential service must keep the premises, facilities, furniture, fittings and equipment of the service—
 - (a) in a proper state of repair; and

S. 108I
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(7)(a)(b)).

- (b) in good working order; and
- (c) in a clean and sanitary condition; and
- (d) in accordance with the regulations.

Penalty: 240 penalty units.

- (2) The proprietor of a supported residential service must ensure that cleaning materials, disinfectants, flammable, poisonous and other deleterious substances are securely stored and clearly labelled.

Penalty: 240 penalty units.

S. 108J
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(8)).

108J. *Communications systems in supported residential service*

The proprietor of a supported residential service must ensure that an electronic communications system to enable residents and staff to summon assistance is provided in the service in accordance with the regulations.

Penalty: 240 penalty units.

S. 108K
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(9)).

108K. *Supply of water must be safe*

The proprietor of a supported residential service must ensure that an adequate and safe supply of hot and cold water is provided in the service in accordance with the regulations.

Penalty: 240 penalty units.

S. 108L
inserted by
No. 73/1997
s. 8 (as
amended by
No. 13/1998
s. 14(10)).

108L. *Minimum staff requirements*

- (1) The proprietor of a supported residential service must ensure that adequate and appropriately trained staff are employed in the service in accordance with the regulations.

Penalty: 240 penalty units.

- (2) The proprietor of a supported residential service must not appoint or continue to employ a person

Health Services Act 1988

Act No. 49/1988

as a member of staff who is engaged in the special or personal care needs of residents if that person—

- (a) has not attained the age of 16 years; or
- (b) is not physically or intellectually capable of adequately performing the work required of him or her.

Penalty: 240 penalty units.

109. Records

- (1) The proprietor of a health service establishment must cause to be kept in the prescribed manner and to be retained for the prescribed period the prescribed particulars of—
 - (a) persons who receive care in the establishment and the type of care received; and
 - (b) staff employed in the establishment.
- (2) A person must not during the prescribed period destroy or damage any record kept for the purposes of sub-section (1).

S. 109(2)
amended by
No. 13/1998
s. 5.

Penalty: 120 penalty units.

110. Reviews

S. 110
amended by
Nos 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 15(d)),
52/1998
s. 311(Sch. 1
items 36.4,
36.5)(LA
s. 39B(1)).

S. 110(1)(c)
amended by
No. 88/1994
s. 16.

S. 110(1)(d)
amended by
No. 88/1994
s. 16.

S. 110(1)(f)
amended by
No. 88/1994
s. 16.

S. 110(1)(g)
amended by
Nos 1/1989
s. 4(d),
46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 15(d)).
S. 110(2)
inserted by
No. 52/1998
s. 311(Sch. 1
item 36.5).

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a decision of the Minister or the Secretary under this Part—
 - (a) to approve or refuse to approve an application; or
 - (b) to impose conditions on the approval of an application; or
 - (c) to vary the registration of a supported residential service; or
 - (d) to suspend admissions to a supported residential service; or
 - (e) to revoke the registration of a health service establishment; or
 - (f) to appoint an administrator of a supported residential service; or
 - (g) to determine the amount payable to the Secretary by way of costs incurred under section 103(9).
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for

the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

111. *Offence to carry on business if establishment or proprietor not registered*

S. 111
amended by
Nos 13/1998
s. 6, 46/1998
s. 7(Sch. 1).

The proprietor of a health service establishment must not carry on the establishment if—

- (a) the establishment is not registered under this Part; or
- (b) the proprietor is not the holder for the time being of the certificate of registration of the establishment.

Penalty: 240 penalty units and 20 penalty units for each day the offence continues after conviction or service by the Secretary on the proprietor of notice of contravention of this section, whichever first occurs.

112. *Offence to provide excess beds or accommodation*

S. 112
amended by
Nos 13/1998
s. 7, 46/1998
s. 7(Sch. 1).

The proprietor of a health service establishment must not provide in the establishment more beds, or accommodation for more persons, than the number of beds for which the establishment is registered.

Penalty: 240 penalty units and 15 penalty units for each day the offence continues after conviction or service by the Secretary on the proprietor of notice of contravention of this section, whichever first occurs.

S. 113
amended by
No. 46/1998
s. 7(Sch. 1).

113. *Offences relating to day procedure centres and private hospitals*

The proprietor of a day procedure centre or private hospital must not provide in the centre or hospital—

- (a) any kind of prescribed health services for the provision of which the centre or hospital is not registered; or
- (b) more beds for any kind of prescribed health services than the number for which the centre or hospital is registered in respect of that kind of care.

Penalty: 50 penalty units and 15 penalty units for each day the offence continues after conviction or service by the Secretary on the proprietor of notice of contravention of this section, whichever first occurs.

S. 114
amended by
No. 13/1998
s. 8.

114. *Offence to contravene condition of registration*

The proprietor of a health service establishment must not contravene a condition to which registration of the establishment is subject.

Penalty: 240 penalty units.

115. *Offence to build etc. without approval in principle*

S. 115(1)
amended by
Nos 99/1995
s. 18(a),
13/1998 s. 9.

- (1) A person must not enter into an agreement or arrangement for the construction, alteration or extension of a health service establishment unless an approval in principle under this Part is in force in respect of that construction, alteration or extension.

Penalty: 120 penalty units.

Health Services Act 1988

Act No. 49/1988

s. 115

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- (2) The proprietor of a health service establishment must not authorise or permit the construction, alteration or extension of any part of the establishment unless an approval in principle under this Part is in force in respect of that construction, alteration or extension.

S. 115(2)
amended by
Nos 99/1995
s. 18(b),
13/1998 s. 9.

Penalty: 120 penalty units.

- (3) A person must not enter into an agreement or arrangement for the alteration or extension of premises proposed to be used as a health service establishment unless an approval in principle under this Part is in force in respect of that alteration or extension.

S. 115(3)
inserted by
No. 53/1990
s. 19,
amended by
Nos 99/1995
s. 18(c),
13/1998 s. 9.

Penalty: 120 penalty units.

Pt 4A
(Heading and
ss 115A–
115V) inserted
by No.
99/1995 s. 6.

PART 4A—MULTI PURPOSE SERVICES

S. 115A
inserted by
No. 99/1995
s. 6.

115A. Declaration and incorporation

S. 115A(1)
amended by
No. 68/1996
s. 30.

(1) The Governor in Council may, by Order published in the Government Gazette, declare a body that provides, or proposes to provide, services of a kind referred to in section 115C(2) and that is not a privately-operated hospital to be a multi purpose service.

S. 115A(1A)
inserted by
No. 66/1998
s. 11(1).

- (1A) Without limiting sub-section (1), an Order made under that sub-section may provide that on and from the date specified in the Order as the date on which the Order takes effect—
- (a) all property and rights of a body to which the Order relates, wherever located, vest in the multi purpose service;
 - (b) all liabilities of the body, wherever located, become liabilities of the multi purpose service;
 - (c) the multi purpose service becomes the successor in law of the body;
 - (d) except for the purposes of any trust in relation to the body, the incorporation of the body is cancelled or the body ceases to exist (as the case requires).

S. 115A(1B)
inserted by
No. 66/1998
s. 11(1).

(1B) An Order under sub-section (1) has effect as if, on and from the date specified in the Order as the date on which the Order takes effect—

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- (a) for the purposes of any trust in relation to the body, the multi purpose service is the same body as the body to which the Order relates; and
- (b) without limiting the effect of paragraph (a), an instrument creating a trust in relation to—
- (i) the body to which the Order relates; or
 - (ii) a former agency of which that body is the successor agency—
- continues to have effect according to its tenor as if the trust were in relation to the multi purpose service."
- (2) Each multi purpose service, by operation of this Act—
- (a) is a body corporate with perpetual succession; and
 - (b) shall have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of purchasing, taking, holding, selling, leasing, taking on lease, exchanging and disposing of real and personal property; and
 - (e) is capable of doing and suffering all acts and things which bodies corporate may by law do or suffer.
- (3) An Order made under this section before the commencement of section 11(1) of the **Health Services (Further Amendment) Act 1998** has, and must be taken to have always had, effect as if on and from the date specified in the Order as the date on which the Order took effect—

S. 115A(3)
inserted by
No. 66/1998
s. 11(2).

s. 115B

- (a) all property and rights of the body to which the Order relates, wherever located, vested in the multi purpose service referred to in the Order;
- (b) all liabilities of the body, wherever located, became liabilities of the multi purpose service;
- (c) the multi purpose service became the successor in law of the body;
- (d) except for the purposes of any trust in relation to the body, the incorporation of the body was cancelled.

S. 115A(4)
inserted by
No. 66/1998
s. 11(3).

- (4) On and from the date on which an Order referred to in sub-section (3) took effect—
 - (a) for the purposes of any trust in relation to the body, the multi purpose service referred to in the Order is, and must be taken to have always been, the same body as the body to which the Order relates; and
 - (b) without limiting the effect of paragraph (a), an instrument creating a trust in relation to—
 - (i) the body to which the Order relates; or
 - (ii) a former agency of which that body is the successor agency—continues, and must be taken to have always continued, to have effect according to its tenor as if the trust were in relation to the multi purpose service.

S. 115B
inserted by
No. 99/1995
s. 6.

115B. *Multi purpose services do not represent Crown*

A multi purpose service does not represent, and shall not be taken to be part of, the Crown.

S. 115C
inserted by
No. 99/1995
s. 6.

115C. *Objects and functions of multi purpose services*

Health Services Act 1988

Act No. 49/1988

- (1) The objects of a multi purpose service are as approved for the time being by the board of the multi purpose service.
- (2) The functions of a multi purpose service are the provision of any or a combination of the following—
 - (a) public hospital services;
 - (b) health services;
 - (c) aged care services;
 - (d) community care services.

115D. Powers

The powers of a multi purpose service include all such powers as are necessary to enable the service to carry out its objects and do all things it is required or permitted to do under this Act, its by-laws and any agreement to which it is a party and, without limiting the generality of the foregoing, include power—

- (a) to undertake commercial exploitation of any research or intellectual property rights undertaken by or belonging to the service for any purpose relating to the carrying on of the service; and
- (b) to be a member of or form or participate in the formation of a company, association, trust or partnership, the objects or purposes of which include one or more objects or purposes that are incidental or conducive to the exercise of any other powers of the service; and
- (c) 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

S. 115D
inserted by
No. 99/1995
s. 6.

or conducive to the exercise of the powers of the service.

S. 115E
inserted by
No. 99/1995
s. 6.

115E. Board of management

- (1) There shall be a board of management of each multi purpose service.
 - (2) The functions of the board of a multi purpose service are—
 - (a) to oversee and manage the service; and
 - (b) to ensure that the services provided by the service comply with the requirements of this Act, the objects of the service, its by-laws and any agreement entered into by the service.
 - (3) The board of a multi purpose service has such powers as are necessary to enable it to carry out its functions, including the power to make, amend or revoke by-laws.
 - (4) The board of a multi purpose service shall consist of not less than 6 and not more than 12 natural persons—
 - (a) in the case of the first board of a multi purpose service, nominated by the Minister; and
 - (b) in any other case, nominated by the Minister after consideration of a name or names submitted by the board.
 - (5) If the board does not submit a name or names for the purposes of sub-section (4) within 60 days after receiving a request to do so from the Minister, the Minister may nominate a natural person or natural persons for the purposes of that sub-section.
 - (6) The members of a board shall be appointed by the Governor in Council.
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- (7) The **Public Sector Management and Employment Act 1998** does not apply to a member of a board in respect of the office of member.

S. 115E(7) amended by No. 46/1998 s. 7(Sch. 1) (as amended by No. 12/1999 s. 3(Sch. 1 item 16)).
S. 115F inserted by No. 99/1995 s. 6.

115F. Terms and conditions of appointment

- (1) A member of a board of a multi purpose service holds office for the term, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.
- (2) A member of a board is entitled to be paid expenses incurred in holding office as a member of the board.
- (3) A person appointed to a board of a multi purpose service to fill a vacancy which arises otherwise than by expiry of a member's term of office holds office for the remainder of that member's term.

