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**TABLE OF PROVISIONS**

| <i>Section</i>  | <i>Page</i> |
|---|-------------|
| <b>PART 1—PRELIMINARY</b>   | <b>1</b>    |
| 1 Purpose   | 1           |
| 2 Commencement  | 1           |
| 3 Definitions   | 1           |
| 4 Interpretation: health service establishment                                      | 16          |
| 5 Interpretation: day procedure centre  | 16          |
| 5A Interpretation: trust instruments  | 16          |
| 6 State funded residential care service   | 17          |
| 7 Designated public hospital  | 18          |
| 8 Amendment of Schedules  | 18          |
| 9 Objectives  | 20          |
| 10 Principles applying to hostels, nursing homes and supported residential services | 21          |
| 11 Exemptions   | 22          |
| 11A Principal function of the Secretary   | 22          |
| <b>PART 2—HEALTH SERVICES DEVELOPMENT GUIDELINES</b>                                | <b>24</b>   |
| 12 Preparation of draft guidelines  | 24          |
| 13 Notice of draft guidelines   | 24          |
| 14 Approval of guidelines   | 25          |
| 15 Publication of approved guidelines   | 25          |
| 16 Operation of guideline   | 25          |
| 17 Revocation of guideline  | 26          |
| <b>PART 2A—PUBLIC HOSPITAL SERVICES PRINCIPLES</b>                                  | <b>27</b>   |
| 17AA Public hospital services principles  | 27          |

| <i>Section</i>   | <i>Page</i> |
|--|-------------|
| <b>PART 3—AGENCIES</b>   | <b>28</b>   |
| <b>Division 1—Public funding</b>   | <b>28</b>   |
| 17AB Definition  | 28          |
| 17A Power to fund agencies   | 28          |
| 18 Criteria for public funding of agencies                                 | 28          |
| <b>Division 1A—Case mix funding</b>  | <b>30</b>   |
| 18A Definition   | 30          |
| 18B Case mix auditors  | 31          |
| 18C Functions of case mix auditors   | 32          |
| 18D Powers of case mix auditors  | 32          |
| 18E Confidentiality requirements   | 33          |
| 18F <i>Repealed</i>  | 34          |
| <b>Division 2—Registration of certain agencies</b>                         | <b>34</b>   |
| 19 Definition  | 34          |
| 20 Registration as condition of funding                                    | 34          |
| 21 Conditions of registration  | 35          |
| 22 Registration  | 36          |
| <b>Division 3—Registered funded agencies</b>                               | <b>36</b>   |
| 23 <i>Repealed</i>   | 36          |
| 24 Rules of registered funded agency                                       | 36          |
| 25 Chief executive officer   | 38          |
| 26 Health service agreements   | 38          |
| 27 Interim funding statements  | 41          |
| 28 Limits or controls on expenditure or entering into of<br>contracts etc. | 42          |
| 29 Power to invest   | 43          |
| 30 Approved borrowers and guarantees                                       | 43          |
| <b>Division 4—Public hospitals</b>   | <b>44</b>   |
| 31 Incorporation   | 44          |
| 31A Public hospitals do not represent Crown                                | 44          |
| 32 Objects and functions of public hospitals                               | 44          |
| 33 Board of management   | 45          |
| 34 Terms and conditions of appointment                                     | 47          |
| 35 Removal and resignation   | 47          |
| 36 Annual meetings   | 48          |
| 37 Procedure of board  | 48          |
| 38 Membership of board not office of profit                                | 49          |
| 38A Immunity   | 49          |
| 39 <i>Repealed</i>   | 49          |
| 40 Validity of acts or decisions   | 50          |
| 40A Notice of proposed direction   | 50          |
| 40B Minister may issue directions  | 50          |

| <i>Section</i>   | <i>Page</i> |
|--|-------------|
| 40C Appointment of delegate to board   | 51          |
| 40D Functions of delegate  | 53          |
| 40E Obligations of board to delegate   | 53          |
| <b>Division 4A—<i>Repealed</i></b>   | <b>53</b>   |
| 40F–40L <i>Repealed</i>  | 53          |
| <b>Division 5—Public hospitals and denominational hospitals</b>  | <b>54</b>   |
| 41 Powers and duties   | 54          |
| 42 Hospital must comply with directions of Secretary   | 55          |
| 43 Public hospitals and denominational hospitals excluded from Corporations legislation                                    | 57          |
| 44 Trustees' power to transfer certain property  | 58          |
| 44A Statement of priorities for denominational hospitals   | 58          |
| <b>Division 6—Community health centres</b>   | <b>58</b>   |
| 45 Community health centres  | 58          |
| 46 Board of management   | 59          |
| 47 Terms and conditions of appointment or election   | 60          |
| 48 Proceedings of boards   | 60          |
| 49 Casual vacancies  | 60          |
| 50 Resignation and removal   | 65          |
| 51 Elected members   | 65          |
| 51A Validity of acts or decisions of a board   | 67          |
| <b>Division 7—<i>Repealed</i></b>  | <b>67</b>   |
| 52–57B <i>Repealed</i>   | 67          |
| <b>Division 8—Censure etc.</b>   | <b>67</b>   |
| 58 Powers of Minister  | 68          |
| 59 Censure   | 69          |
| 60 Suspension of admissions  | 70          |
| 61 Appointment of administrator  | 71          |
| 62 Closure   | 72          |
| <b>Division 8A—Audits of public hospitals, public health services, multi purpose services and denominational hospitals</b> | <b>74</b>   |
| 63 Definition  | 74          |
| 63A Secretary may commission audits  | 75          |
| 63B Appointment or engagement of auditors  | 75          |
| 63C Powers of auditors   | 76          |
| 63D Confidentiality requirements   | 77          |
| <b>Division 9—Amalgamation of registered funded agencies</b>   | <b>78</b>   |
| 64 Proposal for amalgamation   | 78          |
| 64A Voluntary amalgamations  | 80          |
| 65 Governor in Council may order amalgamation  | 81          |

| <i>Section</i>   | <i>Page</i> |
|--|-------------|
| <b>Division 9A—Aggregation of metropolitan hospitals</b>   | <b>85</b>   |
| 65A Definitions  | 85          |
| 65B Extra-territorial operation                            | 86          |
| 65C Aggregation  | 87          |
| 65D New metropolitan hospital to be successor in law       | 88          |
| 65E Substitution of party to agreement                     | 89          |
| 65F Old instruments  | 89          |
| 65FA Trusts in relation to aggregated hospitals            | 90          |
| 65G Proceedings  | 90          |
| 65H Interests in land                                      | 90          |
| 65I Amendment of Register                                  | 91          |
| 65J Taxes  | 91          |
| 65K Evidence   | 91          |
| 65L Transfer of aggregated hospital staff to new hospital  | 92          |
| 65M Future terms and conditions of transferred employees   | 93          |
| 65N Validity of things done under this Division            | 93          |
| 65O Operation of Division not subject to review            | 94          |
| <b>Division 9B—Public health services</b>                  | <b>95</b>   |
| 65P Incorporation  | 95          |
| 65Q Public health services do not represent the Crown      | 95          |
| 65R Objects of public health services                      | 96          |
| 65S Board of directors                                     | 96          |
| 65T Directors  | 99          |
| 65U Terms and conditions                                   | 100         |
| 65V Removal and resignation                                | 101         |
| 65W Disclosure of interest                                 | 101         |
| 65X Procedure of board                                     | 102         |
| 65XA Chief executive officer                               | 102         |
| 65XB Functions of the chief executive officer              | 103         |
| 65Y Immunity   | 104         |
| 65Z Validity of acts or decisions                          | 105         |
| 65ZAA Appointment of delegate to board                     | 105         |
| 65ZAB Functions of delegate                                | 107         |
| 65ZAC Obligations of board to delegate                     | 107         |
| 65ZA Advisory committees                                   | 107         |
| 65ZB Community advisory committee                          | 108         |
| 65ZC Primary care and population health advisory committee | 109         |
| 65ZD Guidelines of Secretary                               | 109         |
| 65ZE Procedure of advisory committees                      | 110         |
| 65ZF Strategic plans                                       | 110         |
| 65ZFA When statement of priorities to be prepared          | 110         |
| 65ZFB Content of statement of priorities                   | 111         |
| 65ZG Annual meetings                                       | 112         |
| 66 Notice of proposed direction                            | 113         |
| 66A Minister may issue directions                          | 114         |

| <i>Section</i>  | <i>Page</i>    |
|---|----------------|
| <b>Division 10—Compulsory acquisition of land</b>                       | <b>115</b>     |
| 67 Acquisition  | 115            |
| 68 Acquired land to vest in the Crown                                   | 116            |
| 69 Power to reserve and grant land to agency                            | 116            |
| <br><b>PART 3A—PUBLIC HOSPITAL PATIENT SERVICES AGREEMENTS</b>          | <br><b>117</b> |
| <b>Division 1—Definitions</b>   | <b>117</b>     |
| 69A Definitions   | 117            |
| <b>Division 2—Agreements</b>  | <b>117</b>     |
| 69B Minister may enter into public hospital patient services agreements | 117            |
| 69C Matters that may be included in agreement                           | 118            |
| 69D Agreement to run with land  | 121            |
| 69E Rights of access  | 121            |
| 69F Right of intervention in management                                 | 123            |
| 69G Application of FOI Act  | 124            |
| 69H Investigation of administrative actions                             | 125            |
| 69I Application of Land Act   | 126            |
| <br><b>PART 4—HEALTH SERVICE ESTABLISHMENTS</b>                         | <br><b>127</b> |
| <b>Division 1—Approval in principle</b>                                 | <b>127</b>     |
| 70 Application  | 127            |
| 71 Criteria for grant of approval in principle                          | 128            |
| 72 Decision on application  | 132            |
| 73 Certificate of approval in principle                                 | 132            |
| 74 Transfer or variation of certificate                                 | 133            |
| 75 Revocation of certificate  | 134            |
| 76 Voluntary revocation of certificate                                  | 135            |
| <b>Division 2—<i>Repealed</i></b>                                       | <b>135</b>     |
| 77–81 <i>Repealed</i>   | 135            |
| <b>Division 3—Registration</b>  | <b>135</b>     |
| 82 Application  | 135            |
| 83 Criteria for registration  | 136            |
| 84 Decision on application  | 139            |
| 85 Certificate of registration  | 139            |
| 86 Change of directors etc.   | 140            |
| 87 Annual fees  | 141            |
| 88 Renewal of registration  | 141            |
| 89 Criteria for renewal of registration                                 | 142            |
| 90 Decision on application  | 144            |

| <i>Section</i>  | <i>Page</i> |
|---|-------------|
| 91 Certificate of renewal   | 145         |
| 92 Variation of registration  | 145         |
| 93 Criteria for variation of registration   | 146         |
| 94 Decision on application  | 147         |
| 95 Variation of registration without application  | 147         |
| 95A Cancellation of registration  | 148         |
| 96 Endorsement of certificate of registration   | 148         |
| 97 Legal personal representatives   | 149         |
| <b>Division 4—Censure etc.</b>  | <b>149</b>  |
| 98 <i>Repealed</i>  | 149         |
| 99 Powers of Minister—supported residential services  | 149         |
| 100 Censure   | 150         |
| 101 Suspension of admissions  | 151         |
| 102 Revocation of registration of health service establishment                                | 152         |
| 103 Appointment of administrator of supported residential service                             | 154         |
| <b>Division 5—General</b>   | <b>158</b>  |
| 104 Notification of decisions by Chief General Manager  | 158         |
| 104A Application deemed withdrawn   | 159         |
| 105 Directions of Secretary   | 160         |
| 106 Residential statements  | 160         |
| 106A Resident's interim and on-going care plans   | 162         |
| 106B Information for prospective residents  | 164         |
| 106C Notice to vacate   | 164         |
| 107 Sick residents of supported residential services  | 165         |
| 108 Medical examination or further care   | 166         |
| 108A Privacy, dignity and security of residents   | 166         |
| 108B Personal hygiene of residents  | 166         |
| 108C Medication for residents   | 167         |
| 108D Suitable nutrition for residents   | 167         |
| 108E Mobility and sensory function of residents   | 168         |
| 108F Notification of certain matters to next of kin etc.                                      | 168         |
| 108G Procedures for resident complaints   | 170         |
| 108H Money of a resident  | 170         |
| 108HA Management or control of resident's money by proprietor                                 | 170         |
| 108HB Proprietor may give directions relating to resident's money                             | 172         |
| 108HC Proprietor to give notice of sections 108HA and 108HB                                   | 173         |
| 108HD Proprietor or close associate not to be resident's administrator or resident's guardian | 174         |
| 108I Maintenance and cleanliness of supported residential service                             | 174         |
| 108J Communications systems in supported residential service                                  | 175         |
| 108K Supply of water must be safe   | 175         |
| 108L Minimum staff requirements   | 175         |
| 108M Prohibited and reportable transactions   | 176         |

| <i>Section</i>   | <i>Page</i> |
|--|-------------|
| 108N Proprietor or close associate not to enter into prohibited transactions   | 177         |
| 108O Proprietor to give notice of sections 108M, 108P, 108Q and 108R           | 178         |
| 108P Reportable transactions   | 178         |
| 108Q Cooling off period  | 179         |
| 108R Remedies  | 180         |
| 108S Proprietor to notify Secretary of offences                                | 181         |
| 109 Records  | 181         |
| 110 Reviews  | 182         |
| 111 Offence to carry on business if establishment or proprietor not registered | 183         |
| 112 Offence to provide excess beds or accommodation                            | 184         |
| 113 Offences relating to day procedure centres and private hospitals           | 184         |
| 114 Offence to contravene condition of registration                            | 185         |
| 115 Offence to build etc. without approval in principle                        | 185         |
| <br>   |             |
| <b>PART 4A—MULTI PURPOSE SERVICES</b>  | <b>187</b>  |
| 115A Declaration and incorporation   | 187         |
| 115B Multi purpose services do not represent Crown                             | 190         |
| 115C Objects and functions of multi purpose services                           | 190         |
| 115D Powers  | 190         |
| 115E Board of management   | 191         |
| 115F Terms and conditions of appointment                                       | 192         |
| 115G Removal and resignation   | 193         |
| 115H Annual meetings   | 193         |
| 115I Procedure of board  | 194         |
| 115J Membership of board not office of profit                                  | 194         |
| 115JA Immunity   | 194         |
| 115K <i>Repealed</i>   | 195         |
| 115L Validity of acts or decisions   | 195         |
| 115M Secretary may give directions   | 195         |
| 115N Rules of multi purpose service  | 195         |
| 115O Service agreements  | 196         |
| 115P Health service agreements   | 196         |
| 115Q Powers of Minister  | 197         |
| 115R Appointment of administrator  | 197         |
| 115S Closure   | 199         |
| 115T Amalgamations   | 200         |
| 115U Governor in Council may order amalgamation                                | 201         |
| 115V Transitional  | 204         |