115G. Removal and resignation

- (1) A member of a board of a multi purpose service may resign by writing signed by that person and delivered to the Governor in Council.
- (2) The Governor in Council, on the recommendation of the Minister, may remove a member of a board from office.

S. 115G inserted by No. 99/1995 s. 6.

115H. Annual meetings

- (1) The board of a multi purpose service must ensure that the chief executive officer convenes an annual meeting of the multi purpose service to be held on or after 1 July and on or before 31 October (or, if the Secretary in writing approves a later date, on or before that later date) in each year.

S. 115H inserted by No. 99/1995 s. 6.

S. 115H(1) amended by No. 46/1998 s. 7(Sch. 1).

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- (2) The chief executive officer of the multi purpose service must cause notice of the annual meeting to be published in a newspaper circulating generally in the area where the multi purpose service is situated giving notice—
- (a) of the date, time and place of the meeting; and
 - (b) that the meeting is open to the public.
- (3) At each annual meeting of a multi purpose service, the board—
- (a) must submit the report of operations and financial statements prepared in accordance with Part 7 of the **Financial Management Act 1994**; and
 - (b) must report on the services provided to the community in the preceding year and on services proposed to be provided in the following year; and
 - (c) must report on such other matters that are prescribed.

S. 115I
inserted by
No. 99/1995
s. 6.

115I. Procedure of board

Subject to this Part, the procedure of a board of a multi purpose service is in the discretion of the board.

S. 115J
inserted by
No. 99/1995
s. 6.

115J. Membership of board not office of profit

A member of a board of a multi purpose service shall not be taken to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
- (b) make void the member's election to the Council or the Assembly; or

- (c) prevent the member continuing to be a member of the Council or the Assembly; or
- (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

115K. Immunity

A member of a board of a multi purpose service is not liable to an action or other proceedings for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function or the exercise or purported exercise of any power conferred on the board.

S. 115K
inserted by
No. 99/1995
s. 6.

115L. Validity of acts or decisions

An act or decision of a board of a multi purpose service is not invalid by reason only of—

- (a) a defect or irregularity in or in connection with the appointment of a member of the board; or
- (b) a vacancy in the membership of the board.

S. 115L
inserted by
No. 99/1995
s. 6.

115M. Secretary may give directions

The Secretary, for the purpose of carrying out functions and powers under this Act or for carrying out the objectives of this Act, may in writing give directions to a multi purpose service in relation to action to be taken or avoided to enable the State to comply with the terms of any agreement made between it and the Commonwealth or any other State.

S. 115M
inserted by
No. 99/1995
s. 6, amended
by No.
46/1998 s.
7(Sch. 1).

115N. Rules of multi purpose service

A multi purpose service must not—

- (a) change its name; or
- (b) change its objects; or

S. 115N
inserted by
No. 99/1995
s. 6, amended
by No.
66/1998 s. 16.

- (c) make, amend or alter its by-laws—
without the approval in writing of the Secretary.

S. 115O
inserted by
No. 99/1995
s. 6.

115O. *Service agreements*

- (1) A multi purpose service may enter into a service agreement for the provision of services in respect of each financial year with the Commonwealth and the State.
- (2) The terms of a service agreement shall be in accordance with this Part and as agreed between the multi purpose service and the Commonwealth and the State.
- (3) A service agreement shall be in respect of one year or such other period as is specified in the agreement.
- (4) A service agreement may specify—
 - (a) particulars of services to be provided by the multi purpose service, including particulars of the type, frequency, scope and standard of services; and
 - (b) particulars of the organisation and management of the multi purpose service; and
 - (c) limits or controls on expenditure or the entering into of contracts or agreements by the multi purpose service; and
 - (d) particulars of grants, subsidies or other assistance provided or to be provided to the multi purpose service by the Commonwealth or the State during or in respect of a financial year; and
 - (e) any other relevant matters.

S. 115P
inserted by
No. 99/1995
s. 6.

115P. *Health service agreements*

Health Services Act 1988

Act No. 49/1988

A multi purpose service may enter into a health service agreement under section 26 as if the multi purpose service were a registered funded agency.

115Q. Powers of Minister

S. 115Q
inserted by
No. 99/1995
s. 6.

If the Minister is satisfied that a multi purpose service—

- (a) is inefficiently or incompetently managed; or
- (b) is failing to carry out its functions, or failing to carry them out effectively; or
- (c) has negligently failed to comply with an agreement entered into under section 115O or 115P—

the Minister may do either or both of the following—

- (d) recommend to the Governor in Council that an administrator of the service be appointed in accordance with section 115R; or
- (e) recommend to the Governor in Council that the service be closed in accordance with section 115S.

115R. Appointment of administrator

S. 115R
inserted by
No. 99/1995
s. 6.

(1) If the Minister proposes that a multi purpose service should be administered by an administrator, the Minister—

- (a) must give notice in writing to the service of his or her proposal; and
 - (b) must consider any submissions, whether oral or in writing, made to the Minister by the service within 7 days after the giving of the notice; and
 - (c) may consider any other submissions and any other matters the Minister considers appropriate—
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before deciding whether or not to recommend the appointment of an administrator.

- (2) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may by notice published in the Government Gazette appoint an administrator of the multi purpose service for such period and subject to such terms and conditions as are specified in the appointment.
- (3) An administrator of a multi purpose service appointed under this section has and may exercise all the powers and is subject to all the duties of the board of the service.
- (4) On the appointment of an administrator, the members of the board of the multi purpose service cease to hold office.
- (5) If the Minister recommends to the Governor in Council that the appointment of the administrator of a multi purpose service should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
- (6) If a notice is published under sub-section (5) in relation to a multi purpose service—
 - (a) members of the board of the service shall be appointed in accordance with this Part; and
 - (b) on the date specified in the notice—
 - (i) the appointment of the administrator is revoked; and
 - (ii) the board of the service is re-established.

115S. Closure

S. 115S
inserted by
No. 99/1995
s. 6.

- (1) If the Minister proposes that a multi purpose service should be closed, the Minister must cause a report of the proposal to be prepared and made available to persons who request it.
- (2) A report under sub-section (1) must include—
 - (a) a statement of the circumstances giving rise to the proposal; and
 - (b) a statement of any other available options in relation to continuing the services of the multi purpose service.
- (3) The Minister, after consideration of any submissions made on a report under sub-section (1) within 90 days after the report is made available to interested persons—
 - (a) must decide whether or not to recommend the closure of the multi purpose service; and
 - (b) must give notice in writing of his or her decision to the service.
- (4) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette direct that the multi purpose service be closed on and after the date fixed in the Order.
- (5) If an Order is published under sub-section (4)—
 - (a) the multi purpose service shall be closed subject to and in accordance with the directions contained in the Order; and

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- (b) except as otherwise provided in any service agreement—
 - (i) the property of the service becomes the property of the State and may be dealt with or disposed of accordingly; and
 - (ii) the liabilities of the service become liabilities of the State.

S. 115T
inserted by
No. 99/1995
s. 6.

115T. Amalgamations

- (1) The governing bodies of 2 or more bodies, each being a registered funded agency or a multi purpose service, may agree that the bodies should amalgamate under this Part only if—
 - (a) the bodies and the agencies or the services, as the case may be, are not prohibited from doing so by any Acts or other documents creating them and the amalgamation is made in accordance with those Acts or other documents; and
 - (b) apart from this Part, there is no law of the Commonwealth or the State under which they could amalgamate.
- (2) The governing bodies of the agencies or multi purpose services must submit the agreement to the Secretary.
- (3) The Secretary must not advise the Minister to approve the agreement unless the Secretary is satisfied that—
 - (a) the amalgamation will result in the provision of better health services in any part of Victoria; and
 - (b) the amalgamation is otherwise in the public interest.

S. 115T(2)
amended by
No. 66/1998
s. 16.

S. 115T(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) The Minister, on the advice of the Secretary, may approve the agreement.

S. 115T(4)
amended by
No. 46/1998
s. 7(Sch. 1).

115U. Governor in Council may order amalgamation

S. 115U
inserted by
No. 99/1995
s. 6.

- (1) The Governor in Council, on the recommendation of the Minister made after receiving advice from the Secretary under section 115T, may by Order published in the Government Gazette direct that—
- (a) 2 or more registered funded agencies be amalgamated and declare the amalgamated body to be a multi purpose service; or
 - (b) a multi purpose service and one or more registered funded agencies, or 2 or more multi purpose services, be amalgamated and declare the amalgamated body to be—
 - (i) a multi purpose service; or
 - (ii) a public hospital; or
 - (iii) an incorporated association.
- (2) If an Order is made under sub-section (1)—
- (a) on a date specified in the Order—
 - (i) the incorporation of each registered funded agency to which the Order relates that is an incorporated body shall be cancelled; or
 - (ii) each registered funded agency to which the Order relates that is an unincorporated body shall cease to exist; or
 - (iii) each multi purpose service to which the Order relates shall cease to exist—

S. 115U(1)
amended by
No. 46/1998
s. 7(Sch. 1).

as the case requires; and

- (b) on that date a new body of the kind specified in the Order having a board or committee of management constituted as specified in the Order shall come into existence by operation of the Order as if on that date—
 - (i) in the case of a multi purpose service or public hospital, it had been incorporated under this Act; or
 - (ii) in the case of an incorporated association, a certificate of incorporation had been granted under the **Associations Incorporation Act 1981**; and
- (c) on that date the property of each registered funded agency and multi purpose service that is the subject of the Order vests in the new body without the necessity for any conveyance, transfer or assignment and so vests subject to—
 - (i) any trust; and
 - (ii) any restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant, contract or liability—to which the property was subject immediately before that date; and
- (d) on that date all debts and liabilities, whether certain or contingent, of a registered funded agency or multi purpose service that is the subject of the Order existing at that date become the debts and liabilities of the new body; and
- (e) on and from that date, each registered funded agency or multi purpose service to which the Order relates must be taken, for the purposes

S. 115U(2)(d)
amended by
No. 66/1998
s. 11(4).

S. 115U(2)(e)
inserted by
No. 66/1998
s. 11(4).

of any trust in relation to that agency or service, not to have had its incorporation cancelled or to have ceased to exist and the new body must be taken to be the same body as that agency or service for those purposes; and

- (f) without limiting the effect of paragraph (e), on and from that date, an instrument creating a trust in relation to—
- (i) a registered funded agency or multi purpose service to which the Order relates; or
 - (ii) a former agency of which such a registered funded agency or multi purpose service is the successor agency—

S. 115U(2)(f) inserted by No. 66/1998 s. 11(4).

continues to have effect according to its tenor as if the trust were in relation to the new body.

- (3) An Order under sub-section (1) may include such other provisions not inconsistent with this Part or, in the case of a public hospital or an incorporated association, Part 3 as are necessary or expedient, including provisions giving effect to any agreement under section 115T.

- (4) Sub-section (2), as amended by section 11(4) of the **Health Services (Further Amendment) Act 1998**, has effect with respect to—

S. 115U(4) inserted by No. 66/1998 s. 11(5).

- (a) an Order made under sub-section (1) before the commencement of that section of that Act; and
- (b) an instrument of a kind referred to in sub-section (2)(f) of this section—

in the same way as it would if it had been in force as so amended at the time when the Order was

made and must be taken to have always had that effect on and from that time.

S. 115V
inserted by
No. 99/1995
s. 6.

115V. Transitional

(1) In this section—

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective;

"property" means a legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"the appointed day" means the day on which the **Miscellaneous Acts (Health and Justice) Amendment Act 1995** comes into operation.

(2) On the appointed day the following public hospitals are deemed to have been declared under section 115A(1) to be multi purpose services—
Far East Gippsland Health and Support Service

The Otway Health and Community Services

Upper Murray Health and Community Services.

(3) The objects of a multi purpose service referred to in sub-section (2) are its objects as existing immediately before the appointed day as altered or added to from time to time by the board of the service.

(4) The by-laws of a multi purpose service referred to in sub-section (2) are its by-laws as existing immediately before the appointed day as amended from time to time.

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- (5) Each member of the board of a public hospital that on the appointed day becomes a multi purpose service continues as a member of the board of the multi purpose service for the remainder of the term of office specified in the instrument of his or her appointment.
- (6) On the coming into existence of a multi purpose service under this section—
- (a) all property and rights of the body it was before the appointed day, wherever located, vest in the multi purpose service; and
 - (b) all liabilities of the body it was before the appointed day, wherever located, become liabilities of the multi purpose service; and
 - (c) the multi purpose service becomes the successor in law of the body it was before the appointed day; and
 - (d) on and from the appointed day, the multi purpose service must be taken, for the purposes of any trust in relation to the body it was before the appointed day, to be the same body as that body; and
 - (e) without limiting the effect of paragraph (d), on and from the appointed day, an instrument creating a trust in relation to—
 - (i) the body that the multi purpose service was before the appointed day; or
 - (ii) a former agency of which such a body is the successor agency—continues to have effect according to its tenor as if the trust were in relation to the multi purpose service.

S. 115V(6)(c)
amended by
No. 66/1998
s. 11(6).

S. 115V(6)(d)
inserted by
No. 66/1998
s. 11(6).

S. 115V(6)(e)
inserted by
No. 66/1998
s. 11(6).

Health Services Act 1988

Act No. 49/1988

s. 115V

S. 115V(7)
inserted by
No. 66/1998
s. 11(7).

(7) Sub-section (6), as amended by section 11(6) of the **Health Services (Further Amendment) Act 1998**, has effect with respect to—

- (a) a declaration that is by force of sub-section (2) of this section deemed to have been made; and
- (b) an instrument of a kind referred to in sub-section (6)(e) of this section—

in the same way as it would if it had been in force as so amended at the time that the declaration was deemed to have been made and must be taken to have always had that effect on and from that time.

**PART 5—COMMUNITY (RESIDENTIAL SERVICES)
VISITORS**

116. *Appointment*

The Governor in Council may appoint persons nominated by the Minister as community (residential services) visitors for each region.

116A. *Definition*

In this Part, "**resident**", in relation to a privately-operated hospital that is a designated public hospital, means a public hospital patient who is a resident of that hospital.

S. 116A
inserted by
No. 68/1996
s. 31.

117. *Functions of a visitor*

The functions of a visitor appointed for a region are—

- (a) to visit any designated public hospital or supported residential service in the region; and
- (b) to inquire into—
 - (i) the appropriateness and standard of facilities for the accommodation, physical well-being and welfare of residents of the hospital or service; and
 - (ii) the adequacy of opportunities and facilities for the recreation, occupation, education and training of residents of the hospital or service; and
 - (iii) whether services are being provided for the hospital or service in accordance with the principles specified in section 10; and

S. 117(a)
amended by
No. 53/1990
s. 20(a)(i).

S. 117(b)(i)
amended by
No. 53/1990
s. 20(a)(ii).

S. 117(b)(ii)
amended by
No. 53/1990
s. 20(a)(ii).

S. 117(b)(iii)
amended by
No. 53/1990
s. 20(a)(ii).

S. 117(b)(iv)
amended by
No. 53/1990
s. 20(a)(ii).

(iv) any failure by the proprietor of the hospital or service to comply with the provisions of this Act; and

S. 117(b)(v)
amended by
No. 53/1990
s. 20(a)(ii).

(v) any complaint made to a visitor by a resident of the hospital or service.

118. *Panels*

Any two visitors for a region constitute a panel of visitors for that region.

119. *Visiting designated public hospitals and supported residential services*

S. 119(1)
amended by
No. 53/1990
s. 20(b).

(1) A visitor or a panel of visitors for a region may visit a designated public hospital or supported residential service in the region with or without any previous notice at such times and for such periods as the visitor or panel thinks fit.

S. 119(2)
amended by
No. 53/1990
s. 20(b).

(2) The Minister may direct a visitor or a panel of visitors for a region to visit a designated public hospital or supported residential service in the region at such times as the Minister directs.

120. *Powers of inspection*

S. 120(1)
amended by
No. 53/1990
s. 20(e)(i).

(1) A visitor when visiting a designated public hospital or supported residential service in the region may—

S. 120(1)(a)
amended by
No. 53/1990
s. 20(c)(ii).

(a) inspect any part of the premises of the hospital or service; and

S. 120(1)(b)
amended by
No. 53/1990
s. 20(c)(ii).

(b) ask questions of any resident of the hospital or service; and

S. 120(1)(c)
amended by
No. 53/1990
s. 20(c)(ii).

Health Services Act 1988

Act No. 49/1988

s. 120

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- (c) make enquiries of any employee of the hospital or service relating to the admission and care of residents; and
- (d) inspect any records required to be kept on the premises by or under this Act.
- (2) Sub-section (1)(d) does not authorise a visitor to inspect—
- (a) a resident's medical records unless the resident consents; or
- (b) personnel records unless the member of staff consents.
- (3) The person in charge and members of the staff or management of a designated public hospital or service must give a visitor any reasonable assistance that the visitor requires to perform or exercise any powers or functions effectively.
- Penalty: 2 penalty units.
- (4) A person in charge or member of the staff or management of a designated public hospital or service must not—
- (a) unreasonably refuse or neglect to give assistance when required to do so under sub-section (3); or
- (b) refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by a visitor in the performance or exercise of any power or function under this Act; or
- (c) assault, obstruct or threaten a visitor in the performance or exercise of any power or function under this Act.

S. 120(2)
substituted by
No. 53/1990
s. 20(d).

S. 120(3)
amended by
No. 53/1990
s. 20(e).

S. 120(4)
amended by
No. 53/1990
s. 20(f)(i).

S. 120(4)(a)
amended by
No. 53/1990
s. 20(f)(ii).

Penalty applying to this sub-section: 25 penalty units.

121. Request to see a visitor

S. 121(1)
amended by
No. 53/1990
s. 20(g).

- (1) A resident in a designated public hospital or supported residential service or any person on behalf of such a resident may request the person in charge to arrange for the resident to be seen by a visitor.
- (2) The person in charge, within 7 days after receiving a request under sub-section (1), must advise one of the visitors for the region that a request has been made.

Penalty: 2 penalty units.

S. 121(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) After seeing a resident requesting to be seen, the visitor may submit a report to the Secretary and the Public Advocate containing such recommendations as he or she considers appropriate.

S. 122
amended by
No. 53/1990
s. 20(h).

122. Record of visits

The person in charge of a designated public hospital or supported residential service must keep a record in the prescribed form of visits by visitors.

Penalty: 2 penalty units.

123. Reports by visitors

S. 123(1)
amended by
No. 53/1990
s. 20(i).

- (1) The visitors for a region at least twice a year must submit a joint report to the Public Advocate on visits made by them to designated public hospitals or supported residential services since the last report under this section.
- (2) The Minister may require a panel of visitors to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.

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- (3) A visitor, panel of visitors or the visitors for a region may submit a report to the Minister at any time if the visitor or visitors consider that the Minister should consider any matter personally.

124. Terms and conditions of appointment

- (1) Each visitor—
- (a) holds office for a period of 3 years from the date of appointment; and
 - (b) is eligible for re-appointment; and
 - (c) is entitled to be paid fees and travelling and other allowances as are from time to time fixed by the Governor in Council; and
 - (d) is not, in respect of the office of visitor, subject to the provisions of the **Public Sector Management and Employment Act 1998**.
- (2) The Governor in Council, in the instrument of appointment of a person as a visitor, may specify terms and conditions of appointment.
- (3) A person must not be appointed as a visitor for a region if the person—
- (a) is an officer or employee of the Department or a person who holds any other appointment with the Department; or
 - (b) has any interests which conflict or may conflict with the best interests of residents of a designated public hospital or supported residential service in that region; or
 - (c) resides outside the region.
- (4) In nominating persons for appointment as visitors for a region, the Minister must ensure that both men and women are adequately represented.

S. 124(1)(d)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 124(3)(b)
amended by
No. 53/1990
s. 20(i).

125. Resignation and removal from office

- (1) The Governor in Council, on the recommendation of the Minister, may remove a visitor from office.
- (2) A person may resign from the office of visitor by writing signed by that person and delivered to the Governor in Council.

126. Secrecy provision

- (1) A person who is or has at any time been a visitor must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been a visitor or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 50 penalty units.

- (2) Sub-section (1) does not preclude a person from—
 - (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or
 - (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or
 - (c) producing a document or divulging or communicating information that is expressly authorised or permitted by any Act to be produced, divulged or communicated; or
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- (d) producing a document or divulging or communicating information with the prior consent of the person to whom it relates or, if that person has died, with the consent of the senior available next of kin of that person.
 - (3) In this section, "**court**" includes any board, tribunal or person authorised to receive evidence.

126A. Immunity of visitors

No civil or criminal proceedings lie against a visitor for anything done in good faith and with reasonable care in reliance on any authority or document apparently given or made in accordance with the requirements of this Act.

S. 126A
inserted by
No. 42/1993
s. 20(1).

127. Community (Residential Services) Visitors Board

- (1) There is established a Board to be known as the Community (Residential Services) Visitors Board.
- (2) The Community (Residential Services) Visitors Board consists of—
 - (a) the Public Advocate; and
 - (b) two visitors elected by visitors in accordance with the regulations.
- (3) The functions of the Board are—
 - (a) to represent visitors; and
 - (b) to prepare and circulate publications explaining the role of visitors; and
 - (c) to supervise the training of visitors; and
 - (d) to prepare an annual report.

128. Annual report of visitors

- (1) The Community (Residential Services) Visitors Board must as soon as practicable after the end of each financial year and not later than the following 30 September submit to the Minister a

report on the activities of visitors during the financial year.

- (2) The Minister must cause the annual report of the visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

Pt 6 (Heading and ss 129–134) amended by No. 88/1994 s. 17(1)(a)(b) (2), repealed by No. 11/1995 s. 3(2)(Sch. 2).

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PART 7—MISCELLANEOUS PROVISIONS

Division 1—Hospitals and Charities Fund

135. *Definition*

In this Division, "agency" includes an ambulance service and the Ambulance Officers Training Centre under the **Ambulance Services Act 1986**.

136. *Hospitals and Charities Fund*

(1) There shall be established in the Public Account as part of the Trust Fund an account to be known as the Hospitals and Charities Fund.

(2) There shall be paid into the Fund—

(a) all money standing to the credit of the Hospitals and Charities Fund under the **Hospitals and Charities Act 1958** immediately before the commencement of this Act; and

* * * * *

(c) all money authorised under this Act, the **Racing Act 1958**, the **Tattersall Consultations Act 1958** or any other Act to be paid, or otherwise made available for payment, into the Fund.

(3) There shall be paid out of the Fund—

(a) all liabilities of the Hospitals and Charities Fund under the **Hospitals and Charities Act 1958** that have not been met before the commencement of this section; and

S. 136(2)(b) repealed by No. 31/1994 s. 3(Sch. 1 item 33(a)).

S. 136(2)(c) amended by No. 31/1994 s. 3(Sch. 1 item 33(b)).

Health Services Act 1988

Act No. 49/1988

s. 137

S. 136(3)(b)
amended by
No. 38/1998
s. 14(2).

(b) amounts determined by the Minister as payable under this Act to or on behalf of an agency; and

S. 136(3)(ba)
inserted by
No. 38/1998
s. 14(2).

(ba) amounts determined by the Minister as payable to any person or body providing education and training associated with ambulance and related services under any agreement or arrangement made with the Secretary under the **Ambulance Services Act 1986**; and

S. 136(3)(c)
amended by
No. 42/1993
s. 23(1).

(c) amounts determined by the Minister administering the **Community Services Act 1970** as payable under this Act to or on behalf of an agency; and

(d) any other money authorised under this Act, the **Racing Act 1958** or any other Act to be paid out of the Fund.