| <i>Section</i>   | <i>Page</i>    |
|--|----------------|
| <b>PART 5—COMMUNITY (RESIDENTIAL SERVICES)<br/>VISITORS</b>                                | <b>207</b>     |
| 116 Appointment  | 207            |
| 116A Definition  | 207            |
| 117 Functions of a visitor   | 207            |
| 118 Panels   | 208            |
| 119 Visiting designated public hospitals and supported residential<br>services             | 208            |
| 120 Powers of inspection   | 208            |
| 121 Request to see a visitor   | 209            |
| 122 Record of visits   | 210            |
| 123 Reports by visitors  | 210            |
| 124 Terms and conditions of appointment  | 211            |
| 125 Resignation and removal from office  | 212            |
| 126 Secrecy provision  | 212            |
| 126A Immunity of visitors  | 213            |
| 127 Community (Residential Services) Visitors Board  | 213            |
| 128 Annual report of visitors  | 214            |
| <br><b>PART 6—HEALTH PURCHASING VICTORIA</b>   | <br><b>215</b> |
| <b>Division 1—Establishment</b>  | <b>215</b>     |
| 129 Establishment of Health Purchasing Victoria  | 215            |
| 130 HPV represents the Crown   | 216            |
| <b>Division 2—General functions and powers</b>   | <b>216</b>     |
| 131 Functions of HPV   | 216            |
| 132 Powers of HPV  | 217            |
| 133 Factors to which HPV must have regard in performing<br>functions and exercising powers | 218            |
| <b>Division 3—Purchasing policies</b>  | <b>219</b>     |
| 134 Purchasing policies  | 219            |
| 134A HPV may exempt public hospitals from policies   | 220            |
| 134B Procedure for making and notification of purchasing<br>policies                       | 220            |
| 134C Disallowance of purchasing policies   | 222            |
| <b>Division 4—Membership and procedure</b>   | <b>222</b>     |
| 134D Members of HPV  | 222            |
| 134E Terms and conditions  | 224            |
| 134F Removal and resignation   | 225            |
| 134G Procedure of HPV  | 226            |
| 134H Validity of HPV decisions   | 226            |

| <i>Section</i>  | <i>Page</i> |
|---|-------------|
| 134I Members' pecuniary interests                             | 226         |
| 134J Improper use of information                              | 227         |
| 134K Delegation   | 228         |
| <b>Division 5—General</b>                                     | <b>228</b>  |
| 134L Directions of the Minister or Secretary                  | 228         |
| 134M Strategic plans  | 228         |
| 134N Existing supply contracts                                | 229         |
| 134O HPV—trade practices                                      | 229         |
| <b>PART 7—MISCELLANEOUS PROVISIONS</b>                        | <b>231</b>  |
| <b>Division 1—Hospitals and charities fund</b>                | <b>231</b>  |
| 135 Definition  | 231         |
| 136 Hospitals and Charities Fund                              | 231         |
| 137 Payments out of Fund to agencies                          | 232         |
| <b>Division 2—Payment of fees to certain agencies</b>         | <b>233</b>  |
| 138 Payment of fees   | 233         |
| <b>Division 2A—Conditions of certain public service staff</b> | <b>233</b>  |
| 138A Definition   | 233         |
| 138B Remuneration and allowances                              | 234         |
| 138C No compensation payable                                  | 234         |
| <b>Division 3—General</b>                                     | <b>235</b>  |
| 139 Quality assurance   | 235         |
| 140 Proclaimed services                                       | 238         |
| 141 Confidentiality   | 239         |
| 142 Agencies etc. incorporated under other Acts               | 245         |
| 143 Delegation by Minister                                    | 245         |
| 144 Inquiry by Secretary                                      | 245         |
| 145 Authorised officers                                       | 246         |
| 146 Identity cards  | 246         |
| 147 Powers of authorised officers                             | 247         |
| 147A Entry to unregistered premises—search warrant            | 248         |
| 148 Immunity  | 249         |
| 149 Offence to obstruct or hinder                             | 249         |
| 150 Impersonating etc. an authorised officer                  | 250         |
| 151 False and misleading statements                           | 250         |
| 152 Defacing documents etc.                                   | 250         |
| 152A Offences by bodies corporate etc.                        | 251         |
| 153 Police assistance   | 251         |
| 154 Service of documents                                      | 251         |
| 155 Infringement notice                                       | 252         |

| <i>Section</i>   | <i>Page</i> |
|--|-------------|
| 156 Power to bring proceedings   | 253         |
| 156A Extension of time limit for proceedings for certain offences                      | 253         |
| 157 Evidentiary  | 253         |
| 157AA Supreme Court—limitation of jurisdiction—section 138C                            | 254         |
| 157A Supreme Court—limitation of jurisdiction—section 126A                             | 254         |
| 157B Supreme Court—limitation of jurisdiction—section 18F                              | 254         |
| 157C Supreme Court—limitation of jurisdiction—sections 17AA, 40J or 65O                | 254         |
| 157D Supreme Court—limitation of jurisdiction—section 115K                             | 255         |
| 157E Supreme Court—limitation of jurisdiction  | 255         |
| 157F Supreme Court—limitation of jurisdiction  | 255         |
| 157G Supreme Court—limitation of jurisdiction  | 255         |
| 157H Supreme Court—limitation of jurisdiction  | 255         |
| 158 Regulations  | 255         |
| <br>   |             |
| <b>PART 8—TRANSITIONAL PROVISIONS</b>  | <b>260</b>  |
| 159 Saving of Hospitals and Charities (Fees) Regulations 1986                          | 260         |
| 159A Saving of hospital by-laws  | 260         |
| 160 Private hospitals etc. registered under <b>Health Act 1958</b>                     | 260         |
| 161 Existing nursing homes and hostels not registered under the <b>Health Act 1958</b> | 262         |
| 162 Applications under <b>Health Act 1958</b>  | 263         |
| 163 Building approval in force under <b>Health Act 1958</b>                            | 263         |
| 164 Transitional provision for Commonwealth building approval                          | 264         |
| 165 Residential statements   | 264         |
| 166 Transitional provision for public hospitals  | 264         |
| 166A Peter MacCallum Cancer Institute  | 264         |
| 166B Fairfield Hospital  | 265         |
| 167 Tweddle Baby Hospital  | 265         |
| 168 Transitional provision for community health centres                                | 266         |
| 169 Transitional provision for boards of public hospitals                              | 267         |
| 170 New boards of certain public hospitals   | 267         |
| 171 Transitional provisions for boards of community health centres                     | 268         |
| 172 Transitional provision for chief executive officers                                | 269         |
| 173 Bodies incorporated under <b>Hospitals and Charities Act 1958</b>                  | 269         |
| 174 Administrators   | 270         |
| 175 Guarantees   | 270         |
| 176 St Andrew's Hospital   | 271         |
| 177 Transitional provisions (1998 amendments)  | 271         |
| 178 Saving provision: validity of things done by trustees                              | 271         |
| 178A Transitional provisions— <b>Health Records Act 2001</b>                           | 272         |

| <i>Section</i>   | <i>Page</i> |
|--|-------------|
| <b>PART 9—TRANSITIONAL PROVISIONS RELATING TO METROPOLITAN HEALTH SERVICES</b>   | <b>273</b>  |
| <b>Division 1—Preliminary</b>  | <b>273</b>  |
| 179 Definitions  | 273         |
| 180 Extra-territorial operation  | 273         |
| <b>Division 2—Establishment of metropolitan health services</b>  | <b>274</b>  |
| 181 Order establishing a metropolitan health service   | 274         |
| 182 Establishment of first board   | 274         |
| 183 Appointment of first chief executive officer   | 275         |
| 184 First by-laws of metropolitan health service   | 275         |
| 185 Limited period to make Orders  | 276         |
| <b>Division 3—Establishment of community health centres</b>  | <b>276</b>  |
| 186 Order establishing a community health centre   | 276         |
| 187 Establishment of first board of management   | 277         |
| 188 First rules of community health centre   | 277         |
| 189 Limited period to make orders  | 278         |
| <b>Division 4—<i>Repealed</i></b>  | <b>278</b>  |
| 190–192 <i>Repealed</i>  | 278         |
| <b>Division 5—Transfer of property, rights and liabilities of metropolitan hospitals on cancellation of incorporation</b>    | <b>278</b>  |
| 193 Definitions  | 278         |
| 194 Cancellation of incorporation of metropolitan hospital   | 279         |
| 195 Transfer from metropolitan hospital to metropolitan health service   | 279         |
| 196 New metropolitan health service to be successor in law   | 280         |
| 197 Substitution of party to agreement   | 280         |
| 198 Old instruments  | 281         |
| 199 Proceedings  | 281         |
| 200 Interests in land  | 282         |
| 201 Amendment of Register  | 282         |
| 202 Taxes  | 282         |
| 203 Evidence   | 282         |
| 204 Transfer of hospital employees to new health service   | 283         |
| 205 Future terms and conditions of transferred employees   | 284         |
| <b>Division 6—Transfer of property, rights and liabilities before cancellation of incorporation of metropolitan hospital</b> | <b>284</b>  |
| 206 Definitions  | 284         |
| 207 Division to prevail  | 286         |
| 208 Transfer Order   | 286         |
| 209 Property rights and liabilities transferred to metropolitan health service or community health centre                    | 286         |

| <i>Section</i>  | <i>Page</i> |
|---|-------------|
| 210 Substitution of party to agreement  | 287         |
| 211 Proceedings   | 287         |
| 212 Interests in land   | 288         |
| 213 Old instruments   | 288         |
| 214 Trusts in respect of metropolitan hospitals existing on 31 July 1995          | 289         |
| 215 Trusts in respect of metropolitan hospitals created on or after 1 August 1995 | 290         |
| 216 Amendment of the Register   | 291         |
| 217 Taxes   | 291         |
| 218 Evidence  | 291         |
| 219 Staff transfer date   | 292         |
| 220 List of staff   | 292         |
| 221 Transfer of staff   | 293         |
| 222 Future terms and conditions of transferred employees                          | 294         |
| 223 Abolition of metropolitan hospital  | 294         |
| 224 Effect of Order   | 295         |
| <b>Division 7—General</b>   | <b>296</b>  |
| 225 Validity of things done under this Part                                       | 296         |
| 226 Operation of provisions not subject to review                                 | 297         |
| 227 Application of property cy-pres not affected                                  | 297         |
| 228 Application to trusts whenever created  | 298         |
| 229 Saving of quality assurance bodies  | 298         |
| <b>PART 10—FURTHER TRANSITIONALS</b>  | <b>299</b>  |
| 230 Transitional provision for boards of community health centres                 | 299         |
| <b>PART 11—DEEMED PUBLICATION</b>   | <b>301</b>  |
| 231 Deemed publication of Order in Council  | 301         |
| <b>PART 12—TRANSITIONAL PROVISIONS RELATING TO PUBLIC HEALTH SERVICES</b>         | <b>302</b>  |
| 232 Definitions   | 302         |
| 233 Extra-territorial operation   | 304         |
| 234 Public health service same body as former metropolitan health service         | 304         |
| 235 Certain public health services same body as certain former public hospitals   | 305         |
| 236 First directors of boards of certain public health service                    | 305         |
| 237 Old instruments referring to metropolitan health service                      | 306         |
| 238 Old instruments referring to public hospitals                                 | 306         |
| 239 Order establishing a public health service                                    | 308         |
| 240 Establishment of first board of certain public health services                | 309         |
| 241 First by-laws   | 309         |

| <i>Section</i>  | <i>Page</i> |
|---|-------------|
| 242 Registrar of Titles   | 309         |
| 243 Operation of provisions not subject to review                                 | 310         |
| <b>PART 13—RE-ORGANISATION OF PUBLIC HOSPITALS<br/>AND PUBLIC HEALTH SERVICES</b> | <b>311</b>  |
| 244 Definitions   | 311         |
| 245 Extra-territorial operation   | 312         |
| 246 Part to prevail   | 313         |
| 247 Minister to consider report   | 313         |
| 248 Order in Council  | 313         |
| 249 Amendment of Schedules if new agency established                              | 315         |
| 250 Establishment of first board  | 315         |
| 251 First by-laws of agency   | 316         |
| 252 Appointment of first chief executive officer                                  | 316         |
| 253 Cancellation of agency's incorporation  | 316         |
| 254 Vesting of property, rights and liabilities                                   | 317         |
| 255 Substitution of party to agreement  | 318         |
| 256 Proceedings   | 318         |
| 257 Interests in land   | 319         |
| 258 Old instruments   | 319         |
| 259 Taxes   | 320         |
| 260 Evidence  | 320         |
| 261 Saving of quality assurance bodies  | 321         |
| 262 Staff transfer date   | 321         |
| 263 List of staff   | 322         |
| 264 Transfer of staff   | 322         |
| 265 Future terms and conditions of transferred employees                          | 323         |
| 266 Trusts in respect of transferring agencies                                    | 324         |
| 267 Application of property cy-pres not affected                                  | 325         |
| 268 Application to trusts whenever created  | 325         |
| 269 Validity of things done under this Part                                       | 325         |
| 270 Operation of provisions not subject to review                                 | 326         |
| 271 Appointment of administrator  | 326         |
| 272 Functions of administrator  | 328         |
| 273 Direction of Secretary  | 328         |
| <br>  |             |
| <b>SCHEDULES</b>  | <b>329</b>  |
| SCHEDULE 1—Public Hospitals   | 329         |
| SCHEDULE 2—Denominational Hospitals   | 332         |
| SCHEDULE 3—Metropolitan Hospitals   | 332         |
| SCHEDULE 4—Privately-Operated Hospitals   | 333         |
| SCHEDULE 5—Public Health Services   | 334         |

| <i>Section</i>         | <i>Page</i> |
|------------------------|-------------|
| <b>ENDNOTES</b>        | <b>335</b>  |
| 1. General Information | 335         |
| 2. Table of Amendments | 336         |
| 3. Explanatory Details | 346         |

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**Version No. 112**  
**Health Services Act 1988**  
**No. 49 of 1988**

Version incorporating amendments as at 13 March 2008

**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)).

Health Services Act 1988  
No. 49 of 1988  
Part 1—Preliminary

s. 3

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).

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*close associate*, in relation to a proprietor of a supported residential service, means—

S. 3(1) def. of *close associate* inserted by No. 55/2006 s. 4(1).

- (a) if the proprietor is a natural person—
  - (i) the spouse, domestic partner, parent, child or sibling of the proprietor; or
  - (ii) the parent, child or sibling of the spouse or domestic partner of the proprietor; or
  - (iii) a body corporate of which the proprietor (or the proprietor's spouse, domestic partner, parent, child or sibling, or the parent, child or sibling of the spouse or domestic partner of the proprietor) is a director or secretary;
- (b) if the proprietor is a body corporate—
  - (i) a director or secretary of the body corporate or of a related body corporate; or
  - (ii) the spouse, domestic partner, parent, child or sibling of such a director or secretary; or
  - (iii) the parent, child or sibling of the spouse or domestic partner of such a director or secretary; or
  - (iv) a related body corporate;
- (c) in either case, an agent or employee of the proprietor;

**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;

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

**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;

S. 3(1) def. of *dentist* repealed by No. 26/1999 s. 107(Sch. item 4).

\* \* \* \* \*

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

**Department** means the Department of Human Services;

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

S. 3(1) def. of *designated public hospital* amended by No. 68/1996 s. 19(b).

***domestic partner*** of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

S. 3(1) def. of *domestic partner* inserted by No. 18/2004 s. 4(b).

- (a) for fee or reward; or
- (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

***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

S. 3(1) def. of *former agency* inserted by No. 66/1998 s. 4, amended by Nos 39/2000 s. 4(2)(a)(b), 52/2004 s. 4(b).

(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

(viii) by force of section 195 of this 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; or

(ba) a metropolitan health service; or

(bb) a public hospital that on or after 1 July 2004 becomes a public health service; or

(bc) a public hospital that on the effective date of an Order under section 239 becomes a public health service; or

- (bd) a transferring agency by virtue of an Order under section 248; or
- (c) a metropolitan hospital designated in an Order under section 215.