S. 137
amended by
Nos 1/1989
s. 4(e),
42/1993
s. 23(1).

137. *Payments out of Fund to agencies*

In making determinations under section 136(3)(b) or (c), the Minister or the Minister administering the **Community Services Act 1970** must have regard to—

(a) the services provided by the agency and the extent to which the agency has provided or promoted or will provide or promote health or community services;

(b) any prescribed matters—

and may have regard to such other matters as the Minister or the Minister administering the **Community Services Act 1970** thinks fit.

Division 2—Payment of Fees to Certain Agencies

138. Payment of fees

(1) A person who is accommodated in, or receives health care or other services from, a public hospital, privately-operated hospital, denominational hospital or multi purpose service is liable to pay to the agency—

S. 138(1) amended by Nos 88/1994 s. 18(a), 99/1995 s. 7(a), 68/1996 s. 32.

(a) the fee (if any) prescribed in respect of that accommodation, care or service; or

(b) if no such fee is prescribed, the fee (if any)—

S. 138(1)(b) amended by No. 88/1994 s. 18(b), substituted by No. 99/1995 s. 7(b).

(i) determined by the hospital; or

(ii) subject to any agreement under section 26 or 115O and any by-laws, determined by the multi purpose service—

in respect of that accommodation, care or service.

(2) A person is not liable to pay a fee under subsection (1) in respect of accommodation, health care or other service if, under the regulations, the person is not liable to pay a fee in respect of that accommodation, care or service.

Division 2A—Conditions of certain public service staff

Pt 7 Div. 2A (Heading and ss 138A–138C) inserted by No. 124/1993 s. 27.

138A. Definition

In this Division "**Public Service Determinations**" means the Public Service Determinations 1985 as in force under the **Public Service Act 1974** immediately before its repeal.

S. 138A inserted by No. 124/1993 s. 27.

S. 138B
inserted by
No. 124/1993
s. 27.

138B. Remuneration and allowances

- (1) On and from the commencement of this section, the terms and conditions applying to a person whose remuneration is determined by reference to Schedule 5 of the Public Service Determinations and set out in regulation 4.5(2) of the Public Service Regulations 1985 and determinations 2.9 and 5.10 of the Public Service Determinations cease to form part of an individual employment agreement referred to in clause 22(4) of Schedule 6 of the **Public Sector Management Act 1992**.
- (2) Nothing in sub-section (1) affects—
 - (a) any rights accrued under the terms and conditions set out in regulation 4.5(2) of the Public Service Regulations 1985 or determinations 2.9 and 5.10 of the Public Service Determinations immediately before the commencement of this section; or
 - (b) an election made under determination 5.10(2) of the Public Service Determinations before the commencement of this section or any rights accruing as a result of that election.
- (3) This section has effect despite anything to the contrary in the **Public Sector Management Act 1992**.

S. 138C
inserted by
No. 124/1993
s. 27.

138C. No compensation payable

No compensation is payable to any person because of a term or condition ceasing to form part of an individual employment agreement pursuant to section 138B(1).

Division 3—General

139. Quality assurance

- (1) The Minister, by notice published in the Government Gazette, may declare that a specified committee, council or other body (whether corporate or unincorporate) established by one or more registered funded agencies, health service establishments, multi purpose services, psychiatric services or professional associations is an approved quality assurance body for the purposes of this Part and, by like notice, may revoke the declaration.
- (2) The Minister must not approve a committee, council or other body unless he or she is satisfied—
- (a) that, in the case of a committee, council or body which is not a psychiatric service owned or managed by the Department, it is established under the by-laws or constitution of one or more registered funded agencies, health service establishments, multi purpose services, psychiatric services or professional associations; and
- (b) that its functions include the assessment and evaluation of the quality of health services provided by the registered funded agencies, health service establishments, multi purpose services, psychiatric services or members of a professional association, including the review of clinical practices or clinical competence of persons providing those services; and
- (c) that the carrying out of its functions and powers would be facilitated by the provision

S. 139(1)
amended by
Nos 53/1990
s. 21(a),
99/1995
s. 8(1).

S. 139(2)(a)
amended by
Nos 53/1990
s. 21(b)(i)(ii),
42/1993
s. 21(1),
99/1995
s. 8(2)(a).

S. 139(2)(b)
amended by
Nos 53/1990
s. 21(b)(iii),
99/1995
s. 8(2)(b).

Health Services Act 1988

Act No. 49/1988

s. 139

of certain immunities in respect of proceedings; and

- (d) that it is in the public interest that persons be prohibited from disclosing information given to it in the course of the carrying out of its functions.

S. 139(2A) inserted by No. 53/1990 s. 21(c).

(2A) In sub-sections (1) and (2)—

S. 139(2A) def. of "professional association" amended by No. 42/1993 s. 21(2).

"professional association" means an association, society, college or other body, membership of which consists principally of health care providers, whether or not of a particular class or classes;

"psychiatric service" has the same meaning as in section 106 of the **Mental Health Act 1986**.

S. 139(3) amended by No. 53/1990 s. 21(d)(i)(iii).

(3) A person who is or has been a member, officer or employee of a committee, council or other body in respect of which a declaration under sub-section (1) has been made must not either directly or indirectly—

S. 139(3)(a) amended by No. 53/1990 s. 21(d)(ii).

(a) make a record of or divulge or communicate to any person any information gained by or conveyed to that person by reason only of being such a member, officer or employee while the declaration was in force; or

(b) make use of any such information—

except to the extent necessary for the performance of the functions of that committee, council or body or of the person as such a member, officer or employee.

Penalty: 50 penalty units.

Health Services Act 1988
Act No. 49/1988

s. 139

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|---|---|
| (3A) Sub-section (3) has effect despite anything to the contrary in section 12 of the Audit Act 1994 . | S. 139(3A)
inserted by
No. 42/1993
s. 21(3),
amended by
No. 2/1994
s. 26. |
| (4) A person who is or has been a member, officer or employee of a committee, council or other body in respect of which a declaration under sub-section (1) has been made shall not be required by reason only of being such a member, officer or employee— | S. 139(4)
amended by
No. 53/1990
s. 21(e)(i)(ii). |
| (a) to produce before any court, tribunal, board, agency or person any document in his or her possession or under his or her control by reason only of being such a member, officer or employee while the declaration was in force; or | S. 139(4)(a)
amended by
No. 53/1990
s. 21(e)(iii). |
| (b) to divulge or communicate to any court, tribunal, board, agency or person any matter or thing coming under his or her notice by reason only of being such a member, officer or employee while the declaration was in force. | S. 139(4)(b)
amended by
No. 53/1990
s. 21(e)(iii). |
| (4A) Sub-sections (3) and (4) do not apply to information that does not identify, either expressly or by implication, a particular individual or particular individuals. | S. 139(4A)
inserted by
No. 42/1993
s. 21(4). |
| (4B) Sub-section (4) does not apply to a document that does not identify, either expressly or by implication, a particular individual or particular individuals. | S. 139(4B)
inserted by
No. 42/1993
s. 21(4). |
| (5) Evidence of any information or document concerning the proceedings or prepared for the purposes of a committee, council or other body at any time when a declaration under this section | S. 139(5)
amended by
No. 53/1990
s. 21(f)(i)(ii). |
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was in force in respect of it is not admissible in any action or proceedings before any court, tribunal, board, agency or person.

S. 139(6)
inserted by
No. 53/1990
s. 21(g).

- (6) If there is an inconsistency between this section and a provision of any other Act or law, this section prevails to the extent of the inconsistency.

140. *Proclaimed services*

- (1) If the Minister considers that a person or body other than the proprietor of a health service establishment or a registered funded agency providing a service for use solely or mainly by persons who are—
- (a) chronically ill, senile or mentally ill; or
 - (b) suffering brain damage; or
 - (c) alcoholic or dependent on drugs—
- is abusing or exploiting persons using the service, the Minister may recommend to the Governor in Council that the service be declared a proclaimed service.
- (2) On the recommendation of the Minister, the Governor in Council, by proclamation—
- (a) may declare a service specified in the proclamation to be a proclaimed service; and
 - (b) may impose conditions or requirements on the carrying on of that proclaimed service.
- (3) The Minister must not make a recommendation under this section unless the Minister—
- (a) has given notice in writing to the person or body stating—
 - (i) the reason why it is intended to make a proclamation under this section; and

- (ii) that the person or body may object in writing to the Minister within 14 days after the notice is given to the person or body and may request to be heard; and
 - (b) has considered any such objection and, where requested, given the objector an opportunity to be heard.
- (4) A person must not carry on a proclaimed service in contravention of any conditions or requirements specified in the proclamation.

Penalty applying to this sub-section: 100 penalty units.

141. Confidentiality

- (1) In this section—

"person to whom this section applies" means—

- (a) a relevant health service; or
- (b) the board of a relevant health service; or
- (c) a person who is or has been a member of the board of a relevant health service; or
- (d) a person who is or has been the proprietor of a relevant health service; or
- (e) a person who is or has been engaged or employed in or by a relevant health service, or performs work for a relevant health service;

S. 141(1) def. of "person to whom this section applies" amended by No. 112/1993 s. 10(1).

"relevant health service" means—

- (a) a public hospital or denominational hospital; or
- (b) a private hospital; or

S. 141(1) def. of "relevant health service" amended by Nos 88/1994 s. 19, 99/1995 s. 9.

- (c) a multi purpose service; or
- (d) a day procedure centre; or
- (e) a community health centre.

- (2) A person to whom this section applies must not, except to the extent necessary—
- (a) to carry out functions under this or any other Act; or
 - (b) to exercise powers under this or any other Act in relation to a relevant health service; or
 - (c) to give any information he or she is expressly authorised, permitted or required to give under this or any other Act—

give to any other person, whether directly or indirectly, any information acquired by reason of being a person to whom this section applies if a person who is or has been a patient in, or has received health services from, a relevant health service could be identified from that information.

Penalty: 50 penalty units.

- (3) Sub-section (2) does not apply—
- (a) to the giving of information with the prior consent of the person to whom it relates or, if that person has died, with the consent of the senior available next of kin of that person; or
 - (b) to the giving of information to a court in the course of criminal proceedings; or
 - (c) to the giving of information concerning the condition of a person who is a patient in, or is receiving health services from, a relevant health service if the information—
 - (i) is communicated in general terms; or

S. 141(2)(c)
amended by
No. 53/1990
s. 22.

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- (ii) is communicated by a member of the medical staff of a relevant health service to the next of kin or a near relative of the patient in accordance with the recognised customs of medical practice; or
 - (d) to the giving of information to the Australian Red Cross Society for the purpose of tracing blood, or blood products derived from blood, infected with any disease or the donor or recipient of any such blood; or
 - (e) to the giving of information required in connection with the further treatment of a patient; or
 - (ea) to the giving of information in accordance with an agreement under section 53(1) or 69B(1); or
 - (f) to the giving of information to the Australian Statistician; or
 - (g) to the giving of information acquired by an agency concerning a person's medical condition or treatment for the purposes of medical or social research if—
 - (i) the use to which the information will be put and the research methodology have been approved by an ethics committee established under the by-laws of the agency; and
 - (ii) the giving of information does not conflict with any prescribed requirements; or
 - (ga) the giving of information to a case mix auditor under Division 1A of Part 3 of this Act;

S. 141(3)(ea)
inserted by
No. 68/1996
s. 33.

S. 141(3)(ga)
inserted by
No. 112/1993
s. 10(2).

(h) to the giving of information to a person to whom in the opinion of the Minister it is in the public interest that the information be given.

(4) A person who receives information by reason of the giving of information under sub-section (3)(g) must not give to any other person, whether directly or indirectly, any information so received unless the giving of the information—

(a) has been approved by the ethics committee referred to in sub-section (3); and

(b) does not conflict with any prescribed requirements.

Penalty: 50 penalty units.

142. *Agencies etc. incorporated under other Acts*

If a registered funded agency or health service establishment is incorporated under any other Act or law, any provisions of this Act that are inconsistent with any provisions of the other Act or law apply to the agency or establishment despite the inconsistency in addition to, or in substitution for, as the case requires, the provisions of the other Act or law.