*goods and services* includes facilities, equipment and supplies;

S. 3(1) def. of *goods and services* inserted by No. 18/2001 s. 4.

*health or related service*, in Part 6, means—

S. 3(1) def. of *health or related service* inserted by No. 18/2001 s. 4.

- (a) a registered funded agency, multi purpose service or health service establishment; or
- (b) any other person, body or organisation that provides funds, facilitates access or provides insurance in relation to health services, being services that include, but are not limited to—
  - (i) aged care services; or
  - (ii) palliative care services; or
  - (iii) disability services; or
  - (iv) pharmaceutical services; or
  - (v) ambulance services;

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

*health service establishment* means—

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

- (a) a day procedure centre; or
- \* \* \* \*
- \* \* \* \*
- (d) a private hospital; or
- (e) a supported residential service;

Health Services Act 1988  
No. 49 of 1988  
Part 1—Preliminary

s. 3

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

\* \* \* \* \*

S. 3(1) def. of *HPV* inserted by No. 18/2001 s. 4.

*HPV* means Health Purchasing Victoria established by section 129;

S. 3(1) def. of *HPV direction* inserted by No. 18/2001 s. 4.

*HPV direction* means a direction given by HPV under section 132(2)(c);

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

S. 3(1) def. of *metropolitan health service* inserted by No. 39/2000 s. 4(1), repealed by No. 52/2004 s. 4(a).

\* \* \* \* \*

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

*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 *multi purpose service* inserted by No. 99/1995 s. 5(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;

Health Services Act 1988  
No. 49 of 1988  
Part 1—Preliminary

s. 3

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | S. 3(1) def. of <i>medical practitioner</i> repealed by No. 23/1994 s. 118(Sch. 1 item 25.1(a)).   |
|   |   |   |   |   |  |
|   |   |   |   |   | <i>next of kin</i> includes a domestic partner;  |
|   |   |   |   |   | S. 3(1) def. of <i>next of kin</i> inserted by No. 55/2006 s. 4(1).  |
| * | * | * | * | * | S. 3(1) def. of <i>nursing home</i> amended by No. 88/1994 s. 5(c), repealed by No. 73/1997 s. 4(a).   |
|   |   |   |   |   |  |
|   |   |   |   |   | <i>private hospital</i> 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— |
|   |   |   |   |   | S. 3(1) def. of <i>private hospital</i> amended by Nos 68/1996 s. 19(c), 73/1997 s. 4(b).  |
|   |   |   |   |   | (a) a public hospital or denominational hospital; or   |
|   |   |   |   |   | (b) a day procedure centre; or   |
|   |   |   |   |   | (c) a residential care service;  |
|   |   |   |   |   | <i>privately-operated hospital</i> means—  |
|   |   |   |   |   | S. 3(1) def. of <i>privately-operated hospital</i> inserted by No. 68/1996 s. 19(d).   |
|   |   |   |   |   | (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;  |

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*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;

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

S. 3(1) def. of *public health service* inserted by No. 52/2004 s. 4(c).

*public health service* means—

- (a) a public health service listed in Schedule 5; or
- (b) premises occupied by a public health service listed in Schedule 5—

as the case requires;

S. 3(1) def. of *public hospital* substituted by No. 46/1995 s. 4(c), amended by No. 39/2000 s. 4(3)(a)(b), substituted by No. 52/2004 s. 4(d).

*public hospital* means—

- (a) a hospital listed in Schedule 1; or
- (b) except in Division 4 of Part 3 and Parts 12 and 13, a public health service; or
- (c) premises occupied by a hospital listed in Schedule 1 or, except in Division 4 of Part 3 and Parts 12 and 13, by a public health service—

as the case requires;

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***purchasing policy*** means a purchasing policy made by HPV under section 134;

S. 3(1) def. of *purchasing policy* inserted by No. 18/2001 s. 4.

***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
- (ca) a public health service; 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), 52/2004 s. 4(e).

***registered medical practitioner*** means a medical practitioner registered under the **Health Professions Registration Act 2005**;

S. 3(1) def. of *registered medical practitioner* inserted by No. 23/1994 s. 118(Sch. 1 item 25.1(b)), amended by No. 97/2005 s. 182(Sch. 4 item 27).

***related body corporate*** has the same meaning as in the Corporations Act;

S. 3(1) def. of *related body corporate* inserted by No. 55/2006 s. 4(1).

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

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

*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 *resident's administrator* inserted by No. 18/2004 s. 4(b).

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

S. 3(1) def. of *resident's guardian* inserted by No. 18/2004 s. 4(b).

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

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**;

S. 3(1) def. of *special or personal care* amended by No. 18/2004 s. 4(a)(i)(ii).

*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) eating 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 administering medicine; or
- (e) the provision of substantial emotional support;

*spouse* of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 55/2006 s. 4(1).

\* \* \* \* \*

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, amended by No. 39/2000 s. 4(4).

- (a) the successor, or deemed to be the successor, of the former agency (whether for all purposes or for the purposes of a trust in relation to a 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), 55/2006 s. 4(2).

*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, whether or not the premises are registered as a health service establishment under this Act, 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, amended by Nos 39/2000 s. 4(5)(a)–(c), 52/2004 s. 4(f).

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

- (a) aggregated or amalgamated at any time 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;
- (aa) a transferring agency by virtue of an Order under section 248 or a former agency of such a body; or
- (ab) a metropolitan health service or a former agency of such a body; or
- (ac) a public hospital or a former agency of such a body; or

- (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
- (ba) a body the incorporation of which is cancelled by force of section 195; or
- (c) a former agency of such a body; or
- (ca) a metropolitan hospital designated in an Order under section 215—

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;

***Victorian Electoral Commission*** means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;

S. 3(1) def. of *Victorian Electoral Commission* inserted by No. 23/2002 s. 194(1).

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

- (2) If under the **Public Administration Act 2004** the name of the Department of Human Services is changed, a reference in the definitions of ***Department*** and ***Secretary*** in subsection (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), amended by No. 108/2004 s. 117(1) (Sch. 3 item 96.1).

S. 3(3)  
inserted by  
No. 55/2006  
s. 4(3).

(3) For the purposes of the definition of *domestic partner* in subsection (1)—

- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;
- (b) a person is not a domestic partner of another person only because they are co-tenants.

#### **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**

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

(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.

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

(2) The decision of the Secretary under this section is final.

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

#### **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 to the purposes (if any) of the successor agency

that correspond with, or are similar to, those specified purposes of the former agency.

**6 State funded residential care service**

S. 6  
amended by  
No. 73/1997  
s. 5(1)(a)(2)  
(ILA s. 39B(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)  
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)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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

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

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

S. 6(1)(a)(ii)  
substituted by  
No. 88/1994  
s. 6,  
amended by  
Nos 73/1997  
s. 5(1)(b),  
55/2006 s. 5.

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

(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.

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

## 7 Designated public hospital

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).

(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.

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

(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.

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

(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.

## 8 Amendment of Schedules

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.
- (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.
- (4) The Governor in Council, by Order published in the Government Gazette, may amend Schedule 5 by—
- (a) adding the name of a public health service; or
  - (b) removing the name of a public health service; or
  - (c) amending the name of a public health service.
- (5) If the name of a public hospital listed in Schedule 1 or the name of a public health service listed in Schedule 5 changes—
- (a) the reference in the relevant Schedule to the old name of the public hospital or public health service is taken to be a reference to the new name of the public hospital or public health service; and
- S. 8(3) inserted by No. 68/1996 s. 21.**
- S. 8(4) inserted by No. 39/2000 s. 5.**
- S. 8(4)(a) amended by No. 52/2004 s. 5(1).**
- S. 8(4)(b) amended by No. 52/2004 s. 5(1).**
- S. 8(4)(c) amended by No. 52/2004 s. 5(1).**
- S. 8(5) inserted by No. 52/2004 s. 5(2).**

- 
- (b) the Governor in Council, by Order published in the Government Gazette, may amend the relevant Schedule by amending the name of the public hospital or public health service.

## 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
- (ba) public hospitals are governed and managed effectively, efficiently and economically; and
- (c) public funds—
- (i) are used effectively by health care agencies; and
- (ii) are allocated according to need; and
- (ca) purchasing arrangements for public hospitals and supply chain management by public hospitals provide value for money; 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

S. 9(ba)  
inserted by  
No. 52/2004  
s. 6.

S. 9(ca)  
inserted by  
No. 18/2001  
s. 5.

- (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 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;
- (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 and relationships 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;

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

S. 10(c)  
amended by  
No. 18/2004  
s. 5(a).

S. 10(f)  
amended by  
No. 18/2004  
s. 5(b).

- (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.

Penalty applying to this subsection: 100 penalty units.

S. 11A  
inserted by  
No. 52/2004  
s. 7.

## 11A Principal function of the Secretary

To ensure that the objectives of this Act are met, the Secretary may—

- (a) advise the Minister on the operation of this Act;
- (b) develop policies and plans with respect to health services provided by health care agencies;

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- (c) fund or purchase health services and monitor, evaluate and review publicly funded or purchased health services;
  - (d) encourage safety and improvement in the quality of health services provided by health care agencies and health service establishments;
  - (e) in consultation with health care agencies, develop criteria or measures that enable comparisons to be made between the performance of health care agencies providing similar services;
  - (f) collect and analyse data to enable the Secretary to perform the Secretary's functions under this or any other Act;
  - (g) do anything else that the Secretary considers appropriate.
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**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.
  - (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,  
amended by  
No. 68/1996  
s. 22,  
substituted by  
No. 66/1998  
s. 6.

**17AA Public hospital services principles**

S. 17AA  
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.

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## 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—
  - (i) for ensuring that it makes efficient use of its resources; and

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- (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).

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;

S. 18(ec)  
inserted by  
No. 52/2004  
s. 8.

(ec) in the case of a public health service, whether it has met the objectives, priorities and key performance outcomes specified in its statement of priorities under section 65ZFA in relation to the current financial year or in its statements of priorities under section 65ZFA in relation to the last 2 financial years;

S. 18(ed)  
inserted by  
No. 52/2004  
s. 8.

(ed) in the case of a denominational hospital to which a statement of priorities under section 44A relates, whether it has met the objectives, priorities and key performance outcomes specified in its statement of priorities in relation to the current financial year or in its statements of priorities in relation to the last 2 financial years;

(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).

**18B Case mix auditors**

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

- (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)  
amended by  
Nos 46/1998  
s. 7(Sch. 1) (as  
amended by  
No. 12/1999  
s. 3(Sch. 1  
item 12)),  
108/2004  
s. 117(1)  
(Sch. 3  
item 96.1).

to be a case mix auditor on any terms and conditions that the Secretary thinks fit, and the **Public Administration Act 2004** does not apply to any person in respect of an appointment under this subsection.

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

- (2) The Secretary may designate an authorised officer to be a case mix auditor.
- (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(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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

s. 18C

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

**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—

- (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.

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- (2) Subsection (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.

**18E Confidentiality requirements**

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

- (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) Subsection (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 subsection (1); or

s. 19

- (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.

S. 18F  
inserted by  
No. 112/1993  
s. 6,  
repealed by  
No. 52/2004  
s. 9.

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## Division 2—Registration of certain agencies

### 19 Definition

In this Division, *agency* does not include—

- (a) a public hospital; or
- (b) a denominational hospital; or
- (c) a privately-operated hospital.

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

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

### 20 Registration as condition of funding

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

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- (2) Before making a determination for the purposes of subsection (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
  - (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.
- (3) If the Secretary makes a determination for the purposes of subsection (1)—
- (a) the Secretary must give notice in writing of the determination to the agency; and
  - (b) the agency may apply to the Secretary in the prescribed form for registration under this Division.

## 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. 22

S. 21(2)  
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.

## 22 Registration

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

- (1) The Secretary—
- (a) may register; or
  - (b) may refuse to register—
- an agency that has applied for registration under section 20(3)(b).

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

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

S. 22(3)  
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.

### Division 3—Registered funded agencies

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

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

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

(d) make, amend or alter its by-laws—

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

without the approval in writing of the Secretary.

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

(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

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

(fa) a matter consequent on the making of an Order under section 248; or

S. 24(2)(fa)  
inserted by  
No. 52/2004  
s. 10(1).

(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.

s. 25

S. 24(2A)  
inserted by  
No. 39/2000  
s. 6,  
amended by  
No. 52/2004  
s. 10(2).

(2A) If the Secretary directs a public health service to amend or alter its core objects, the public health service must amend or alter its core objects 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) Subsections (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—

- (a) the appointment of that person is approved by the Secretary; and
- (b) in the case of a public hospital, the remuneration of the chief executive officer and the terms and conditions of his or her appointment are approved by the Secretary.

S. 25(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 52/2004  
s. 11.

## 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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Health Services Act 1988  
No. 49 of 1988  
Part 3—Agencies

s. 26

S. 26(4)(f)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(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.

S. 26(4A)  
inserted by  
No. 42/2005  
s. 8.

(4A) A health service agreement entered into by a denominational hospital or a public health service is not required to specify particulars of any matters that are, or are to be, specified in a statement of priorities that has been, or will be, agreed to or made in relation to the hospital or health service under this Act for the financial year that the health service agreement is made in respect of.

S. 26(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(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—

S. 26(5)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(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.

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

## 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 considering any submissions from the Secretary or the agency may 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—

S. 27(1)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
42/2005  
s. 9(1).

- (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.

- (1A) The Minister is not required to issue an interim funding statement under subsection (1) for a denominational hospital or a public health service in relation to a financial year if a statement of priorities has been agreed to or made in relation to the hospital or health service under this Act in respect of that financial year.

S. 27(1A)  
inserted by  
No. 42/2005  
s. 9(2).

- (2) An interim funding statement relating to a registered funded agency issued under subsection (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.

s. 28

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

- (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.

**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 subsection (1) may be made subject to conditions.

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

- (3) In making a determination under subsection (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

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

(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(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 subsection (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 subsection (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.

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## Division 4—Public hospitals

### 31 Incorporation

Each public 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.

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

### 31A Public hospitals do not represent Crown

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

### 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).

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### 33 Board of management

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

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

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- (4) If the board does not submit a name or names for the purposes of subsection (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 subsection.
- (5) For the purposes of subsection (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 subsection (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 subsection (3)(b)).

S. 33(8)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 25.5) (as  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 77.3)).

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

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- (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) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of a board in respect of the office of member.

S. 33(11) amended by No. 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 96.2), 80/2006 s. 26(Sch. item 48.1).

### 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, specified in the instrument of appointment and is eligible for re-appointment.
- (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.
- (3) Despite subsection (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.

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

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

### 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  
Nos 46/1998  
s. 7(Sch. 1),  
42/2005 s. 10.

- (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 December (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.

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**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**.

**38A Immunity**

- (1) A member of the board of a public hospital is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a member of the board of a public hospital attaches instead to the public hospital.

S. 38A  
inserted by  
No. 52/2004  
s. 12.

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S. 39  
repealed by  
No. 52/2004  
s. 13.

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#### **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.

S. 40A  
inserted by  
No. 52/2004  
s. 14.

#### **40A Notice of proposed direction**

- (1) If the Minister proposes to issue the board of a public hospital with a direction under section 40B, the Minister must give a copy of the proposed direction to the board at least 7 days before issuing the direction.
- (2) The board of a public hospital may give the Minister comments in relation to the proposed direction before the day on which the direction is to be issued.
- (3) The Minister must take into account the comments of the board of a public hospital in determining—
  - (a) whether to issue the direction; and
  - (b) if the direction is to be issued, the content of the direction.