S. 143
repealed by
No. 88/1994
s. 20.

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144. *Inquiry by Secretary*

S. 144(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) The Secretary may at any time make or cause to be made such inquiries as he or she thinks fit as to any matter arising in the performance of any of the functions imposed or powers conferred on the Secretary.

(2) For the purposes of an inquiry under this Act—

- | | |
|--|---|
| (a) the Secretary has the powers conferred by sections 14 to 16, 20 and 20A of the Evidence Act 1958 upon a board appointed by the Governor in Council; and | S. 144(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (b) the board of a registered funded agency or health service establishment must permit the Secretary or an authorised officer to have access to any document in the possession or under the control of the agency or establishment; and | S. 144(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (c) the board of an agency or establishment and any officer of an agency or establishment may be represented by a legal practitioner or any other person authorised in writing by the agency or establishment. | S. 144(2)(c)
amended by
No. 35/1996
s. 453(Sch. 1
item 38). |

145. *Authorised officers*

The Secretary may in writing appoint a person who is an employee of the public service or employed in the Department as an authorised officer for the purposes of this Act and may, in like manner, revoke any such appointment.

S. 145
amended by
No. 46/1998
s. 7(Sch. 1).

146. *Identity cards*

- (1) The Secretary must issue an identity card to each authorised officer.
- (2) An identity card issued to an officer must—
- (a) contain a photograph of the officer; and
 - (b) contain the signature of the officer; and
 - (c) be signed by the Secretary.

S. 146(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 146(2)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) An authorised officer must—
- (a) carry an identity card whenever the officer is exercising his or her functions under this Act; and
 - (b) show the identity card upon being requested to do so.

Penalty applying to this sub-section: 2 penalty units.

147. Powers of authorised officers

- (1) An authorised officer may at any time, with such assistance as he or she reasonably requires, for the purpose of ascertaining—
- (a) whether this Act and the regulations are being complied with; and
 - (b) whether the agency or establishment is ensuring the well-being of persons accommodated in or receiving care from the agency or establishment—

enter the premises of a registered funded agency or health service establishment and may—

- (c) inspect the premises; and
- (d) inspect, take possession of, make copies of or take extracts from any document; and
- (e) examine or seize any thing relevant to that purpose; and
- (f) ask questions of any person accommodated in or receiving health care from the agency or establishment for the purpose of ascertaining whether the person's well-being is being adequately cared for by the agency or establishment.

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- (2) If any thing is seized by an authorised officer under sub-section (1)—
- (a) the authorised officer must give notice of the seizure in the prescribed form to the person apparently in charge of it or, if there is no such person, to the proprietor of the premises; and
 - (b) return the thing or document to the agency or establishment within 48 hours after it is seized.

147A. Entry to unregistered premises—search warrant

S. 147A
inserted by
No. 99/1995
s. 19.

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the officer believes on reasonable grounds that a person is carrying on business at those premises as a health service establishment in contravention of section 111.
- (2) If the magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that a person is carrying on business at the premises as a health service establishment in contravention of section 111, the magistrate may issue a search warrant.
- (3) A search warrant issued under this section must be directed to the applicant for it and must authorise him or her, and any assistants he or she reasonably requires, to enter the premises, or the part of the premises, named or described in the warrant to search for any article, thing or material of a kind named or described in the warrant which there is reasonable ground to believe will afford evidence as to the commission of an offence against section 111.

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- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) any conditions to which the warrant is subject; and
 - (b) whether entry is authorised to be made any time of the day or night or during stated hours of the day or night; and
 - (c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

148. *Immunity*

An authorised officer is not liable for any loss or damage arising from the exercise in good faith of the powers under this Part.

S. 149
amended by
No. 13/1998
s. 10(1).

149. *Offence to obstruct or hinder*

A person must not obstruct or hinder an authorised officer in the exercise of the authorised officer's powers under this Act.

Penalty: 240 penalty units.

S. 150
amended by
No. 13/1998
s. 10(2).

150. *Impersonating etc. an authorised officer*

A person must not—

- (a) impersonate an authorised officer in the exercise of powers under this Act; or

- (b) falsely hold himself or herself out to be an authorised officer.

Penalty: 120 penalty units.

151. False and misleading statements

- (1) A person must not, in purported compliance with this Act, give information or make a statement that is false or misleading in a material particular.

S. 151(1)
amended by
No. 13/1998
s. 11(1).

Penalty: 120 penalty units.

- (2) A person must not make a false or misleading entry in a document required by this Act to be kept by a registered funded agency or health service establishment.

S. 151(2)
amended by
No. 13/1998
s. 11(1).

Penalty: 120 penalty units.

- (3) It is a defence in proceedings under this section to prove that the person did not know that the information statement or entry was false or misleading.

152. Defacing documents etc.

A person must not, without lawful authority, destroy or damage any notice or document given or prepared or kept in accordance with this Act.

S. 152
amended by
No. 13/1998
s. 11(2).

Penalty: 120 penalty units.

152A. Offences by bodies corporate etc.

If a body corporate is guilty of an offence against this Act or the regulations made under this Act, any person who is concerned or takes part in the management of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is also guilty of the offence.

S. 152A
inserted by
No. 68/1996
s. 34.

153. Police assistance

A member of the police force must on the request of an authorised officer assist the authorised officer in the performance of the duties of the authorised officer.

154. Service of documents

- (1) A notice or other document required or authorised by this Act or the regulations to be served on or given to a person shall be deemed to have been duly served on or given to the person—
 - (a) if delivered personally to or left with an adult person at the last known place of abode or business of the person on or to whom the notice or document is to be served or given or, if there is no adult person present, by affixing the notice or document to a conspicuous part of the premises; or
 - (b) if sent to the person by post.
- (2) A notice or other document required or authorised by this Act or the regulations to be served or given to the proprietor of an agency may be served or given in accordance with this section—
 - (a) without the name of the proprietor, if it is addressed to the proprietor;
 - (b) if there are two or more proprietors by being so served on or given to one of them.
- (3) The provisions of this section are in addition to and not in derogation of any other provisions of this Act relating to the service of documents or the provisions of sections 528, 529 and 530 of the **Companies (Victoria) Code**.

155. Infringement notice

- (1) An authorised officer may serve an infringement notice in the prescribed form on a person whom the officer believes has committed a prescribed offence against the regulations requiring the person to pay the prescribed penalty for that infringement, being an amount not exceeding one-fifth of the maximum penalty applicable to the offence.
- (2) The authorised officer may withdraw the infringement notice within 28 days after serving it by sending a notice in the prescribed form to the person on whom the infringement notice was served.
- (3) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty.
- (4) If the person pays the penalty within the time specified in the notice or, if the authorised officer allows, before a summons is served on the person in respect of the infringement—
 - (a) further proceedings are not to be taken against the person; and
 - (b) a conviction must not be recorded against that person for the infringement.
- (5) A penalty paid under this section must be applied as if the person who paid it was convicted of the infringement in the Magistrates' Court on a charge filed by the authorised officer.
- (6) If—
 - (a) a person served with an infringement notice has not paid the penalty within the time specified in the notice; or

S. 155(5)
amended by
No. 57/1989
s. 5(3).

(b) an infringement notice is withdrawn—
proceedings may still be taken or continued for
the infringement.

156. Power to bring proceedings

An authorised officer of the Department or a
member of the police force may bring proceedings
for an offence against this Act.

S. 156A
inserted by
No. 73/1997
s. 9 (as
amended by
No. 13/1998
s. 15).

156A. Extension of time limit for proceedings for certain offences

Despite anything to the contrary in any Act,
proceedings against sections 108A, 108D to 108L
and 115 of this Act may be commenced within
3 years after the commission of the alleged
offence.

157. Evidentiary

- (1) In proceedings under this Act, no proof is
required—
- (a) of an order or authority to bring proceedings;
or
 - (b) of the appointment of an authorised officer
of the Department.
- (2) A copy of an order, direction, authority, decision
or notice made or given under this Act by the
Minister or the Secretary and signed and certified
by the Minister or the Secretary to be a true copy
and to have been so made or given is evidence of
the making or giving of the order, direction,
authority, decision or notice.

S. 157(2)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 157AA
inserted by
No. 124/1993
s. 28.

**157AA. Supreme Court—limitation of jurisdiction—
section 138C**

It is the intention of this section to alter or vary
section 85 of the **Constitution Act 1975** to the
extent necessary to prevent the Supreme Court

from entertaining an action for compensation in circumstances where section 138C provides that no compensation is payable.

**157A. Supreme Court—limitation of jurisdiction—
section 126A**

S. 157A
inserted by
No. 42/1993
s. 20(2).

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of the kind referred to in section 126A.

**157B. Supreme Court—limitation of jurisdiction—
section 18F**

S. 157B
inserted by
No. 112/1993
s. 11.

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing of an action before the Supreme Court of the kind referred to in section 18F.

**157C. Supreme Court—limitation of jurisdiction—
sections 17AA, 40J or 65O**

S. 157C
inserted by
No. 46/1995
s. 11.

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining an action, proceedings or an application referred to in section 17AA, 40J or 65O.

**157D. Supreme Court—limitation of jurisdiction—
section 115K**

S. 157D
inserted by
No. 99/1995
s. 10.

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action or other proceedings of the kind referred to in section 115K.

157E. Supreme Court—limitation of jurisdiction

S. 157E
inserted by
No. 68/1996
s. 35.

It is the intention of section 69D(4) to alter or vary

section 85 of the **Constitution Act 1975**.

S. 157F
inserted by
No. 66/1998
s. 12.

157F. Supreme Court—limitation of jurisdiction

It is the intention of sections 17AA(2) (as substituted by section 6 of the **Health Services (Further Amendment) Act 1998**) and 178 to alter or vary section 85 of the **Constitution Act 1975**.

158. Regulations

S. 158(1)(b)
amended by
No. 88/1994
s. 21(a)(i).

(1) The Governor in Council may make regulations for or with respect to prescribing—

- (a) the kind or kinds of care which may be provided to persons in private hospitals or day procedure centres;
- (b) maximum fees for accommodation in, or health care or any other services provided by, a public hospital, denominational hospital or supported residential service;
- (c) circumstances in which or persons by whom a fee is not chargeable or payable for accommodation in or health care or other services provided by a public hospital or denominational hospital;
- (d) requirements to be complied with for safety, cleanliness and hygiene and the standards of care in health service establishments;
- (e) requirements to be complied with for the welfare of persons accommodated in or receiving health care or other services from health service establishments, including but not limited to matters of personal hygiene, nutrition, comfort, privacy and respectful treatment;
- (f) fire precautions to be complied with in health service establishments, including

S. 158(1)(d)
substituted by
No. 53/1990
s. 23(a).

Health Services Act 1988

Act No. 49/1988

s. 158

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- emergency procedures and the provision of equipment, access and fire escapes;
- (g) requirements for staffing of health service establishments, including but not limited to appointments, numbers, qualifications, rostering and staffing arrangements; **S. 158(1)(g) substituted by No. 53/1990 s. 23(b).**
- (h) requirements for the provision and maintenance of facilities, equipment, furnishings and fittings in health service establishments;
- (i) requirements for suitable storage facilities for food and medicines in health service establishments; **S. 158(1)(i) amended by No. 53/1990 s. 23(c).**
- (j) requirements for meal arrangements and for the supervision of medication in health service establishments;
- (k) requirements for or prohibiting advertising of private hospitals and supported residential services, including prohibiting or regulating the use of the words "private hospital" and "supported residential service"; **S. 158(1)(k) amended by Nos 53/1990 s. 23(d), 88/1994 s. 21(a)(ii).**
- (l) requirements to be complied with in relation to advising next of kin or other responsible persons concerned with the condition of a person accommodated in or receiving health care or other services from health service establishments;
- (m) requirements for the provision of and the display of information and documents in health service establishments; **S. 158(1)(m) amended by No. 53/1990 s. 23(e).**
- (n) records to be kept by registered funded agencies and proprietors of health service establishments, including the form of records, the time when or period within which entries are to be made in the records
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Health Services Act 1988

Act No. 49/1988

s. 158

and the period for which records are to be retained;

S. 158(1)(o)
amended by
No. 46/1998
s. 7(Sch. 1).

(o) returns to be made to the Secretary by proprietors of health service establishments;

(p) penalties not exceeding 100 penalty units for breaches of the regulations;

(q) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

(a) may be of general or limited application; and

(b) may differ according to differences in time, place or circumstances; and

S. 158(2)(ba)
inserted by
No. 53/1990
s. 23(f),
amended by
No. 46/1998
s. 7(Sch. 1).

(ba) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Secretary, a municipal council or public authority or an officer of such a council or authority; and

S. 158(2)(bb)
inserted by
No. 53/1990
s. 23(f),
amended by
No. 88/1994
s. 21(b).

(bb) may prescribe fees payable for accommodation in, or health care or any other service provided by a public hospital or denominational hospital in terms of being a percentage of the pension and rental allowance under any Commonwealth law as payable from time to time; and

S. 158(2)(c)
repealed by
No. 42/1993
s. 22(1).

* * * * *

(2A) The regulations may apply adopt or incorporate any matter contained in any document, code, standard, rule, specification or method (including any document fixing a fee) formulated, issued, prescribed or published by any person whether—

S. 158(2A)
inserted by
No. 42/1993
s. 22(2).

- (a) wholly or partially or as amended by the regulations; and
- (b) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; and
- (c) as formulated, issued, prescribed or published from time to time.

(3) Regulations made under this section may be disallowed, in whole or in part, by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.

(4) Disallowance of a regulation under sub-section (3) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

PART 8—TRANSITIONAL PROVISIONS

159. *Saving of Hospitals and Charities (Fees) Regulations 1986*

Despite the repeal of the **Hospitals and Charities Act 1958**, the Hospitals and Charities (Fees) Regulations 1986 continue in force (except insofar as they are inconsistent with this Act) as if they had been made under this Act and may be amended or repealed as if they had been so made.

S. 159A
inserted by
No. 53/1990
s. 24.

159A. *Saving of hospital by-laws*

- (1) Despite the repeal of the **Hospitals and Charities Act 1958**, any by-law made under section 62 of that Act and existing as at 14 May 1989 continues in force as if it were a by-law under this Act and may be amended or revoked accordingly.
- (2) A by-law purporting to have been made on or after 14 May 1989 by the board of a public hospital is deemed to be and always to have been as valid as if, when it was made, section 33(2A) had been in operation.

160. *Private hospitals etc. registered under Health Act 1958*

- (1) A private hospital within the meaning of Division 3 of Part X of the **Health Act 1958** registered under that Division immediately before the commencement of this section—
 - (a) if it is classed as a hospital under that Division, is deemed to be—
 - (i) a private hospital registered under this Act; or

S. 160(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

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- (ii) a day procedure centre registered under this Act—
as the Secretary determines; or
- (b) if it is classed as a nursing home under that Division, is deemed to be registered under this Act as a nursing home.
- (2) A special accommodation house within the meaning of Division 3A of Part XII of the **Health Act 1958** registered under that Division immediately before the commencement of this section is deemed to be a supported residential service registered under this Act.
- (3) Where, by reason of this section, premises are deemed to be registered under this Act as a private hospital, nursing home, day procedure centre or supported residential service—
- (a) the premises are deemed to be registered for the period expiring when registration under the **Health Act 1958** would have expired unless the registration is sooner revoked under this Act; and
- (b) the person in whose name the premises were registered under the **Health Act 1958** is deemed to be the proprietor of the hospital, home, centre or service; and
- (c) subject to any variation of the registration under this Act, the number of beds, the kinds of prescribed care and other particulars of registration are deemed to be the particulars applying to the registration under the **Health Act 1958**; and
- (d) the Secretary must issue a certificate of registration accordingly; and

S. 160(3)(b)
amended by
No. 53/1990
s. 25(a).

S. 160(3)(d)
amended by
No. 46/1998
s. 7(Sch. 1).

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S. 160(3)(e)
amended by
No. 53/1990
s. 25(b).

(e) this Act applies to the hospital, home, centre or service as if the premises had been registered under this Act; and

S. 160(3)(f)
amended by
No. 46/1998
s. 7(Sch. 1).

(f) the Secretary may, on his or her own motion or on the application of any interested person, alter the particulars of the registration of the premises to correct errors or for any other reasonable cause.

161. Existing nursing homes and hostels not registered under the Health Act 1958

S. 161(1)
amended by
No. 53/1990
s. 26(a).

(1) A nursing home within the meaning of this Act in existence immediately before the commencement of this section but not registered under the **Health Act 1958** is deemed to be registered under this Act.

S. 161(2)
amended by
No. 53/1990
s. 26(b).

(2) A hostel within the meaning of this Act in existence immediately before the commencement of this section but not registered under the **Health Act 1958** is deemed to be registered under this Act.

(3) Where, by reason of this section, a nursing home or hostel is deemed to be registered under this Act—

S. 161(3)(a)
amended by
Nos 53/1990
s. 26(c)(i),
46/1998
s. 7(Sch. 1).

(a) the home or hostel is deemed to be registered for such period, not exceeding two years after the commencement of this section, as the Secretary determines unless the registration is sooner revoked under this Act; and

(b) the person who was the proprietor immediately before the commencement of this section is deemed to be approved as the proprietor, subject to any variation of the registration; and

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- (c) subject to any variation of the registration, the number of beds for which the home or hostel is registered is the number determined by the Secretary having regard to the number in respect of which payments under an Act of the Commonwealth are payable at the date of commencement of this section; and
- (d) subject to any variation of the registration under this Act, the particulars of the registration are deemed to be the particulars applying to the carrying on of the home or hostel before the commencement of this section; and
- (e) the Secretary must issue a certificate of registration accordingly; and
- (f) this Act applies to the home or hostel as if it had been registered under this Act; and
- (g) the Secretary may in consultation with the proprietor determine any necessary particulars of registration.

S. 161(3)(c)
amended by
Nos 53/1990
s. 26(c)(ii),
46/1998
s. 7(Sch. 1).

S. 161(3)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 161(3)(g)
amended by
No. 46/1998
s. 7(Sch. 1).

162. Applications under Health Act 1958

An application made under the **Health Act 1958** before the commencement of this section but not dealt with before that commencement is deemed to be an application made under this Act.

163. Building approval in force under Health Act 1958

An approval in force under section 182 of the **Health Act 1958** immediately before the commencement of this section has effect according to its tenor as a design approval issued under this Act and remains in force for the period—

- (a) expiring when the approval under the **Health Act 1958** would have expired; or
- (b) of one year after the commencement of this section—

whichever is the shorter.

164. *Transitional provision for Commonwealth building approval*

If, immediately before the commencement of this section, there was in force under an Act of the Commonwealth an approval in principle relating to a proposal for approval of premises as a nursing home or hostel, the approval in principle has effect, while so in force, as an approval in principle under this Act in relation to the use of premises as a nursing home or hostel, subject to the same conditions as to number of beds and kinds of health care as the approval under the Act of the Commonwealth is subject.

S. 165
amended by
No. 53/1990
s. 18(e)(i).

165. *Residential statements*

The proprietor of a supported residential service must, within two years after the commencement of this section comply with the provisions of section 106 in relation to each person who—

S. 165(a)
amended by
No. 53/1990
s. 18(e)(ii).

- (a) was a resident of the service immediately before the commencement of this section; and
- (b) continues to be a resident for two years after that commencement.

Penalty: 20 penalty units.

166. *Transitional provision for public hospitals*

S. 166(1)
amended by
No. 31/1990
s. 3(1)(a).

- (1) Subject to sections 166A and 166B, a public hospital that, immediately before the commencement of this section, was a hospital or public hospital under the **Hospitals and Charities**

Act 1958 continues to be the same body after as before that commencement.

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S. 166(2)
repealed by
No. 31/1990
s. 3(1)(b).

166A. Peter MacCallum Cancer Institute

- (1) The Peter MacCallum Cancer Institute is deemed to be and always to have been the successor in law of the Cancer Institute and the Cancer Institute Board.
- (2) A decision purporting to have been made on or after 14 May 1989 by the members constituting the Cancer Institute Board immediately before that date and made before the appointment of a new board of the Peter MacCallum Cancer Institute on 14 June 1989 is deemed to be and always to have been a decision of the Peter MacCallum Cancer Institute.

S. 166A
inserted by
No. 31/1990
s. 3(2).

166B. Fairfield Hospital

- (1) The Fairfield Hospital is deemed to be and always to have been the successor in law of the Queen's Memorial Infectious Diseases Hospital at Fairfield and the Fairfield Hospital Board.
- (2) A decision purporting to have been made on or after 14 May 1989 by the members constituting the Fairfield Hospital Board immediately before that date and made before the appointment of a new board of the Fairfield Hospital on 14 June 1989 is deemed to be and always to have been a decision of the Fairfield Hospital.

S. 166B
inserted by
No. 31/1990
s. 3(2).

167. Tweddle Baby Hospital

- (1) In this section, "**operative day**" means the day of publication in the Government Gazette of an Order under section 8(1) adding the Tweddle

S. 167
substituted by
No. 31/1990
s. 4.

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s. 167

Child and Family Health Service to the list of hospitals in Schedule 1.

- (2) On the operative day, The Tweddle Baby Hospital, a company limited by guarantee, is dissolved.
- (3) On and from the operative day, the Tweddle Child and Family Health Service is the successor in law of The Tweddle Baby Hospital.
- (4) From the operative day, the objects of the Tweddle Child and Family Health Service are the objects of The Tweddle Baby Hospital as existing immediately before the operative day and are deemed to have been approved by the Secretary for the purposes of section 32(b).
- (5) From the operative day, the persons holding office as directors of The Tweddle Baby Hospital immediately before the operative day are deemed, for the purposes of section 33, to have been appointed as the first board of management of the Tweddle Child and Family Health Service for the term of 12 months.
- (6) From the operative day, the persons holding office as the chief executive officer (by whatever name called) of The Tweddle Baby Hospital immediately before the operative day is deemed to have been approved by the Secretary for the purposes of section 25.
- (7) A decision purporting to have been made on or after 14 May 1989 by the persons purporting to hold office as directors of The Tweddle Baby Hospital and made before the day on which the **Health Services (Amendment) Act 1990** receives the Royal Assent is deemed to be and always to have been a decision of The Tweddle Baby Hospital.

S. 167(4)
amended by
Nos. 42/1993
s. 23(2),
46/1998
s. 7(Sch. 1).

S. 167(6)
amended by
No. 46/1998
s. 7(Sch. 1).

168. Transitional provision for community health centres

A community health centre within the meaning of section 43A of the **Hospitals and Charities Act 1958** in existence immediately before the commencement of this section is deemed to be an agency registered under Division 2 of Part 3.

S. 168
amended by
No. 53/1990
s. 27(1).

169. Transitional provision for boards of public hospitals

(1) Subject to sections 166A and 166B, the board of a public hospital as constituted immediately before the commencement of this section continues to be the board of the hospital.

S. 169(1)
amended by
No. 31/1990
s. 3(3).

(2) Except as provided in section 170 a person holding office as a member of a board of a public hospital continues as a member of the board for the remainder of the term for which he or she holds office unless he or she sooner resigns or is removed from office.

S. 169(2)
amended by
No. 1/1989
s. 4(f).

170. New boards of certain public hospitals

(1) This section applies to a public hospital that, immediately before the commencement of this section, was not included in Table A of the Fifth Schedule to the **Hospitals and Charities Act 1958**.

(2) On the expiration of one month after the commencement of this section—

(a) the members of the board of a public hospital to which this section applies cease to hold office; and

(b) section 33 applies in relation to the appointment or election of members of a new board as if, on that expiration, the public hospital had been added to Schedule 1.