S. 40B  
inserted by  
No. 52/2004  
s. 14.

#### **40B Minister may issue directions**

- (1) Subject to subsection (4), the Minister may issue written directions to the board of a public hospital on any matter in relation to the public hospital that the Minister considers necessary or expedient if the Minister considers that the direction—
    - (a) is in the public interest; and
    - (b) will give effect to the objectives of this Act.
  - (2) A direction may be given generally in relation to public hospitals or in relation to a specified public hospital or a specified class of public hospitals.
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- (3) The board of a public hospital must comply with any direction issued to it.
  - (4) A direction issued under this section must not—
    - (a) refer to the health care or health services provided or proposed to be provided to a particular person; or
    - (b) refer to the employment or engagement of a particular person by a public hospital; or
    - (c) require the supply of goods or services to a public hospital by any particular person or organisation unless the supply is in accordance with a tender process.
  - (5) The Minister must cause copies of each direction issued to be made available on request to members of the public.

**40C Appointment of delegate to board**

S. 40C  
inserted by  
No. 52/2004  
s. 14.

- (1) The Minister may appoint not more than 2 delegates to the board of a public hospital if the Minister considers that such an appointment will assist the board to improve the performance of the public hospital.
  - (2) A delegate is not a member of the board of a public hospital.
  - (3) In determining if an appointment of a delegate under subsection (1) will assist the board to improve the performance of the public hospital, the Minister must have regard to—
    - (a) the financial performance of the public hospital; and
    - (b) the safety and quality of the health services provided by the public hospital; and
    - (c) whether the public hospital is complying with the health service agreement to which it is a party; and
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- (d) whether the board has requested such an appointment.
- (4) The Minister may appoint a delegate irrespective of whether the board has requested such an appointment.
- (5) The instrument of appointment of a delegate—
- (a) must be published in the Government Gazette; and
  - (b) must specify the terms and conditions of appointment; and
  - (c) may specify any remuneration to which the delegate is entitled.
- (6) A delegate—
- (a) subject to subsections (7) and (8), holds office for the period specified in the instrument of appointment, being a period of not more than 12 months from the date of appointment; and
  - (b) is eligible for re-appointment; and
  - (c) is entitled to be reimbursed reasonable expenses incurred in holding office as delegate; and
  - (d) is in respect of the office of delegate subject to the **Public Administration Act 2004** (other than Part 3 of that Act).
- (7) A delegate may resign by writing signed by that person and delivered to the Minister.
- (8) The Minister may revoke the appointment of a delegate.
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S. 40C(6)(d)  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 96.3),  
80/2006  
s. 26(Sch.  
item 48.2).

**40D Functions of delegate**

The functions of a delegate to the board of a public hospital are—

- (a) to attend meetings of the board and observe its decision-making processes; and
- (b) to provide advice or information to the board to assist it in understanding its obligations under this Act; and
- (c) to advise the Minister and the Secretary on any matter relating to the public hospital or the board.

S. 40D  
inserted by  
No. 52/2004  
s. 14.

**40E Obligations of board to delegate**

The board of a public hospital must—

- (a) permit a delegate appointed to the board to attend any meeting of the board; and
- (b) provide a delegate appointed to the board with information or a copy of any notice or other document provided to the members of the board at the same time as such information, notice or other document is provided to the members.

S. 40E  
inserted by  
No. 52/2004  
s. 14.

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Pt 3 Div. 4A  
(Heading and  
ss 40A–40L)  
inserted by  
No. 46/1995  
s. 8,  
amended by  
Nos 46/1998  
s. 7(Sch. 1) (as  
amended by  
No. 12/1999  
s. 3(Sch. 1  
item 13)),  
66/1998 s. 7,  
44/2001  
s. 3(Sch.  
item 61.1),  
repealed by  
No. 52/2004  
s. 15.

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**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—

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

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- (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.

#### **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—

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

- (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 should obtain services and their conditions of employment or service;
- (d) the number and types of patients the hospital should treat;
- (e) the facilities, services, equipment or supplies 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, services, equipment or supplies provided by another hospital or should allow another hospital to make use of its facilities, services, equipment or supplies;

S. 42(1)(e)  
amended by  
No. 39/2000  
s. 7(a).

S. 42(1)(f)  
amended by  
No. 39/2000  
s. 7(b).

Health Services Act 1988  
No. 49 of 1988  
Part 3—Agencies

**s. 42**

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S. 42(1)(fa)  
inserted by  
No. 39/2000  
s. 7(c).

(fa) the extent to which and the conditions on which a hospital is required to obtain or purchase facilities, services, equipment or supplies provided by another hospital or another person or body;

S. 42(1)(fb)  
inserted by  
No. 18/2001  
s. 6(1).

(fb) a requirement that a public hospital appoint HPV as its agent for the purposes of obtaining or purchasing goods and services and the conditions on which the appointment is to be made;

(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;

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)).

(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;

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)).

(i) the inspection of its facilities and its accounts and records by the Secretary;

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

(ia) the carrying out of audits for case mix funding purposes;

(j) action 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.

- (2) A direction may be given generally or in relation to public hospitals, denominational hospitals or a specified hospital or class of hospitals.
- (2A) The Secretary must ensure that a direction under subsection (1)(fa) to a public hospital is not inconsistent with an HPV direction or a purchasing policy that applies to the public hospital.
- (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(2A)  
inserted by  
No. 18/2001  
s. 6(2).

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

**43 Public hospitals and denominational hospitals excluded from Corporations legislation**

S. 43  
substituted by  
No. 44/2001  
s. 3(Sch.  
item 61.2).

The following matters are declared to be excluded matters for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation—

- (a) a public hospital;
- (b) a denominational hospital, other than a denominational hospital that is a company within the meaning of the Corporations Act.

**Note**

This section ensures that neither the Corporations Act nor Part 3 of the ASIC Act will apply in relation to a public hospital or denominational hospital (other than a denominational hospital that is a Corporations Act company). Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation, then

that legislation will not apply in relation to that matter in the State concerned.

#### **44 Trustees' power to transfer certain property**

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

- (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 subsection (1) has no effect unless it has been approved by the Governor in Council.

S. 44A  
inserted by  
No. 52/2004  
s. 16.

#### **44A Statement of priorities for denominational hospitals**

The board of a denominational hospital and the Minister may agree to a statement of priorities in respect of a financial year that specifies the matters referred to in section 65ZFB with any necessary modifications to that section.

### **Division 6—Community health centres**

#### **45 Community health centres**

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.

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

#### 46 Board of management

- (1) There shall be a board of management of each community health centre.
- (2) The board of management of a community health centre shall consist of not less than 7 and not more than 9 members, of whom—
  - (a) not less than 4 and not more than 5 are to be elected by and from the electors of the community health centre in accordance with the regulations;
  - (b) not less than 2 and not more than 4 are to be appointed by the Governor in Council, on the nomination of the Minister.
- (3) The Minister must consult with the current members of a board before nominating a person as a member of the board to the Governor in Council.
- (4) A person who is employed by a community health centre is not entitled to be a member of the board of that centre.
- (5) The **Public Administration Act 2004** does not apply to a member of a board in respect of the office of member.

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,  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 1/2001  
s. 3.

S. 46(5)  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 96.4).

s. 47

S. 47  
amended by  
No. 53/1990  
s. 10(2)(3),  
substituted by  
Nos 17/1997  
s. 3, 1/2001  
s. 3.

#### **47 Terms and conditions of appointment or election**

- (1) An appointed member of a board holds office until the third annual general meeting of the centre after his or her appointment and is eligible for re-appointment.
- (2) An elected member of a board holds office until the third annual general meeting of the centre after his or her election and is eligible for re-election.
- (3) The board may pay to a member of a board out of the annual grant provided under subsection (4) an amount or amounts as reimbursement for reasonable expenses approved by the board that were incurred by the member in the course of performing the duties of his or her office as a member of the board.
- (4) The Secretary may provide an annual grant to the board of a community health centre to defray the reimbursement of expenses referred to in subsection (3).

S. 48  
substituted by  
Nos 17/1997  
s. 3, 1/2001  
s. 3.

#### **48 Proceedings of boards**

- (1) Each member of a board of a community health centre has one vote on any question to be determined by the board.
- (2) A quorum of a board consists of a majority of the members of the board for the time being.
- (3) Subject to this Division, the procedure of a board is in the discretion of the board.

S. 49  
substituted by  
Nos 17/1997  
s. 3, 1/2001  
s. 3.

#### **49 Casual vacancies**

- (1) This section applies if a vacancy occurs in an office of a member of a board arising otherwise than by the expiration of the term for which the member was appointed, elected or co-opted.

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- (2) If the vacancy occurs in an appointed office or the office of a person co-opted in accordance with this section to fill a vacancy in an appointed office and the number of members of the Board remaining in office after the vacancy occurs is less than 7—
- (a) the board must appoint a member to the board by co-option to fill the vacant office until the next annual general meeting, or until the date that the term of the member who last vacated that office would have expired, whichever occurs first or an earlier date determined by the Board; and
  - (b) if a person is co-opted under paragraph (a) to a date earlier than the date that the term of the member appointed under section 46 would have expired, another person must be appointed in accordance with section 46 to fill the vacancy from that earlier date to the date that the term would have expired.
- (3) If a vacancy occurs in an appointed office or the office of a person co-opted in accordance with this section to fill a vacancy in an appointed office and the number of members of the Board remaining in office after the vacancy occurs is 7 or more—
- (a) the board may appoint a member to the board by co-option to fill the vacant office until the next annual general meeting, or until the date that the term of the member who last vacated that office would have expired, whichever occurs first or an earlier date determined by the Board; and

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- (b) if a person is co-opted under paragraph (a) to a date earlier than the date that the term of the member appointed under section 46 would have expired, another person may be appointed in accordance with section 46 to fill the vacancy from that earlier date to the date that the term would have expired.
- (4) If the vacancy occurs in an elected office or the office of a person co-opted in accordance with this section to fill a vacancy in an elected office and the number of members of the Board remaining in office after the vacancy occurs is less than 7 or the number of elected members is less than 4—
- (a) if—
- (i) the regulations provide for a system of voting for elections of members of boards which makes provision for a count back of votes or another method of ascertaining the next person eligible to be elected; and
  - (ii) the person who was, in accordance with the regulations, determined to be the next person eligible to be elected at the last election for the board is eligible and available to be a member of the board—

that person is deemed to be elected as a member of the board for the remainder of the term of the elected member who vacated the office; or

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- (b) if there is no person eligible and available in accordance with paragraph (a)—
- (i) the board must appoint a member to the board by co-option to fill the vacant office until the next annual general meeting, or until the date that the term of the member who last vacated that office would have expired, whichever occurs first or an earlier date determined by the Board; and
  - (ii) if a person is co-opted under paragraph (b)(i) to a date earlier than the date that the term of the elected member would have expired, another election must be held to elect a person in accordance with section 46 to fill the vacancy from that earlier date to the date that the term would have expired.
- (5) If a vacancy occurs in an elected office or the office of a person co-opted in accordance with this section to fill a vacancy in an elected office and the number of members of the Board remaining in office after the vacancy occurs is 7 or more and the number of elected members is 4 or more—
- (a) if—
    - (i) the regulations provide for a system of voting for elections of members of boards which makes provision for a count back of votes or another method of ascertaining the next person eligible to be elected; and

- (ii) the person who was, in accordance with the regulations, determined to be the next person eligible to be elected at the last election for the board is eligible and available to be a member of the board—

that person is deemed to be elected as a member of the board for the remainder of the term of office of the elected member who vacated the office; or

- (b) if there is no person eligible and available in accordance with paragraph (a)—
  - (i) the board may appoint a member to the board by co-option to fill the vacant office until the next annual general meeting, or until the date that the term of the member who last vacated that office would have expired, whichever occurs first or an earlier date determined by the Board; and
  - (ii) if a person is co-opted under paragraph (b)(i) to a date earlier than the date that the term of the elected member would have expired, another election may be held to elect a person in accordance with section 46 to fill the vacancy from that earlier date to the date that the term would have expired.

- (6) If a person is co-opted to the board under subsection (4)(b)(i) and the term of that co-opted member expires before an election can be held to fill the vacancy in accordance with subsection (4)(b)(ii)—

- (a) the term of the co-opted member is deemed to be extended until the date a person is elected to fill that vacancy; and

- (b) the board must arrange for an election to fill that vacancy as soon as is practicable.
- (7) A person appointed under this section to fill a vacancy in the office of an elected member is deemed to be an elected member for the purposes of this Division.
- (8) A person appointed under this section to fill a vacancy in the office of an appointed member is deemed to be an appointed member for the purposes of this Division.

#### **50 Resignation and removal**

- (1) An appointed member of the board of a community health centre may resign by writing delivered to the Governor in Council.
- (2) An elected member of the board of a community health centre may resign by writing delivered to the chief executive officer of the health centre.
- (3) The Governor in Council, on the recommendation of the Minister, may remove a member of a board from office, whether the member was appointed, elected or co-opted to that office.

S. 50  
amended by  
No. 1/1989  
s. 4(c),  
substituted by  
Nos 17/1997  
s. 3, 1/2001  
s. 3.

#### **51 Elected members**

- (1) The chief executive officer of a community health centre must maintain a roll of electors for the centre consisting of the members of the health centre.
- (2) A person is eligible to be a member of a community health centre if the person is a natural person of or over the age of 18 years who—
- (a) lives, works or is enrolled as a student at an educational institution in the area served by the centre; or
- (b) is a client of the centre.

S. 51  
amended by  
No. 53/1990  
s. 10(4),  
substituted by  
Nos 17/1997  
s. 3, 1/2001  
s. 3.

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- (3) The chief executive officer may remove the name of a person from the roll of electors if he or she is satisfied that—
- (a) the person has ceased to be eligible to be a member of the centre; or
  - (b) the person has not had contact with the centre within the previous 2 years.
- (4) If the board is, after making all reasonable efforts to do so, unable to obtain sufficient nominations to fill the number of vacancies to be filled by an election, the Governor in Council may appoint a person or persons to fill such a vacancy.
- (5) If the number of candidates for an election to a board is equal to or less than the number of vacancies to be filled, the board may appoint the candidate or candidates as a member or members of the board.
- (6) A person appointed under subsection (4) or (5) is deemed to be an elected member of the board.
- (7) A member appointed by the Governor in Council under subsection (4) holds office as a member of the board until the next annual general meeting of the board or until an earlier date fixed by the Governor in Council and specified in the appointment.
- (8) A person elected to an office referred to in subsection (7) that falls vacant at the end of the period of that appointment holds office as an elected member until the next annual general meeting of the board at which elected offices referred to in section 47(2) fall vacant.
- (9) The Victorian Electoral Commission must conduct any election required for membership of the board of management of a community health centre.

S. 51(9)  
amended by  
No. 23/2002  
s. 194(2)(a).

- (10) The Victorian Electoral Commission must ensure that an election required for membership of the board of management of a community health centre is conducted in accordance with the regulations and may exercise the powers and perform any functions relating to the conduct of elections that are conferred on the Victorian Electoral Commission by the regulations.

S. 51(10)  
amended by  
No. 23/2002  
s. 194(2)(b).

**51A Validity of acts or decisions of a board**

S. 51A  
inserted by  
No. 1/2001  
s. 3.

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 or election of a member of the board; or
- (b) a vacancy in the membership of the board.

\* \* \* \* \*

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,  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
11/2002  
s. 3(Sch. 1  
item 32),  
repealed by  
No. 52/2004  
s. 17.

**Division 8—Censure etc.**

\* \* \* \* \*

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

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## 58 Powers of Minister

- (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
  - (ca) in the case of a public hospital, has failed to comply with an HPV direction or a purchasing policy that applies to the hospital; or
  - (cb) in the case of a public health service—
    - (i) has substantially failed to meet any of the objectives, priorities or key performance outcomes specified in its current statement of priorities under section 65ZFA or in its statements of priorities under section 65ZFA in relation to the last 2 financial years; and
    - (ii) has failed to identify and adequately address any problems relating to the failure referred to in subparagraph (i) in a timely manner; or
  - (cc) in the case of a public hospital or public health service, has failed to comply with a direction issued by the Minister under section 40B or 66A; 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)(ca)  
inserted by  
No. 18/2001  
s. 7.

S. 58(1)(cb)  
inserted by  
No. 52/2004  
s. 18.

S. 58(1)(cc)  
inserted by  
No. 52/2004  
s. 18.

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

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

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- (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.

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- (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—
- (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) Subsection (1) does not apply to a denominational hospital.

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## 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.

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- (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 subsection (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**

- (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 subsection (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.

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- (3) If a report under subsection (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 Corporations Act that is taken to be registered in Victoria, 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 subsection (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 subsection (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 subsection (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

S. 62(3)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 61.3).

S. 62(6)(b)  
substituted by  
No. 44/2001  
s. 3(Sch.  
item 61.4).

- (b) in the case of an agency that is a company within the meaning of the Corporations Act that is taken to be registered in Victoria, the Order has effect as if it were an order of the Court for the winding up of the company under Part 5.4A of the Corporations Act; 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.

Pt 3 Div. 8A  
(Heading and  
ss 63–63D)  
inserted by  
No. 52/2004  
s. 19.

**Division 8A—Audits of public hospitals, public health services, multi purpose services and denominational hospitals**

New s. 63  
inserted by  
No. 52/2004  
s. 19.

**63 Definition**

- In this Division, *agency* means—
- (a) a public hospital; or
  - (b) a multi purpose service; or
  - (c) a denominational hospital.

**63A Secretary may commission audits**

S. 63A  
inserted by  
No. 52/2004  
s. 19.

- (1) Having regard to the objectives of this Act and the public interest, the Secretary may commission an audit under this Division of an agency to determine whether the agency—
  - (a) is effectively using the public funds allocated to it; or
  - (b) is providing health services of a high quality; or
  - (c) in the case of a public health service, is meeting the objectives, priorities and key performance outcomes specified in its current statement of priorities under section 65ZF A; or
  - (d) in the case of a denominational hospital to which a statement of priorities applies, is meeting the objectives, priorities and key performance outcomes specified in its current statement of priorities under section 44A.
- (2) If the Secretary commissions an audit, the Secretary must set the terms of reference for the audit, including when the auditor is to report to the Secretary.
- (3) An auditor under this Division must report to the Secretary in accordance with subsection (2).

**63B Appointment or engagement of auditors**

S. 63B  
inserted by  
No. 52/2004  
s. 19.

- (1) The Secretary may appoint an employee under Part 3 of the **Public Administration Act 2004** or engage any other person with the qualifications, skills or expertise which, in the opinion of the Secretary, are appropriate to carry out an audit under this Division.

S. 63B(1)  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 96.5).

- (2) The Secretary must specify the terms and conditions on which a person is engaged to carry out an audit under this Division.
- (3) The Secretary must give written notice to the chief executive officer of an agency in respect of which an audit will be carried out under this Division stating—
  - (a) that an audit will be carried out and the terms of reference for the audit; and
  - (b) the name of the auditor who has been appointed or engaged to carry out the audit.
- (4) The Secretary must issue to an auditor a copy of the auditor's authorisation to act as an auditor under this Division.

S. 63C  
inserted by  
No. 52/2004  
s. 19.

### **63C Powers of auditors**

- (1) An auditor may at any time, with such assistance as he or she reasonably requires, for the purpose of carrying out an audit under this Division enter the premises of an agency and may—
  - (a) inspect the premises; and
  - (b) inspect, take possession of, make copies of or take extracts from any document; and
  - (c) ask questions of any—
    - (i) person who is engaged or employed in or by the agency;
    - (ii) member or director of the board of the agency.
- (2) If any document is seized under subsection (1), the auditor must return the document to the agency within 7 days after it is seized.

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- (3) A person must not refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by an auditor in the performance or exercise of any power under this Division.

Penalty: 60 penalty units.

- (4) An answer given pursuant to a requirement under subsection (3) is not admissible in evidence against the person in criminal proceedings other than proceedings under this section.

- (5) A person must not obstruct or hinder an auditor in the performance or exercise of the auditor's powers under this Division.

Penalty: 60 penalty units.

- (6) An auditor must produce a copy of his or her authorisation to act as an auditor if requested to do so.

**63D Confidentiality requirements**

- (1) A person who is, or at any time has been, an auditor under this Division 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, an 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.

S. 63D  
inserted by  
No. 52/2004  
s. 19.

s. 64

- (2) Subsection (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 function or power referred to in subsection (1); or
  - (c) 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.

#### **Division 9—Amalgamation of registered funded agencies**

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

\* \* \* \* \*

#### **64 Proposal for amalgamation**

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

- (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.

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- (2) A proposal for amalgamation under subsection (1) may be made in respect of—
- (a) two or more registered funded agencies of the kind mentioned in a paragraph of subsection (3); or
  - (b) a combination of two or more agencies of any kind mentioned in subsection (3).
- (3) For the purposes of subsection (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 that is a company within the meaning of the Corporations Act that is taken to be registered in Victoria.
- (4) The Secretary must cause copies of each report under subsection (1)—
- (a) to be given to each registered funded agency concerned; and
  - (b) to be made available on request to members of the public.
- (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(3)(d)  
substituted by  
No. 44/2001  
s. 3(Sch.  
item 61.5).

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

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

s. 64A

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 subsection (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 subsection (1), or give advice to the Minister under subsection (6), in relation to a proposal for the amalgamation of a metropolitan hospital with another registered funded agency.

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

#### 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

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- (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. **S. 64A(2) amended by No. 46/1998 s. 7(Sch. 1).**
- (3) The Secretary, must not advise the Minister to approve an agreement under subsection (4), unless the Secretary is satisfied that— **S. 64A(3) amended by No. 46/1998 s. 7(Sch. 1).**
- (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(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 Gazette direct that two or more registered funded agencies be amalgamated. **S. 65(1) amended by Nos 112/1993 s. 9(1), 46/1998 s. 7(Sch. 1).**
- (2) Where an Order is made under subsection (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

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(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

(ii) any restriction, limitation, mortgage, charge, encumbrance, lien, lease, covenant, contract or liability—

to which the property was subject immediately before that date; and

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- (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 subsection (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).**
- (a) provisions giving effect to any agreement under section 64A; and **S. 65(3)(a) inserted by No. 112/1993 s. 9(2).**
- (b) provisions relating to the construction of references in documents to any amalgamated denominational hospitals. **S. 65(3)(b) inserted by No. 112/1993 s. 9(2).**
-

(4) An Order under subsection (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**;
- (c) a company within the meaning of the Corporations Act that is taken to be registered in Victoria; or

S. 65(4)(c)  
amended by  
No. 112/1993  
s. 9(3),  
substituted by  
No. 44/2001  
s. 3(Sch.  
item 61.6).

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

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

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

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

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

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

- (a) an Order made under subsection (1) before the commencement of that section of that Act; and
- (b) an instrument of a kind referred to in subsection (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.

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**Division 9A—Aggregation of metropolitan hospitals**

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

**65A Definitions**

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**

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

- (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 subsection (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 subsection (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 subsection (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
    - (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 subsection (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 subsection (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 subsection (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 subsection (7) is deemed to have been appointed by the board of the hospital.
- (9) An Order under subsection (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**

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

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

- (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**

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

- (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.
- (2) Without limiting the effect of subsection (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

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

s. 65FA

(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.

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

#### **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.

**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.

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

S. 65I(2)(3)  
repealed by  
No. 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 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.

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

s. 65L

- (3) In subsection (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.

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- (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**

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

Nothing in section 65L prevents—

- (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**

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

Nothing effected by this Division or suffered under this Division—

- (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.

S. 650  
inserted by  
No. 46/1995  
s. 10.

**650 Operation of Division not subject to review**

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

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**Division 9B—Public health services**

Pt 3 Div. 9B  
(Heading and  
ss 65P–65ZG)  
inserted by  
No. 39/2000  
s. 8.

Pt 3 Div. 9B  
(Heading)  
substituted by  
No. 52/2004  
s. 20.

**65P Incorporation**

S. 65P  
inserted by  
No. 39/2000  
s. 8,  
amended by  
No. 52/2004  
s. 21.

Each public health 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.

**65Q Public health services do not represent the Crown**

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

S. 65Q  
(Heading)  
inserted by  
No. 52/2004  
s. 22(1).

S. 65Q  
inserted by  
No. 39/2000  
s. 8,  
amended by  
No. 52/2004  
s. 22(2).

**s. 65R**

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**65R Objects of public health services**

S. 65R  
(Heading)  
inserted by  
No. 52/2004  
s. 23(1).

S. 65R  
inserted by  
No. 39/2000  
s. 8.

S. 65(1)  
amended by  
No. 52/2004  
s. 23(2)(a).

(1) Subject to section 184, the objects of a public health service are the objects approved by the board of the public health service and the Secretary.

S. 65(2)  
amended by  
No. 52/2004  
s. 23(2)(b).

(2) Section 24 applies to the amendment or alteration of the objects of a public health service.

S. 65S  
inserted by  
No. 39/2000  
s. 8.

**65S Board of directors**

S. 65S(1)  
amended by  
No. 52/2004  
s. 24(1).

(1) There shall be a board of directors of each public health service.

S. 65S(2)  
substituted by  
No. 52/2004  
s. 24(2).

(2) The functions of the board of a public health service are—

- (a) to develop statements of priorities and strategic plans for the operation of the public health service and to monitor compliance with those statements and plans;
- (b) to develop financial and business plans, strategies and budgets to ensure the accountable and efficient provision of health services by the public health service and the long term financial viability of the public health service;

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- (c) to establish and maintain effective systems to ensure that the health services provided meet the needs of the communities served by the public health service and that the views of users and providers of health services are taken into account;
  - (d) to monitor the performance of the public health service to ensure that—
    - (i) the public health service operates within its budget;
    - (ii) its audit and accounting systems accurately reflect the financial position and viability of the public health service;
    - (iii) the public health service adheres to its financial and business plans, strategic plans and statements of priorities;
    - (iv) effective and accountable risk management systems are in place;
    - (v) effective and accountable systems are in place to monitor and improve the quality and effectiveness of health services provided by the public health service;
    - (vi) any problems identified with the quality or effectiveness of the health services provided are addressed in a timely manner;
    - (vii) the public health service continuously strives to improve the quality of the health services it provides and to foster innovation;
    - (viii) committees established or appointed under this Division operate effectively;
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- (e) to appoint a chief executive officer of the public health service and to determine, subject to the Secretary's approval, his or her remuneration and the terms and conditions of appointment;
  - (f) to monitor the performance of the chief executive officer of the public health service, each financial year, having regard to the objectives, priorities and key performance outcomes specified in the service's statement of priorities under section 65ZFA;
  - (g) to establish the organisational structure, including the management structure, of the public health service;
  - (h) to develop arrangements with other relevant agencies and service providers to enable effective and efficient service delivery and continuity of care;
  - (i) to ensure that the Minister and the Secretary are advised about significant board decisions and are informed in a timely manner of any issues of public concern or risks that affect or may affect the public health service;
  - (j) to establish a Finance Committee, an Audit Committee and a Quality Committee;
  - (k) to facilitate health research and education;
  - (l) to adopt a code of conduct for staff of the public health service;
  - (m) to provide appropriate training for directors;
  - (n) any other functions conferred on the board by or under this Act.
- (3) The board of a public health service has such powers as are necessary to enable it to carry out its functions, including the power, subject to section 24, to make, amend or revoke by-laws.

S. 65S(3)  
amended by  
No. 52/2004  
s. 24(3).

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- (4) In performing its functions and exercising its powers, the board of a public health service must have regard to—
- (a) the needs and views of patients and other users of the health services that the public health service provides and the community that the public health service serves; and
  - (b) the need to ensure that the public health service uses its resources in an effective and efficient manner; and
  - (c) the need to ensure that resources of the Victorian public hospital sector generally are used effectively and efficiently.

S. 65S(4)  
inserted by  
No. 52/2004  
s. 24(4).

**65T Directors**

S. 65T  
inserted by  
No. 39/2000  
s. 8.

- (1) The board of a public health service 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 Governor in Council, on the recommendation of the Minister, may appoint one of the directors of the board to be the chairperson of the board.
- (3) In making a recommendation under this section, the Minister must ensure that—
- (a) the board includes at least one person who is able to reflect the perspectives of users of health services; and
  - (b) women and men are adequately represented.

S. 65T(1)  
amended by  
No. 52/2004  
s. 25.

s. 65U

- (4) In considering a recommendation for the purposes of subsection (3)(a), the Minister must give preference to a person—
- (a) who is not a registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**; and
  - (b) who is not currently or has not recently been employed or engaged in the provision of health services.
- (5) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director of a board of a public health service in respect of the office of director.

S. 65T(5)  
amended by  
No. 52/2004  
s. 25,  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 96.6),  
80/2006  
s. 26(Sch.  
item 48.3).

S. 65U  
inserted by  
No. 39/2000  
s. 8.

S. 65U(1)  
amended by  
No. 52/2004  
s. 26.

S. 65U(2)  
amended by  
Nos 52/2004  
s. 26, 42/2005  
s. 11.

## 65U Terms and conditions

- (1) A director of a board of a public health service 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 of a public health service must not serve more than 9 consecutive years as director of that board.
- (3) A director of a board is entitled to be paid—
  - (a) reasonable expenses incurred in holding office as a director of the board; and
  - (b) such remuneration as is specified in the instrument of appointment.

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**65V Removal and resignation**

S. 65V  
inserted by  
No. 39/2000  
s. 8.

- (1) A director of a board of a public health 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 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—
  - (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 Act.

S. 65V(1)  
amended by  
No. 52/2004  
s. 27.

S. 65V(3)(d)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 61.7).

**65W Disclosure of interest**

S. 65W  
inserted by  
No. 39/2000  
s. 8.

- (1) If a director of a board of a public health service has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the board, the director, as soon as practicable after the relevant facts come to the

S. 65W(1)  
amended by  
No. 52/2004  
s. 28.

s. 65X

director's knowledge, must disclose the nature of the interest at a meeting of the board.

- (2) The person presiding at the meeting must cause the declaration to be recorded in the minutes of the meeting.
- (3) A director who has a conflict of interest in a matter—
  - (a) must not be present during any deliberations on the matter; and
  - (b) is not entitled to vote on the matter.
- (4) If a director votes on a matter in contravention of subsection (3)(b), his or her vote must be disallowed.
- (5) This section does not apply in relation to a matter relating to the supply of goods or services to the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

S. 65X  
inserted by  
No. 39/2000  
s. 8,  
amended by  
No. 52/2004  
s. 29.

#### **65X Procedure of board**

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

S. 65XA  
inserted by  
No. 52/2004  
s. 30.

#### **65XA Chief executive officer**

- (1) The board of a public health service must appoint a chief executive officer of the public health service and determine, subject to the Secretary's approval, the remuneration of the chief executive officer and the terms and conditions of his or her employment.
- (2) The chief executive officer of a public health service is subject to the direction of the board in controlling and managing the public health service.