S. 170(3)
inserted by
No. 31/1990
s. 5.

- (3) This section does not apply to The Tweddle Baby Hospital.

171. Transitional provisions for boards of community health centres

- (1) The board of a community health centre as constituted immediately before the commencement of this section continues as the board of the centre until the next annual meeting of the centre.
- (2) A person holding office as a member of a board of a community health centre continues as a member of the board until the next annual meeting unless he or she sooner resigns or is removed from office as if he or she were a member of a board elected or appointed under this Act.
- (3) A vacancy on a board of a community health centre must not be filled before the next annual meeting unless it is necessary to do so to maintain a number of members of the board that is not less than the number that would be required for the board if it were constituted under this Act.
- (4) A vacancy filled in accordance with sub-section (3) may be filled in the manner determined by the Secretary.
- (5) At the first annual meeting of a community health centre held after the commencement of this section—
- (a) the offices of all members of the board fall vacant; and
 - (b) each person elected or appointed in accordance with this Act to fill a vacancy on the board holds office for the term specified

S. 171(4)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 171(5)
amended by
No. 53/1990
s. 27(2)(a).

S. 171(5)(a)
amended by
No. 53/1990
s. 27(2)(b).

S. 171(5)(b)
amended by
No. 53/1990
s. 27(2)(c).

in the instrument of appointment, the regulations or the by-laws of the centre to the intent that, as nearly as possible, one third of the positions of elected members are or become vacant at each of the next three annual meetings.

172. Transitional provision for chief executive officers

A person holding office as the chief executive officer (by whatever name called) of an agency immediately before the commencement of this section that, upon the commencement of a provision of this Act is, or is deemed to be, a registered funded agency, is deemed to have been approved by the Secretary for the purposes of section 25.

S. 172
amended by
No. 46/1998
s. 7(Sch. 1).

173. Bodies incorporated under Hospitals and Charities Act 1958

- (1) An institution or other body incorporated under the **Hospitals and Charities Act 1958** or any corresponding previous enactment and that is not incorporated under this Act continues to be an incorporated institution or body by reason of that Act or enactment until—
- (a) it becomes incorporated under any other Act or law; or
 - (b) it has ceased to exist; or
 - (c) 30 June 1994—

S. 173(1)(c)
amended by
No. 2/1992
s. 3.

whichever first occurs.

- (2) Any rule or by-law of an institution or other body to which sub-section (1) applies in force immediately before the commencement of this section continues in force as such a rule or by-law,

except insofar as it is inconsistent with this Act or the regulations.

(3) Despite its repeal, the **Hospitals and Charities Act 1958** is deemed to continue in force so far as—

- (a) it applies to or affects incorporated benevolent societies and institutions, the committees or boards of such societies and institutions and all other matters governing or making provision for the affairs of such societies and institutions; and
- (b) is necessary for the purposes of this section—

except to the extent of any inconsistency with this Act or the regulations.

174. Administrators

A person holding office immediately before the commencement of this section as—

- (a) an administrator of a community health centre appointed under section 43A of the **Hospitals and Charities Act 1958**; or
- (b) an administrator of a scheduled hospital appointed under section 63J of that Act—

continues to be an administrator for the purposes of this Act as if the administrator had been appointed under this Act and, in the case of an administrator appointed under section 43A of the **Hospitals and Charities Act 1958**, the community health centre were a registered funded agency within the meaning of this Act.

175. Guarantees

Despite the repeal of the **Hospitals and Charities Act 1958**, sections 68A and 68B of that Act continue in force in relation to guarantees given

under those sections before the commencement of this section.

176. *St Andrew's Hospital*

- (1) The **St Andrew's Hospital Act 1978** and the **St Andrew's Hospital (Guarantee) Act 1978** are **repealed**.
- (2) The body corporate under section 6(1) of the **Health Act 1958** is the successor in law of St Andrew's Hospital.

New s. 176
inserted by
No. 83/1997
s. 3.

177. *Transitional provisions (1998 amendments)*

- (1) The amendments of section 40G made by section 7 of the **Health Services (Further Amendment) Act 1998** apply to any person holding office as director of a board of a metropolitan hospital immediately before the commencement of that section as well as to directors appointed on or after that commencement.
- (2) The amendments of this Act made by the **Health Services (Further Amendment) Act 1998** (other than sections 6 and 7 of that Act) apply with respect to a trust (as defined in section 3(1)) in relation to a body, whether the trust was created before, on or after the commencement of section 13 of that Act.

New s. 177
inserted by
No. 66/1998
s. 13.

178. *Saving provision: validity of things done by trustees*

- (1) Anything done or omitted to be done before the commencement day by a trustee of a trust (as defined in section 3(1)) that would not have constituted a breach of trust had the **Health Services (Further Amendment) Act 1998** been enacted at the time at which the thing was done or omitted to be done is not to be regarded as constituting a breach of trust and the trustee is not liable for breach of trust on account of that act or omission.

New s. 178
inserted by
No. 66/1998
s. 13.

- (2) Nothing effected by the **Health Services (Further Amendment) Act 1998** is to be regarded as making a trustee of a trust (as defined in section 3(1)) liable for breach of trust on account of anything done or omitted to be done before the commencement day by the trustee that would not have constituted a breach of trust had the **Health Services (Further Amendment) Act 1998** never been enacted and on and from that day the trustee is not liable for breach of trust on account of that act or omission.
- (3) In this section "**commencement day**" means the day on which section 13 of the **Health Services (Further Amendment) Act 1998** comes into operation.
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s. 176

*	*	*	*	*	Pt 9 (Heading and ss 176–186) amended by No. 1/1989 s. 4(g) (as amended by No. 42/1993 s. 67), repealed by No. 42/1993 s. 23(3). ³
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*	*	*	*	*	Pt 10 (Heading and ss 187–193) repealed by No. 42/1993 s. 23(3).
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*	*	*	*	*	Pt 11 (Heading and ss 194–198) amended by No. 1/1989 s. 4(h), repealed by No. 42/1993 s. 23(3).
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*	*	*	*	*	Pt 12 (Heading and ss 199–201) repealed by No. 42/1993 s. 23(3).
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SCHEDULES

SCHEDULE 1⁴

Section 3

PUBLIC HOSPITALS

Alexandra District Hospital
Bairnsdale Regional Health Service
Ballarat Health Services
Barwon Health
Beaufort and Skipton Health Service
Beechworth Hospital, The
Benalla and District Memorial Hospital
Bendigo Health Care Group
Boort District Hospital
Casterton Memorial Hospital
Central Gippsland Health Service
Cobram District Hospital
Cohuna District Hospital
Colac Community Health Services
Coleraine and District Hospital
Djerriwarrh Health Services
Dunmunkle Health Services
East Grampians Health Service
East Wimmera Health Service
Echuca Regional Health
Edenhope and District Memorial Hospital
Gippsland Southern Health Service
Goulburn Valley Health
Hepburn Health Service

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Sch. 1

Hesse Rural Health Service
Heywood and District Memorial Hospital
Inglewood and Districts Health Service
Kerang and District Hospital
Kilmore and District Hospital, The
Kooweerup Regional Health Service
Kyabram and District Memorial Community Hospital
Kyneton District Health Service
Latrobe Regional Hospital
Lorne Community Hospital
Maldon Hospital
Manangatang and District Hospital
Mansfield District Hospital
Maryborough District Health Service
McIvor Health and Community Services
Mildura Base Hospital
Moyne Health Services
Mt Alexander Hospital
Nathalia District Hospital
Numurkah and District Health Service
Omeo District Hospital
Portland and District Hospital
Queen Elizabeth Centre, The
Rochester and Elmore District Health Service
Rural Northwest Health
Seymour District Memorial Hospital
South Gippsland Hospital
South West Healthcare
Stawell District Hospital
Swan Hill District Hospital
Tallangatta Hospital

Terang and Mortlake Health Service
Tweddle Child and Family Health Service
Wangaratta District Base Hospital
West Gippsland Healthcare Group
West Wimmera Health Service
Western District Health Service
Wimmera Health Care Group
Wodonga Regional Health Service
Wonthaggi and District Hospital
Yarram and District Health Service
Yarrawonga District Health Service
Yea and District Memorial Hospital

SCHEDULE 2

Section 3

Sch. 2
amended by
GG s 23.5.90
p. 1623, 1.8.90
p. 2389,
20.2.91 p. 331,
4.9.91 p. 2478,
9.9.93 p. 2512.

DENOMINATIONAL HOSPITALS

Bethlehem Hospital Incorporated

Caritas Christi Hospice Limited

Mercy Public Hospitals Incorporated

O'Connell Family Centre (Grey Sisters) Incorporated

St Vincent's Hospital (Melbourne) Limited

Sch. 3
inserted by
No. 46/1995
s. 13,
amended by
GG s 27.7.95
pp 1977–1983,
21.12.95
p. 3655,
SG (No. 56)
23.5.96 p. 1,
GG 25.9.97
p. 2708, 2709,
SG (No. 139)
3.11.97 p. 1,
GG 18.12.97
p. 3749.

SCHEDULE 3

Sections 3 and 8

METROPOLITAN HOSPITALS

Austin and Repatriation Medical Centre
Dental Health Services Victoria
Inner and Eastern Health Care Network
North Western Health Care Network
Peninsula Health Care Network
Southern Health Care Network
Women's and Children's Health Care Network

Health Services Act 1988
Act No. 49/1988

Sch. 4

SCHEDULE 4

PRIVATELY-OPERATED HOSPITALS

New Latrobe Regional Hospital

Sch. 4
inserted by
No. 68/1996
s. 36,
amended by
GG 27.8.98
p. 2322.

Health Services Act 1988
Act No. 49/1988

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 24 March 1988

Legislative Council: 22 April 1988

The long title for the Bill for this Act was "A Bill relating to health services, to repeal the **Hospitals and Charities Act 1958**, to make consequential amendments to certain Acts, to amend the **Cancer Act 1958** and for other purposes."

The **Health Services Act 1988** was assented to on 24 May 1988 and came into operation as follows:

Section 196 on 1 October 1987: section 2(2); sections 1–3, 6, 8–17, 52–56, 139, 193–195, 197–201 on 1 July 1988: Government Gazette 29.6.88 page 1896; section 27 on 1 July 1989: Government Gazette 3 May 1989 page 998; sections 18–26, 28–51, 57–69, 135–138, 140–142, 144–154, 156–159, 166–176, 177(1) (*except* (b)(c)), 178, 180, 182–192 on 14 May 1989: Government Gazette 3 May 1989 page 998; rest of Act (*except* Part 6) on 1 February 1991: Special Gazette (No. 9) 31 January 1991 page 2; Part 6 was never proclaimed and was repealed by section 3(2)(Sch. 2) of the **Statute Law Revision Act 1995**, No. 11/1995.

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Notes

2. Table of Amendments

This Version incorporates amendments made to the **Health Services Act 1988** by Acts and subordinate instruments.