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**65XB Functions of the chief executive officer**

S. 65XB  
inserted by  
No. 52/2004  
s. 30.

- (1) The functions of the chief executive officer are—
- (a) to manage the public health service in accordance with—
    - (i) the financial and business plans, strategies and budgets developed by the board; and
    - (ii) the instructions of the board;
  - (b) to prepare material for consideration by the board including statements of priorities, strategic plans, business plans, strategies and budgets;
  - (c) to ensure that the board and the committees established or appointed under this Division are assisted and provided with relevant information to enable them to perform their functions effectively and efficiently;
  - (d) to implement effective and accountable systems to monitor the quality and effectiveness of health services provided by the public health service;
  - (e) to ensure that the public health service continuously strives to improve the quality of the health services it provides and to foster innovation;
  - (f) to ensure that the board's decisions are implemented effectively and efficiently throughout the public health service;
  - (g) to inform the board in a timely manner of any issues of public concern or risks that affect or may affect the public health service;

s. 65Y

- (h) to inform the board, the Secretary and the Minister without delay of any significant issues of public concern or significant risks affecting the public health service.
- (2) In performing his or her functions, the chief executive officer must have regard to—
  - (a) the needs and views of patients and other users of the health services that the public health service provides and the community that the public health service serves; and
  - (b) the need to ensure that the public health service uses its resources in an effective and efficient manner; and
  - (c) the need to ensure that resources of the Victorian public hospital sector generally are used effectively and efficiently.

S. 65Y  
inserted by  
No. 39/2000  
s. 8.

## 65Y Immunity

S. 65Y(1)  
amended by  
No. 52/2004  
s. 31(a).

- (1) A director of a board of a public health service is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

S. 65Y(2)  
amended by  
No. 52/2004  
s. 31(b).

- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a director of the board of a public health service attaches instead to the public health service.

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**65Z Validity of acts or decisions**

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

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

S. 65Z  
inserted by  
No. 39/2000  
s. 8,  
amended by  
No. 52/2004  
s. 32.

**65ZAA Appointment of delegate to board**

- (1) The Minister may appoint not more than 2 delegates to the board of a public health service if the Minister considers that such an appointment will assist the board to improve the performance of the public health service.
- (2) A delegate is not a director of the board of a public health service.
- (3) In determining if an appointment of a delegate under subsection (1) will assist the board to improve the performance of the public health service, the Minister must have regard to—
  - (a) the need to ensure that the public health service is meeting the objectives, priorities and key performance outcomes specified in the service's statement of priorities under section 65ZFA; and
  - (b) whether the board has requested such an appointment.
- (4) The Minister may appoint a delegate irrespective of whether the board has requested such an appointment.

S. 65ZAA  
inserted by  
No. 52/2004  
s. 33.

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- (5) The instrument of appointment of a delegate—
- (a) must be published in the Government Gazette; and
  - (b) must specify the terms and conditions of appointment; and
  - (c) may specify any remuneration to which the delegate is entitled.
- (6) A delegate—
- (a) subject to subsections (7) and (8), holds office for the period specified in the instrument of appointment, being a period of not more than 12 months from the date of appointment; and
  - (b) is eligible for re-appointment; and
  - (c) is entitled to be reimbursed reasonable expenses incurred in holding office as delegate; and
  - (d) is in respect of the office of delegate subject to the **Public Administration Act 2004** (other than Part 3 of that Act).
- (7) A delegate may resign by writing signed by that person and delivered to the Minister.
- (8) The Minister may revoke the appointment of a delegate.

S. 65ZAA(6)(d)  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 96.7),  
80/2006  
s. 26(Sch.  
item 48.4).

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**65ZAB Functions of delegate**

The functions of a delegate to the board of a public health service are—

S. 65ZAB  
inserted by  
No. 52/2004  
s. 33.

- (a) to attend meetings of the board and observe its decision-making processes; and
- (b) to provide advice or information to the board to assist it in understanding its obligations under this Act; and
- (c) to advise the Minister and the Secretary on any matter relating to the public health service or the board.

**65ZAC Obligations of board to delegate**

The board of a public health service must—

S. 65ZAC  
inserted by  
No. 52/2004  
s. 33.

- (a) permit a delegate appointed to the board to attend any meeting of the board or any meeting of its committees established or appointed under this Division; and
- (b) provide a delegate appointed to the board with information or a copy of any notice or other document provided to the directors of the board or to the members of any of the board's committees established or appointed under this Division at the same time as such information, notice or other document is provided to the directors or members.

**65ZA Advisory committees**

S. 65ZA  
inserted by  
No. 39/2000  
s. 8.

(1) The board of a public health service —

- (a) must appoint at least one community advisory committee; and
- (b) must appoint a primary care and population health advisory committee; and

S. 65ZA(1)  
amended by  
No. 52/2004  
s. 34(a).

s. 65ZB

(c) may appoint such other advisory committees as it determines.

S. 65ZA(2)  
amended by  
No. 52/2004  
s. 34(b).

(2) The board of a public health service must appoint its community advisory committee and its primary care and population health advisory committee within 6 months after the establishment of the public health service.

S. 65ZA(3)  
amended by  
No. 52/2004  
s. 34(c).

(3) The board of a public health service must include in its report of operations under Part 7 of the **Financial Management Act 1994**, a report on the activities of its advisory committees.

S. 65ZB  
inserted by  
No. 39/2000  
s. 8.

**65ZB Community advisory committee**

S. 65ZB(1)  
amended by  
No. 52/2004  
s. 35(a).

(1) Subject to this section, a community advisory committee consists of such number of members as the board of the public health service determines.

S. 65ZB(2)  
amended by  
No. 52/2004  
s. 35(b).

(2) The board of a public health service must ensure that the persons appointed to a community advisory committee are persons who are able to represent the views of the communities served by the public health service.

(3) In appointing persons to a community advisory committee, a board must give preference to a person—

(a) who is not a registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**; and

(b) who is not currently or has not recently been employed or engaged in the provision of health services.

- (4) The board of a public health service must appoint a person to fill a vacancy in the membership of a community advisory committee within 3 months after the vacancy arises.

S. 65ZB(4)  
amended by  
No. 52/2004  
s. 35(c).

**65ZC Primary care and population health advisory committee**

S. 65ZC  
inserted by  
No. 39/2000  
s. 8.

- (1) Subject to this section, a primary care and population health advisory committee consists of such number of members as the board of the public health service determines.

S. 65ZC(1)  
amended by  
No. 52/2004  
s. 36(a).

- (2) A board of a public health service must ensure that its primary care and population health advisory committee consists of persons who between them have the following knowledge and expertise—

S. 65ZC(2)  
amended by  
No. 52/2004  
s. 36(b).

- (a) expertise in or knowledge of the provision of primary health services in the areas served by the public health service;

S. 65ZC(2)(a)  
amended by  
No. 52/2004  
s. 36(b).

- (b) expertise in identifying health issues affecting the population served by the public health service and designing strategies to improve the health of that population;

S. 65ZC(2)(b)  
amended by  
No. 52/2004  
s. 36(b).

- (c) knowledge of the health services provided by local government in the areas served by the public health service.

S. 65ZC(2)(c)  
amended by  
No. 52/2004  
s. 36(b).

- (3) The board of a public health service must appoint a person to fill a vacancy in the membership of its primary care and population health advisory committee within 3 months after the vacancy arises.

S. 65ZC(3)  
amended by  
No. 52/2004  
s. 36(c).

**65ZD Guidelines of Secretary**

The Secretary may publish guidelines relating to the composition, role, functions and procedure of advisory committees.

S. 65ZD  
inserted by  
No. 39/2000  
s. 8.

s. 65ZE

S. 65ZE  
inserted by  
No. 39/2000  
s. 8,  
amended by  
No. 52/2004  
s. 37.

**65ZE Procedure of advisory committees**

Subject to any guidelines of the Secretary, the procedure of an advisory committee of a public health service is in its discretion.

S. 65ZF  
inserted by  
No. 39/2000  
s. 8.

**65ZF Strategic plans**

S. 65ZF(1)  
amended by  
No. 52/2004  
s. 38(a).

- (1) The board of a public health service must at the direction of the Minister and at the time or times determined by the Minister, prepare and submit to the Minister for approval a strategic plan for the operation of the public health service.
- (2) A strategic plan must be prepared in accordance with the guidelines established by the Minister from time to time.
- (3) The Minister may—
  - (a) approve a strategic plan; or
  - (b) approve a strategic plan with amendments; or
  - (c) refuse to approve a strategic plan.
- (4) The board of a public health service must advise the Minister if it wishes to exercise its functions in a manner inconsistent with its approved strategic plan.

S. 65ZF(4)  
amended by  
No. 52/2004  
s. 38(b).

S. 65ZFA  
inserted by  
No. 52/2004  
s. 39.

**65ZFA When statement of priorities to be prepared**

- (1) In respect of each financial year, the board of a public health service must—
  - (a) prepare, in consultation with the Secretary, a proposed statement of priorities in relation to the public health service in accordance with section 65ZFB; and

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- (b) submit the proposed statement of priorities to the Minister.
- (2) If the board of the public health service and the Minister fail to agree on a statement of priorities before 1 October of the financial year to which the statement of priorities relates, the Minister may make a statement of priorities in relation to the public health service in accordance with section 65ZFB.
- (3) A statement of priorities may be varied at any time if the board of the public health service and the Minister so agree.
- (4) If the board of the public health service and the Minister fail to agree to a proposed variation of a statement of priorities within 28 days after the variation is proposed, the Minister may—
- (a) vary the statement of priorities; or
  - (b) decline to vary the statement of priorities.
- (5) The Minister must cause copies of each statement of priorities and any variation to be made available on request to members of the public.

**65ZFB Content of statement of priorities**

A public health service's statement of priorities under section 65ZFA must—

- (a) be consistent with the strategic plan approved by the Minister for the operation of the service; and
- (b) specify in respect of the financial year to which it relates—
  - (i) the services to be provided by the public health service and the funds to be provided to the public health service; and

S. 65ZFB  
inserted by  
No. 52/2004  
s. 39.

**s. 65ZG**

- (ii) the objectives, priorities and key performance outcomes to be met by the public health service; and
- (iii) the performance indicators, targets or other measures against which the public health service's performance is to be assessed and monitored; and
- (iv) how and when the public health service must report to the Minister and the Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and
- (v) such other matters as, from time to time, are agreed by the Minister and the board of the public health service or are determined by the Minister.

S. 65ZG  
inserted by  
No. 39/2000  
s. 8.

**65ZG Annual meetings**

S. 65ZG(1)  
amended by  
Nos 52/2004  
s. 40(a),  
42/2005 s. 12.

- (1) The board of a public health service must ensure that the chief executive officer convenes an annual meeting of the public health service to be held on or after 1 July and on or before 31 December (or, if the Secretary in writing approves a later date, on or before that later date) in each year.

S. 65ZG(2)  
amended by  
No. 52/2004  
s. 40(a).

- (2) Nothing in subsection (1) requires an annual meeting of a public health service to be held before the public health service has been a public health service for 12 months.

S. 65ZG(3)  
amended by  
No. 52/2004  
s. 40(a).

- (3) The chief executive officer of the public health service must cause notice of the annual meeting to be published in a newspaper circulating generally in the area where the public health service is situated giving notice—

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- (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 public health 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 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. 65ZG(4)  
amended by  
No. 52/2004  
s. 40(b).

## **66 Notice of proposed direction**

- (1) If the Minister proposes to issue the board of a public health service with a direction under section 66A, the Minister must give a copy of the proposed direction to the board at least 7 days before giving the direction.
- (2) The board of a public health service may give the Minister comments in relation to the proposed direction before the day on which the direction is to be issued.
- (3) The Minister must take into account the comments of the board of a public health service in determining—
  - (a) whether to issue the direction; and
  - (b) if the direction is to be issued, the content of the direction.

New s. 66  
inserted by  
No. 52/2004  
s. 41.

S. 66A  
inserted by  
No. 52/2004  
s. 41.

## 66A Minister may issue directions

- (1) Subject to subsection (4), the Minister may issue written directions to the board of a public health service on any matter in relation to the public health service that the Minister considers necessary or expedient if the Minister considers that the direction—
  - (a) is in the public interest; and
  - (b) will give effect to the objectives of this Act.
- (2) A direction may be given generally in relation to public health services or in relation to a specified public health service or a specified class of public health services.
- (3) The board of a public health service must comply with any direction issued to it.
- (4) A direction issued under this section must not—
  - (a) refer to the health care or health services provided or proposed to be provided to a particular person; or
  - (b) refer to the employment or engagement of a particular person by a public health service; or
  - (c) require the supply of goods or services to a public health service by any particular person or organisation unless the supply is in accordance with a tender process.
- (5) The Minister must cause copies of each direction issued to be made available on request to members of the public.

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**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).

\* \* \* \* \*

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
- (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

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

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

- (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.

**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**

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

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.

**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 subsection (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.
- (4) The Minister must not enter into an agreement under subsection (1) on or after the day on which section 42 of the **Health Services (Governance and Accountability) Act 2004** comes into operation.
- (5) Subsection (4) does not apply to an agreement for the provision of health services to public hospital patients from the New Mildura Base Hospital.

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

S. 69B(4)  
inserted by  
No. 52/2004  
s. 42.

S. 69B(5)  
inserted by  
No. 52/2004  
s. 42.

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;

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- (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 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;
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- (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;
  - (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 subsection (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.
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**69D Agreement to run with land**

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

- (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 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

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

**s. 69E**

(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 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).

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**69F Right of intervention in management**

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

- (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 subsection (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.

s. 69G

- (5) An administrator appointed under subsection (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 subsection (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).
- (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. 69F(7)  
amended by  
No. 46/1998  
s. 7(Sch. 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**

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- 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—
- (a) in any capacity other than that mentioned in subsection (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**

- (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.

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

**s. 69I**

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- (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 subsection (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.

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.

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**PART 4—HEALTH SERVICE ESTABLISHMENTS**

**Division 1—Approval in principle**

**70 Application<sup>1</sup>**

- (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).

**s. 71**

- (2) An application under subsection (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.

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

- (4) An applicant for approval in principle must give the Secretary—

S. 70(4)(a)  
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

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

- (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

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- (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
- (v) the security of tenure which the applicant holds over the land or premises; and
- (b) if the applicant is or was previously a proprietor, or is or was previously a director of a body corporate that is or was previously a proprietor, of any other health service establishment, or is or was previously associated with any other health service establishment in a managerial capacity—
- (i) the extent and nature of the applicant's involvement in the other health service establishment; and
- (ii) the number of complaints, if any, that have been brought within the previous 3 years by or on behalf of residents of the other health service establishment

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

S. 71(1)(a)(v)  
inserted by  
No. 55/2006  
s. 6(1).

S. 71(1)(b)  
repealed by  
No. 99/1995  
s. 14(3)(b),  
new s. 71(1)(b)  
inserted by  
No. 55/2006  
s. 6(2).

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- (regardless of who received the complaints) and how the complaints have been dealt with; and
- (iii) the financial management of the other health service establishment; and
  - (iv) the applicant's compliance with any reporting requirements under this Act that relate to the other health service establishment; and
  - (v) whether the applicant has carried on the other health service establishment in accordance with this Act, the regulations and, if the establishment is registered under this Act, any conditions to which the registration of the establishment is subject; and
  - (vi) whether the applicant has been convicted or found guilty of an offence under this Act or the regulations in relation to the other health service establishment; and
  - (vii) the capacity of the applicant to meet any requirements for the registration under this Act of the other health service establishment; and
- (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
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- (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
- (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.
- (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—
- (a) the person (whether a natural person or a body corporate) who is or is likely to be the proprietor of the health service establishment is not likely to have, or to continue to have, the financial capacity to carry on the health service establishment, or to carry on the health service establishment if the registration is varied; or
- (b) if the person who is or is likely to be the proprietor of the health service establishment—
- (i) is a natural person, that person is not a fit and proper person to be such a proprietor, or to be a proprietor of the health service establishment if the registration is varied; or
- S. 71(1)(c)(iii) amended by No. 99/1995 s. 14(3)(c).
- S. 71(1)(c)(iv) inserted by No. 99/1995 s. 14(3)(c).
- S. 71(2) amended by No. 46/1998 s. 7(Sch. 1), substituted by No. 55/2006 s. 6(3).

(ii) is a body corporate, that any director or other officer of the body corporate who exercises or may exercise control over the health service establishment is not a fit and proper person to be such a proprietor, or to be a proprietor of the health service establishment if the registration is varied, or to exercise such control.

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

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

(1) The Secretary must decide whether to grant (whether or not subject to conditions) or to refuse to grant an application under section 70.

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

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

## 73 Certificate of approval in principle

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

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

- (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).

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)).

#### 74 Transfer or variation of certificate

- (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

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

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

S. 74(3)(a)  
substituted by  
No. 18/2004  
s. 6(a).

S. 74(3)(b)  
amended by  
No. 18/2004  
s. 6(b).

- (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.
- (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 under subsection (1)(a) of the certificate or any condition to which the certificate is subject; or
  - (b) the transfer under subsection (1)(b) of the certificate to that person.

## 75 Revocation of certificate

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

- (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.

- (2) Except as provided in subsection (1), section 76 or section 86, 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),  
18/2004 s. 7.

### 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 subsection (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).<sup>2</sup>

## Division 3—Registration

### 82 Application

- (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 subsection (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(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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; and
  - (d) if the applicant is a body corporate, whether 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 carry on or exercise control over the establishment; and
  - (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

S. 83(1)(c)(ii)  
amended by  
No. 55/2006  
s. 7(1).

S. 83(1)(d)  
amended by  
No. 55/2006  
s. 7(1).

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- (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 **S. 83(1)(k) amended by No. 99/1995 s. 16(1).**
- (l) whether all conditions to which the approval in principle is subject have been met; and **S. 83(1)(l) inserted by No. 99/1995 s. 16(1), amended by No. 55/2006 s. 7(2).**
- (m) the security of the applicant's tenure over the premises in which the applicant proposes to carry on the health service establishment; and **S. 83(1)(m) inserted by No. 55/2006 s. 7(3).**
- (n) if the applicant is or was previously a proprietor, or is or was previously a director of a body corporate that is or was previously a proprietor, of any other health service establishment, or is or was previously associated with any other health service establishment in a managerial capacity— **S. 83(1)(n) inserted by No. 55/2006 s. 7(3).**
- (i) the extent and nature of the applicant's involvement in the other health service establishment; and
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- (ii) the number of complaints, if any, that have been brought within the previous 3 years by or on behalf of residents of the other health service establishment (regardless of who received the complaints) and how the complaints have been dealt with; and
  - (iii) the financial management of the other health service establishment; and
  - (iv) the applicant's compliance with any reporting requirements under this Act that relate to the other health service establishment; and
  - (v) whether the applicant has carried on the other health service establishment in accordance with this Act, the regulations and, if the establishment is registered under this Act, any conditions to which the registration of the establishment is subject; and
  - (vi) whether the applicant has been convicted or found guilty of an offence under this Act or the regulations in relation to the other health service establishment; and
  - (vii) the capacity of the applicant to meet any requirements for the registration under this Act of the other health service establishment.
- (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.

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

#### 84 Decision on application

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

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

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

#### 85 Certificate of registration

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—

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

- (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

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

- (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—
  - (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

s. 86

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)).

(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. 86  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
18/2004 s. 8  
(LA s. 39B(1)).

## 86 Change of directors etc.

(1) 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(2)  
inserted by  
No. 18/2004  
s. 8.

(2) The Secretary may determine whether a person who is, or is appointed as, a director of or other officer having control over a proprietor that is a body corporate is a fit and proper person to carry on or exercise control over a health service establishment.

S. 86(3)  
inserted by  
No. 18/2004  
s. 8.

(3) In making a determination under subsection (2), the Secretary must consider any relevant criteria that the Secretary would be required to consider in determining whether an applicant under section 71 is a fit and proper person for the purposes of that section.

S. 86(4)  
inserted by  
No. 18/2004  
s. 8.

(4) If an approval in principle has been granted in respect of a health service establishment and the Secretary subsequently determines that a person referred to in subsection (2) is not a fit and proper person to carry on or exercise control over the health service establishment, the Secretary, by notice in writing given to the person, may revoke the certificate of approval in principle.

## 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 subsection (1), the proprietor is liable to pay—
- (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.

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

## 88 Renewal of registration

- (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 subsection (1)—
- (a) must be in the prescribed form; and
  - (b) must be accompanied—
    - (i) if the application is made at least three months before the expiration of the registration, by the prescribed fee; or

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

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

(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.

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

## 89 Criteria for renewal of registration

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

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- (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; and
- (g) the security of the proprietor's tenure over the premises in which the proprietor carries on the establishment will continue to enable the proprietor to carry on the establishment in those premises; and
- (h) the proprietor has been convicted or found guilty of an offence under this Act or the regulations; and
- (i) if the proprietor is or was previously a proprietor, or is or was previously a director of a body corporate that is or was previously a proprietor, of any other health service establishment, or is or was previously associated with any other health service establishment in a managerial capacity—
- (i) the extent and nature of the proprietor's involvement in the other health service establishment; and
- S. 89(f) amended by Nos 53/1990 s. 18(a), 55/2006 s. 8(1).
- S. 89(g) inserted by No. 55/2006 s. 8(2).
- S. 89(h) inserted by No. 55/2006 s. 8(2).
- S. 89(i) inserted by No. 55/2006 s. 8(2).

- (ii) the number of complaints, if any, that have been brought within the previous 3 years by or on behalf of residents of the other health service establishment (regardless of who received the complaints) and how the complaints have been dealt with; and
- (iii) the financial management of the other health service establishment; and
- (iv) the proprietor's compliance with any reporting requirements under this Act that relate to the other health service establishment; and
- (v) the proprietor has carried on the other health service establishment in accordance with this Act, the regulations and, if the health service establishment is registered under this Act, any conditions to which the registration of the health service establishment is subject; and
- (vi) the proprietor has been convicted or found guilty of an offence under this Act or the regulations in relation to the other health service establishment; and
- (vii) the proprietor has the capacity to meet any requirements for the registration under this Act of the other health service establishment.

## **90 Decision on application**

- (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(1)  
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.

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

### 91 Certificate of renewal

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

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

- (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).

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

### 92 Variation of registration

- (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 subsection (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

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

S. 92(2)(c)(ii)  
amended by  
No. 53/1990  
s. 16.

- (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.

S. 92(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

### 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.

(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.

S. 93(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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

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**94 Decision on application**

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

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

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

**95 Variation of registration without application**

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—

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

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.

s. 95A

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## 95A Cancellation of registration

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

S. 95A(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 cancellation of the registration of the establishment.
- (2) A person making application under subsection (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 subsection (1)—

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

- (a) the Secretary must cancel the registration of the health service establishment; and

S. 95A(3)(b)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
18/2004  
s. 9(1).

- (b) the proprietor must produce the certificate of registration or certificate of renewal of registration to the Secretary for cancellation.

S. 96  
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—

S. 96(a)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
18/2004  
s. 9(2).

- (a) the proprietor must produce the certificate of registration or certificate of renewal of registration to the Secretary for endorsement; and

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

- (b) the Secretary must cause the certificate to be endorsed with particulars of the variation, including any conditions to which it is subject.

### 97 Legal personal representatives

- (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(1) amended by No. 46/1998 s. 7(Sch. 1).
- (2) The Secretary must grant an application under subsection (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.
- S. 97(2) amended by No. 46/1998 s. 7(Sch. 1).
- (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.

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

### 99 Powers of Minister—supported residential services

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

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

**s. 100**

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

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

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

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

(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—

the Minister may do either or both of the following—

(c) censure the proprietor in accordance with section 100;

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

(d) direct that the admission of patients to the service be suspended in accordance with section 101.

## 100 Censure

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

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

(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.

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- (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**

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

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

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

**s. 102**

(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—

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

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

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

Penalty applying to this subsection: 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

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

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

S. 102(1)(ca)  
inserted 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

- (cb) 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 establishment has ceased to be or is not a fit and proper person to carry on or exercise control over the establishment—

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

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.

s. 103

### 103 Appointment of administrator of supported residential service

S. 103(1)  
amended by  
No. 88/1994  
s. 14(b).

(1) If—

S. 103(1)(a)  
amended by  
No. 88/1994  
s. 14(a).

(a) the Minister revokes, or serves notice of intention to revoke, the registration of a supported residential service; or

S. 103(1)(b)  
amended by  
Nos 88/1994  
s. 14(a),  
55/2006  
s. 9(1).

(b) the proprietor of a supported residential service does not apply for registration or renewal of registration; or

S. 103(1)(ba)  
inserted by  
No. 18/2004  
s. 10(1).

(ba) the Minister believes on reasonable grounds that the appointment of an administrator to a supported residential service is necessary to protect the interests of the residents of the service; or

S. 103(1)(c)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
55/2006  
s. 9(1).

(c) the Secretary refuses to approve an application for registration or renewal of the registration—

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.
- (2A) The function of an administrator of a supported residential service is—
- (a) to manage and operate the service, taking into account the principles set out in section 10; and
- (b) to ensure that suitable accommodation and special or personal care for residents of the service is provided at the service or, if necessary, by relocation to another service.
- (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
- (b) in any other case, for the period not exceeding 180 days determined by the Minister.
- (3A) Despite subsection (3)(b), before the expiry of the period for which the appointment of an administrator has effect, the Minister may extend the period of the appointment for a further period that the Minister considers to be reasonably required to complete the administration.
- (4) While the appointment of an administrator of a supported residential service has effect, an administrator, in the name of, or as agent of, the proprietor, may do such things as are necessary or desirable for the purpose of carrying out his or her function as an administrator.
- S. 103(2)**  
amended by  
**No. 88/1994**  
s. 14(a).
- S. 103(2A)**  
inserted by  
**No. 18/2004**  
s. 10(2).
- S. 103(3)(b)**  
amended by  
**No. 55/2006**  
s. 9(2).
- S. 103(3A)**  
inserted by  
**No. 55/2006**  
s. 9(3).
- S. 103(4)**  
amended by  
**No. 88/1994**  
s. 14(a)(b),  
substituted by  
**No. 18/2004**  
s. 10(3).

**s. 103**

**S. 103(4A)**  
inserted by  
No. 18/2004  
s. 10(3).

- (4A) Without limiting the generality of subsection (4), an administrator of a supported residential service may—
- (a) enter and occupy the service;
  - (b) manage and operate the service;
  - (c) put into place a financial management system in relation to the service including—
    - (i) receiving fees from or on behalf of a resident in respect of the resident's accommodation and care at the service;
    - (ii) receiving money from or on behalf of a resident as an allowance for a resident and appropriately distributing that money to the resident or using it for the benefit of the resident;
    - (iii) establishing and maintaining a trust account with a financial institution into which money received from or on behalf of residents may be paid;
    - (iv) making payments in relation to the exercise of any power referred to in this section;
  - (d) inspect and take possession of any document in connection with the operation and management of the service;
  - (e) use, repair or replace any equipment or facilities in the service;
  - (f) prepare and distribute to the residents for consumption any food stored at the service;
  - (g) enter into or renew any contract for the provision of goods or services or any lease contract or any contract of insurance in relation to the operation and management of the service;

(h) engage additional members of staff to work at the service.

(4B) In carrying out his or her function and exercising a power under this section, an administrator must comply with—

S. 103(4B)  
inserted by  
No. 18/2004  
s. 10(3).

(a) any direction given by the Secretary; and

(b) any guidelines issued by the Secretary in relation to administrators of supported residential services.

(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 or the use of premises for the purposes of carrying on the service continues in force despite the appointment.

S. 103(5)  
amended by  
Nos 88/1994  
s. 14(a)(b),  
18/2004  
s. 10(4).

(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.

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

Penalty: 100 penalty units.

(7) A person who suffers loss as a result of—

(a) the appointment of an administrator; and

(b) the operation of subsection (5) or (6)—

is entitled to be paid such compensation as the Minister, on the recommendation of the Secretary, determines.

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

Health Services Act 1988  
No. 49 of 1988  
Part 4—Health Service Establishments

**s. 104**

S. 103(7A)  
inserted by  
No. 55/2006  
s. 9(4).

- (7A) If a person is appointed as an administrator of a supported residential service, a person must not, without reasonable excuse, hinder or obstruct the administrator in carrying out his or her function or exercising a power under this section.

Penalty: 100 penalty units.

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.

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

- (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—

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

S. 103(10)  
inserted by  
No. 18/2004  
s. 10(5).

- (10) If a person has been appointed as an administrator of a supported residential service under this section, a resident of the service may make payments in relation to the resident's accommodation and care at the service to the administrator.

**Division 5—General**

**104 Notification of decisions by Chief General Manager**

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

- (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—

- (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).

- (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—

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

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

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

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

**104A Application deemed withdrawn**

S. 104A  
inserted by  
No. 18/2004  
s. 11.

- (1) If, in the course of considering an application made under this Part, the Secretary has made 2 or more requests for further information from the applicant and the applicant has failed to provide the requested information within 4 months after the second request and has not given notice to the Secretary under section 104(2), the Secretary may notify the applicant in writing that the application is deemed to be withdrawn unless the requests are complied with within 14 days after the notice is given to the applicant.

**s. 105**

- (2) An application is deemed to be withdrawn if, within 14 days after the Secretary gives the applicant a notice referred to in subsection (1), an applicant fails to comply with the requests for further information.

**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 subsection (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),  
18/2004  
s. 12(1)(2).

- (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 the resident's guardian or the resident's administrator, 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: 120 penalty units.

S. 106(2)  
amended by  
Nos 68/1996  
s. 29(1)(b),  
18/2004  
s. 12(2),  
substituted by  
No. 55/2006  
s. 10(1).

- (2) The statement prepared under subsection (1) must include—
- (a) the statement of matters referred to in that subsection; and
  - (b) a description of the requirements set out in sections 108HA, 108HB, 108M, 108Q and 108R; and

(c) the prescribed information.

Penalty: 120 penalty units.

- (3) The statement prepared under this section must be given to the resident within 48 hours after he or she becomes a resident and, if appropriate, to any relative of the resident or the resident's guardian or the resident's administrator or to any other person having an interest in the care of the resident.

S. 106(3) amended by No. 18/2004 s. 12(2)(3) (a)(b).

Penalty: 120 penalty units.

- (3A) The proprietor of a supported residential service must ensure that a statement prepared under this section does not include any information or matters that are inconsistent with a right or entitlement conferred, or an obligation imposed, on a resident of the supported residential service by this Act or any regulations made under this Act.

S. 106(3A) inserted by No. 55/2006 s. 10(2).

Penalty: 120 penalty units.

- (4) If any dispute arises between the proprietor and a resident or resident's guardian or resident's administrator 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), 18/2004 s. 12(4).