Health Acts (Amendment) Act 1989, No. 1/1989 (as amended by No. 42/1993)

Assent Date: 21.3.89
Commencement Date: Ss 3–5 on 24.5.88: s. 2(1); rest of Act on 21.3.89:
s. 2(2)
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette
30.8.89 p. 2210; rest of Act on 1.9.90: Government
Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Health Services (Amendment) Act 1990, No. 31/1990

Assent Date: 13.6.90
Commencement Date: Ss 3, 5 on 14.5.89: s. 2(1); rest of Act on 13.6.90: s.
2(2)
Current State: All of Act in operation

Health Services (Further Amendment) Act 1990, No. 53/1990

Assent Date: 7.11.90
Commencement Date: Ss 9, 27 on 14.5.89: s. 2(1); rest of Act on 7.11.90:
s. 2(2)
Current State: All of Act in operation

Hospitals and Charities (Extension) Act 1992, No. 2/1992

Assent Date: 28.4.92
Commencement Date: 28.4.92
Current State: All of Act in operation

Health and Community Services (General Amendment) Act 1993, No. 42/1993

Assent Date: 1.6.93
Commencement Date: S. 23(1) on 14.5.89: s. 2(2); ss 19–22, 23(2)(3) on
1.10.93: Government Gazette 16.9.93 p. 2548
Current State: This information relates only to the provision/s
amending the **Health Services Act 1988**

Health Services (Amendment) Act 1993, No. 112/1993

Assent Date: 7.12.93
Commencement Date: 7.12.93
Current State: All of Act in operation

Health and Community Services (Further Amendment) Act 1993, No. 124/1993

*Health Services Act 1988**Act No. 49/1988*

Assent Date: 7.12.93
Commencement Date: All of Act (except Pt 3 (ss 4–8)) on 7.12.93: s. 2(1);
Pt 3 on 18.12.94: Government Gazette 15.12.94
p. 3308
Current State: All of Act in operation

Audit Act 1994, No. 2/1994

Assent Date: 27.4.94
Commencement Date: Pt 1 (ss 1–3) on 27.4.94: s. 2(1); rest of Act on
1.7.94: s. 2(2)
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94:
Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: Ss 1, 2 on 31.5.94: s. 2(1); s. 3, Sch. 1 (except
item 60) on 7.7.94: Government Gazette 7.7.94
p. 1878—see **Interpretation of Legislation Act 1984**; Sch. 1 item 60 was never proclaimed,
repealed by 75/1994: s. 13; s. 4, Sch. 2 on 1.1.95:
Government Gazette 28.7.94 p. 2055
Current State: All of Act in operation

Financial Management (Amendment) Act 1994, No. 75/1994

Assent Date: 22.11.94
Commencement Date: S. 7(6) on 10.5.94: s. 2(1); rest of Act on 1.1.95
s. 2(2)
Current State: All of Act in operation

Health Services (Amendment) Act 1994, No. 88/1994

Assent Date: 6.12.94
Commencement Date: Ss 1, 2 on 6.12.94: s. 2(1); rest of Act on 2.3.95:
Government Gazette 2.3.95 p. 431
Current State: All of Act in operation

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: S. 25 on 23.1.95: Government Gazette 19.1.95
p. 121
Current State: This information relates only to the provision/s
amending the **Health Services Act 1988**

Statute Law Revision Act 1995, No. 11/1995

Assent Date: 26.4.95
Commencement Date: 26.4.95
Current State: All of Act in operation

Health Services (Metropolitan Hospitals) Act 1995, No. 46/1995

Assent Date: 14.6.95
Commencement Date: 14.6.95

Health Services Act 1988

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Current State: All of Act in operation

Miscellaneous Acts (Health and Justice) Amendment Act 1995, No. 99/1995

Assent Date: 5.12.95

Commencement Date: 5.12.95

Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96

Commencement Date: S. 453(Sch. 1 item 38) on 1.1.97: s. 2(3)

Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Health Acts (Further Amendment) Act 1996, No. 68/1996

Assent Date: 17.12.96

Commencement Date: Pt 6 (ss 18–36) on 17.12.96: s. 2(1)

Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Health Services (Community Health Centres) Act 1997, No. 17/1997

Assent Date: 6.5.97

Commencement Date: Ss 1, 2 on 6.5.97: s. 2(1); s. 3 on 1.9.97: s. 2(2)

Current State: All of Act in operation

Health Services (Amendment) Act 1997, No. 73/1997 (as amended by Nos 13/1998, 52/1998)

Assent Date: 25.11.97

Commencement Date: Ss 4–6 on 18.12.97: Government Gazette 18.12.97 p. 3613; ss 8, 9 on 2.11.98: Government Gazette 29.10.98 p. 2639

Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Mental Health (Victorian Institute of Forensic Mental Health) Act 1997, No. 77/1997

Assent Date: 25.11.97

Commencement Date: S. 6 on 1.1.98: s. 2(3)

Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Health Services (St Andrew's Hospital) Act 1997, No. 83/1997

Assent Date: 2.12.97

Commencement Date: S. 3 on 7.5.98: Government Gazette 23.4.98 p. 880

Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Health Services (Amendment) Act 1998, No. 13/1998

*Health Services Act 1988**Act No. 49/1988*

Assent Date: 28.4.98
Commencement Date: 28.4.98
Current State: All of Act in operation

Ambulance Services (Amendment) Act 1998, No. 38/1998

Assent Date: 26.5.98
Commencement Date: S. 14(2) on 30.6.98: Government Gazette 25.6.98 p. 1562
Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998
(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 36) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Health Services (Further Amendment) Act 1998, No. 66/1998

Assent Date: 4.11.98
Commencement Date: Ss 4, 5, 7–14, 16 on 4.11.98: s. 2(1): s. 6 on 21.12.98: Government Gazette 17.12.98 p. 3053
Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 32) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999⁵

Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 7) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **Health Services Act 1988**

Government Gazette 10 August 1988 page 2433
 Government Gazette 19 October 1988 page 3182
 Government Gazette 2 November 1988 page 3281
 Government Gazette 14 December 1988 page 3769
 Government Gazette 22 March 1989 page 658

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Government Gazette	11 October 1989 page 2597
Government Gazette	18 October 1989 page 2666
Government Gazette	24 January 1990 page 222
Government Gazette	7 March 1990 page 705
Government Gazette	23 May 1990 page 1623
Government Gazette	1 August 1990 page 2389
Government Gazette	31 October 1990 page 3356
Government Gazette	6 February 1991 page 243
Government Gazette	20 February 1991 page 331
Government Gazette	24 April 1991 page 1100
Government Gazette	8 May 1991 page 1246
Government Gazette	29 May 1991 page 1414
Government Gazette	26 June 1991 page 1712
Government Gazette	4 September 1991 page 2478
Government Gazette	18 December 1991 page 3541
Government Gazette	22 January 1992 page 149
Government Gazette	29 January 1992 page 212
Government Gazette	17 June 1992 page 1504
Government Gazette	22 July 1992 page 1900
Government Gazette	5 August 1992 pages 2082, 2085
Government Gazette	7 October 1992 page 2998
Government Gazette	17 June 1993 page 1560
Government Gazette	26 August 1993 page 2406
Government Gazette	9 September 1993 page 2512
Government Gazette	28 October 1993 pages 2927, 2928
Government Gazette	16 December 1993 pages 3352, 3353
Special Gazette (No. 95)	21 December 1993 page 5
Government Gazette	24 March 1994 page 756
Government Gazette	28 July 1994 page 2098
Government Gazette	15 September 1994 page 2503
Government Gazette	22 September 1994 page 2290

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Government Gazette	27 October 1994 page 2905
Government Gazette	1 December 1994 page 3191
Government Gazette	8 December 1994 page 3264
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Government Gazette	12 January 1995 page 40
Government Gazette	23 March 1995 pages 671, 672
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Government Gazette	20 April 1995 page 931
Government Gazette	15 June 1995 page 1439
Government Gazette	22 June 1995 pages 1531, 1532
Government Gazette	29 June 1995 pages 1681, 1682
Government Gazette	27 July 1995 pages 1977–1983
Government Gazette	17 August 1995 page 2178
Special Gazette (No. 108)	31 October 1995 pages 1, 2
Government Gazette	21 December 1995 pages 3655, 3656
Government Gazette	29 February 1996 page 505
Special Gazette (No. 56)	23 May 1996 pages 1, 2
Government Gazette	20 June 1996 page 1578
Government Gazette	27 June 1996 page 1648
Government Gazette	26 September 1996 pages 2568, 2569
Government Gazette	31 October 1996 pages 2854, 2855
Government Gazette	19 December 1996 pages 3330–3334
Government Gazette	30 January 1997 page 245
Government Gazette	22 May 1997 page 1182
Government Gazette	19 June 1997 pages 1416, 1417
Government Gazette	25 September 1997 pages 2708, 2709
Government Gazette	2 October 1997 page 2759
Special Gazette (No. 139)	3 November 1997 page 1
Government Gazette	27 November 1997 page 3266
Government Gazette	18 December 1997 page 3749

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Government Gazette	12 March 1998 page 547
Government Gazette	19 March 1998 page 595
Government Gazette	26 March 1998 pages 693–697
Government Gazette	25 June 1998 pages 1656, 1657
Government Gazette	27 August 1998 page 2322
Government Gazette	12 November 1998 page 2775
Government Gazette	21 January 1999 page 111
Government Gazette	25 February 1999 page 515
Government Gazette	1 July 1999 pages 1559–1562
Government Gazette	12 August 1999 page 1888

3. Explanatory Details

¹ S. 70: Section 21 of the **Miscellaneous Acts (Health and Justice) Amendment Act 1995**, No. 99/1995 reads as follows:

21. *Saving*

If—

(a) a certificate of design approval of proposed premises or of alterations or extensions to premises has been issued under section 80 of the Principal Act before the day on which this Act comes into operation; and

(b) the period of the approval has not expired—

the design of the proposed premises or of the alterations or extensions and the standard and style of construction work proposed must be taken to be satisfactory for the purposes of an application under section 70 of the Principal Act as amended by this Part.

² S. 80 (*repealed*): See note 1.

³ Pt 9 (Heading and ss 176–186) (*repealed*): The repeal of section 181 by section 166(4) of the **Infertility Treatment Act 1995**, No. 63/1995 is ineffective.

⁴ Sch. 1 amended by GGs 10.8.88 p. 2433, 19.10.88 p. 3182, 2.11.88 p. 3281, 14.12.88 p. 3769, 22.3.89 p. 658, 20.9.89 p. 2427, 11.10.89 p. 2597, 18.10.89 p. 2666, 24.1.90 p. 222, 7.3.90 p. 705, 31.10.90 p. 3356, 6.2.91 p. 243, 24.4.91 p. 1100, 8.5.91 p. 1246, 29.5.91 p. 1414, 26.6.91 p. 1712, 18.12.91 p. 3541, 22.1.92 p. 149, 29.1.92 p. 1504, 22.7.92 p. 1900, 5.8.92 pp 2082, 2085, 7.10.92 p. 2998, 17.6.93 p. 1560, 26.8.93 p. 2406, 28.10.93 pp 2927, 2928, 16.12.93 pp 3352, 3353, SG (No. 95) 21.12.93 p. 5, GGs 24.3.94 p. 756, 28.7.94 p. 2098, 15.9.94 p. 2503, 22.9.94 p. 2290, 20.10.94 p. 2830, 27.10.94 p. 2905, 1.12.94 p. 3191, 8.12.94 p. 3264, 22.12.94 pp 3486, 3487, 12.1.95 p. 40, 23.3.95 pp 671, 672, 6.4.95 p. 822, 20.4.95 p. 931, 15.6.95 p. 1439, No. 46/1995 s. 12, GGs 22.6.95 pp 1531, 1532, 29.6.95 pp 1681, 1682, 17.8.95 p. 2178, SG (No. 108) 31.10.95 pp 1, 2, GG 21.12.95 p. 3656, No. 99/1995 s. 11, GGs 29.2.96 p. 505, 20.6.96 p. 1578, 27.6.96 p. 1648, 26.9.96 pp 2568, 2569, 31.10.96 pp 2854, 2855, 19.12.96 pp 3330–3334, 30.1.97 p. 245, 22.5.97 p. 1182, 19.6.97 pp 1416, 1417, 2.10.97 p. 2759, 27.11.97 p. 3266, 12.3.98 p. 547, 19.3.98 p. 595 26.3.98

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pp 693–697, 25.6.98 pp 1656, 1657, 12.11.98 p. 2775, 21.1.99 p. 111,
25.2.99 p. 515, 1.7.99 pp 1559–1562, 12.8.99 p. 1888.

⁵ Table of Amendments (**Public Sector Reform (Further Amendments) Act 1999**): The amendment proposed to sections 115N and 115T(2) by section 4 (Sch. 2 item 7) of the **Public Sector Reform (Further Amendments) Act 1999**, No. 12/1999 is not included in this publication due to the earlier amendment of sections 115N and 115T(2) by section 16 of the **Health Services (Further Amendment) Act 1998**, No. 66/1998.