- (4A) Subsection (4B) applies if—

- (a) the statement prepared under this section includes a representation that purports to confer a right or entitlement, or to impose an obligation, on a resident of a supported residential service; and
- (b) that representation is not inconsistent with this Act or any regulations made under this Act.

S. 106(4A) inserted by No. 55/2006 s. 10(3).

**s. 106A**

**S. 106(4B)**  
inserted by  
No. 55/2006  
s. 12(3).

- (4B) If this subsection applies—
- (a) the representation prevails over anything to the contrary in—
    - (i) any agreement (written or otherwise) between the resident and the proprietor; or
    - (ii) any practice followed by the proprietor in the carrying on of the supported residential service; and
  - (b) the resident may rely on the representation in any dispute with the proprietor to which the representation is relevant.

**S. 106(5)**  
inserted by  
No. 18/2004  
s. 12(5).

- (5) The statement prepared under this section must be—
- (a) signed by the proprietor as soon as practicable; and
  - (b) signed and returned to the proprietor as soon as practicable after the statement is received under subsection (3) by the resident or the resident's guardian or resident's administrator.

**S. 106A**  
inserted by  
No. 18/2004  
s. 13.

**106A Resident's interim and on-going care plans**

- (1) Within 48 hours after a person becomes a resident of a supported residential service, the proprietor of the service must cause to be prepared in relation to the resident a written document to be called the resident's interim care plan that includes—
- (a) the immediate health and special or personal care needs of the resident; and
  - (b) the services to be provided to the resident to assist with those needs.

Penalty: 120 penalty units.

- (1A) The proprietor must ensure that a resident's interim care plan is carried out as prepared.

Penalty: 120 penalty units.

**S. 106A(1A)**  
inserted by  
**No. 55/2006**  
s. 11.

- (2) Within 30 days after a person becomes a resident, the proprietor, in consultation with the resident and, if appropriate, a relative of the resident or the resident's guardian, must cause the resident's interim care plan to be reviewed and expanded into a written document to be called the resident's on-going care plan that includes—

- (a) the on-going health and special or personal care needs of the resident; and  
(b) the services to be provided to the resident to assist with those needs.

Penalty: 120 penalty units.

- (3) The proprietor must cause a resident's on-going care plan to be reviewed and updated at least once every 6 months.

Penalty: 120 penalty units.

- (4) If the resident's health and special or personal care needs change, the on-going care plan must be reviewed and changed as necessary to meet those changed needs of the resident.

- (5) The proprietor must ensure that any change to a resident's on-going care plan is prepared in consultation with the resident and, if appropriate, a relative of the resident or the resident's guardian.

Penalty: 120 penalty units.

- (6) The proprietor must ensure that consultation occurs with the resident's health service providers in the preparation of—

**s. 106B**

- (a) a resident's on-going care plan; and
- (b) any changes made to that plan.

Penalty: 120 penalty units.

- (7) The proprietor must ensure that a resident's on-going care plan is carried out as prepared.

Penalty: 120 penalty units.

- (8) When so requested, the proprietor must cause a resident's interim care plan, on-going care plan and any changes made to either plan to be available to—

- (a) the resident;
- (b) the resident's guardian;
- (c) staff at the supported residential service;
- (d) the resident's health service providers.

Penalty: 120 penalty units.

S. 106B  
inserted by  
No. 18/2004  
s. 13.

**106B Information for prospective residents**

The proprietor of a supported residential service must provide prospective residents who seek information about the service with a document containing information in respect of prescribed matters.

Penalty: 10 penalty units.

S. 106C  
inserted by  
No. 55/2006  
s. 12.

**106C Notice to vacate**

- (1) If the proprietor of a supported residential service proposes to cease conducting or carrying out business as a supported residential service at the premises, the proprietor must, at least 28 days before the proposed date of cessation, give a written notice requiring residents to vacate the service—

- (a) to each resident of the supported residential service; and
- (b) to the resident's administrator or resident's guardian, if any.

Penalty: 120 penalty units.

- (2) If the proprietor of a supported residential service gives a written notice under subsection (1), the proprietor must inform the resident's next of kin of that fact.

Penalty: 120 penalty units.

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

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 subsection (1) is an indictable offence.

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

**s. 108**

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—

the Secretary must—

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

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 subsection (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 subsection (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.

Penalty: 240 penalty units.

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)).

**s. 108E**

**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.

**S. 108F(1A)**  
inserted by  
No. 18/2004  
s. 14(1).

- (1A) The proprietor of a supported residential service must maintain an accurate and up to date record of the particulars of any injury or incident that occurs to a resident.

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 and resident's guardian (if any) and next of kin of a resident are informed as soon as practicable of the death of the resident.

S. 108F(4)  
amended by  
No. 18/2004  
s. 14(2).

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;

\* \* \* \* \*

S. 108F(5)  
def. of  
*next of kin*  
inserted by  
No. 18/2004  
s. 14(3)(c),  
repealed by  
No. 55/2006  
s. 13.

\* \* \* \* \*

S. 108F(5)  
def. of  
*resident's  
administrator*  
repealed by  
No. 18/2004  
s. 14(3)(a).

s. 108G

S. 108F(5)  
def. of  
*resident's  
guardian*  
repealed by  
No. 18/2004  
s. 14(3)(b).

\* \* \* \* \*

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

**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 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)),  
substituted by  
Nos 18/2004  
s. 15, 55/2006  
s. 14.

**108H Money of a resident**

In sections 108HA and 108HB, *money of a resident* of a supported residential service does not include money paid to the proprietor of the service on account of fees and expenses payable by the resident for accommodation or services provided by the proprietor.

S. 108HA  
inserted by  
No. 55/2006  
s. 14.

**108HA Management or control of resident's money by proprietor**

- (1) A proprietor of a supported residential service must not manage or control money of a resident without the written consent of the resident or the resident's administrator.

Penalty: 240 penalty units.

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- (2) A proprietor who manages or controls money of a resident must not manage or control more than the prescribed amount of that money at any one time.

Penalty: 240 penalty units.

- (3) A proprietor who manages or controls money of a resident must—

(a) keep a copy of the written consent for that management or control; and

(b) maintain an accurate and up to date record of—

(i) any money that the proprietor manages or controls; and

(ii) any expenditure by the proprietor of any money on behalf of the resident; and

(c) ensure that records kept under paragraph (b) individually itemise each transaction made on behalf of the resident.

Penalty: 240 penalty units.

- (4) A proprietor who manages or controls money of a resident must ensure that all expenses and fees charged to the resident are individually itemised and explained to the resident or the resident's administrator.

Penalty: 240 penalty units.

- (5) A proprietor who manages or controls money of a resident must ensure that a record in respect of all money received by the proprietor on behalf of the resident is provided to the resident or the resident's administrator upon request.

Penalty: 240 penalty units.

- (6) A proprietor who manages or controls money of a resident must provide the resident or the resident's administrator upon request with a statement at least once every 3 months setting out any income received and expenditure incurred on behalf of a resident since the previous statement.

Penalty: 240 penalty units.

- (7) A proprietor who manages or controls money of a resident must, upon request, give access to the resident's financial records held by the proprietor to the resident or the resident's administrator.

Penalty: 240 penalty units.

S. 108HB  
inserted by  
No. 55/2006  
s. 14.

**108HB Proprietor may give directions relating to resident's money**

- (1) In managing or controlling money of a resident under section 108HA, a proprietor of a supported residential service may direct employees of the service to handle or deal with the money.
- (2) A proprietor of a supported residential service must not give directions under subsection (1) in relation to the money of a particular resident of the service—
- (a) if the proprietor does not have the written consent of that resident or that resident's administrator to manage or control that money; or
- (b) requiring or allowing an employee to do anything that would, if done by the proprietor, contravene section 108HA.

Penalty: 240 penalty units.

- (3) An employee of a supported residential service must only handle or deal with money of a resident in accordance with directions given to the employee under subsection (1).

Penalty: 240 penalty units.

- (4) Except as provided by subsection (1), a proprietor of a supported residential service must not give a direction to handle, deal with, manage or control money of a resident to a close associate of the proprietor.

Penalty: 240 penalty units.

- (5) Except as provided by subsection (3), a close associate of a proprietor of a supported residential service must not handle, deal with, manage or control money of a resident of the service.

Penalty: 240 penalty units.

**108HC Proprietor to give notice of sections 108HA and 108HB**

S. 108HC  
inserted by  
No. 55/2006  
s. 14.

- (1) This section applies in respect of each person who is a resident, or close associate of the proprietor, of a supported residential service on the commencement of section 14 of the **Health Services (Supported Residential Services) Act 2006**.
- (2) A proprietor of a supported residential service must, within 28 days after the commencement of section 14 of the **Health Services (Supported Residential Services) Act 2006**, give notice of the requirements of sections 108HA and 108HB—
- (a) to each resident of the service in respect of whom this section applies; and
  - (b) if any, to the next of kin, resident's guardian or resident's administrator of each resident of the service in respect of whom this section applies; and

**s. 108HD**

(c) to each close associate in respect of whom this section applies who is actively involved or employed in the service.

(3) A notice under subsection (2) must include a description of the requirements set out in sections 108HA and 108HB.

S. 108HD  
inserted by  
No. 55/2006  
s. 14.

**108HD Proprietor or close associate not to be resident's administrator or resident's guardian**

A proprietor of a supported residential service or a close associate of the proprietor must not accept appointment as a resident's administrator or resident's guardian in respect of any resident of the supported residential service of which he or she is proprietor or a close associate of the proprietor.

Penalty: 240 penalty units.

S. 108I  
inserted by  
No. 73/1997  
s. 8 (as  
amended by  
No. 13/1998  
s. 14(7)(a)(b)).

**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
  - (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.

**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. 108J  
inserted by  
No. 73/1997  
s. 8 (as  
amended by  
No. 13/1998  
s. 14(8)).

**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. 108K  
inserted by  
No. 73/1997  
s. 8 (as  
amended by  
No. 13/1998  
s. 14(9)).

**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.

S. 108L  
inserted by  
No. 73/1997  
s. 8 (as  
amended by  
No. 13/1998  
s. 14(10)).

- (2) The proprietor of a supported residential service must not appoint or continue to employ a person 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
- (aa) is not a fit and proper person, having regard to guidelines issued by the Secretary in relation to the employment of persons in a supported residential service; or

S. 108L(2)(aa)  
inserted by  
No. 18/2004  
s. 16.

s. 108M

- (b) is not physically or intellectually capable of adequately performing the work required of him or her.

Penalty: 240 penalty units.

S. 108M  
inserted by  
No. 55/2006  
s. 15.

**108M Prohibited and reportable transactions**

- (1) In sections 108N, 108O, 108P, 108Q and 108R—

*prohibited transaction* means any of the following—

- (a) a gift from a resident of a supported residential service, other than a gift the value of which is less than \$100 or, if the regulations prescribe a different amount, which is less than that amount;
- (b) a transfer (by way of sale or exchange) of real or personal property from a resident of a supported residential service for less than market value;
- (c) a sale of real or personal property to a resident of a supported residential service for more than market value;
- (d) subject to subsection (2), a transaction with a resident of a supported residential service, other than a transaction referred to in paragraphs (a) to (c), the value of which exceeds \$100 (or, if the regulations prescribe a different amount, which exceeds that amount) that is not evidenced in a written agreement signed by the parties;

- (e) subject to subsection (2), a transaction with a resident of a supported residential service, other than a transaction referred to in paragraphs (a) to (c), the value of which exceeds \$500 (or, if the regulations prescribe a different amount, which exceeds that amount) in relation to which the resident or the resident's administrator has not obtained independent financial or legal advice;

***reportable transaction*** means any transaction between a proprietor of a supported residential service, or a close associate of a proprietor, and a resident of the service that involves real or personal property the value of which exceeds \$100 or, if the regulations prescribe a different amount, which exceeds that amount, other than a transaction at market value that relates only to the provision of accommodation or special or personal care to the resident in accordance with this Act.

- (2) A transaction referred to in paragraph (d) or (e) of the definition of ***prohibited transaction*** in subsection (1) is not a prohibited transaction if the transaction relates only to the provision of accommodation or special or personal care to a resident of a supported residential service in accordance with this Act.

**108N Proprietor or close associate not to enter into prohibited transactions**

A proprietor of a supported residential service, or a close associate of a proprietor, must not enter into a prohibited transaction with a resident of the service.

Penalty: 240 penalty units.

S. 108N  
inserted by  
No. 55/2006  
s. 15.

**s. 108O**

S. 108O  
inserted by  
No. 55/2006  
s. 15.

**108O Proprietor to give notice of sections 108M, 108P,  
108Q and 108R**

- (1) Subsection (2) applies in respect of each person who is a resident or close associate of the proprietor of a supported residential service on the commencement of section 15 of the **Health Services (Supported Residential Services) Act 2006**.
- (2) A proprietor of a supported residential service must, within 28 days after the commencement of section 15 of the **Health Services (Supported Residential Services) Act 2006**, give notice of what constitutes a prohibited transaction and a reportable transaction under section 108M and of the requirements of sections 108P, 108Q and 108R—
  - (a) to each resident of the service in respect of whom this section applies; and
  - (b) if any, to the next of kin, resident's guardian or resident's administrator of each resident of the service in respect of whom this section applies; and
  - (c) to each close associate in respect of whom this section applies who is actively involved or employed in the service.

S. 108P  
inserted by  
No. 55/2006  
s. 15.

**108P Reportable transactions**

- (1) A proprietor of a supported residential service, or a close associate of a proprietor, must, in accordance with this section, give notice to the Secretary of any reportable transaction to which the proprietor or close associate is a party within the reporting period.

Penalty: 240 penalty units.

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- (2) A notice under subsection (1) must be in writing and include—
- (a) if there is one, a copy of the written agreement for the reportable transaction; or
  - (b) if the reportable transaction involves property the value of which exceeds \$500, or, if the regulations prescribe a different amount, which exceeds that amount, evidence of—
    - (i) the market value of the property involved in the reportable transaction; and
    - (ii) the independent financial or legal advice obtained by the resident or the resident's administrator in respect of the reportable transaction.
- (3) In this section, *reporting period* means the period of 14 days after the entering into of a reportable transaction, or if a different period is prescribed by the regulations, that period.

**108Q Cooling off period**

- (1) A resident of a supported residential service may rescind a transaction between the resident and the proprietor, or a close associate of the proprietor, of the supported residential service that relates to real or personal property within the cooling off period.
- (2) A proprietor of a supported residential service, or a close associate of the proprietor, who is a party to a transaction must not, during the cooling off period, have any other dealings with the property to which the transaction relates.

Penalty: 240 penalty units.

S. 108Q  
inserted by  
No. 55/2006  
s. 15.

**s. 108R**

- (3) In this section, *cooling off period*, in relation to a transaction, whether or not a prohibited or reportable transaction, means the period ending 5 days after the day on which the transaction was entered into.
- (4) This section applies despite anything to the contrary in any Act.

S. 108R  
inserted by  
No. 55/2006  
s. 15.

**108R Remedies**

- (1) This section applies to a resident of a supported residential service—
  - (a) who is a party to a prohibited transaction; or
  - (b) whose real or personal property has been dealt with by a proprietor, or a close associate of a proprietor, in contravention of section 108Q(2).
- (2) A resident to whom this section applies may apply to a court of competent jurisdiction for a declaration that the transaction which the resident entered into with the proprietor, or close associate of the proprietor, of the relevant supported residential service is void.
- (3) If the transaction relates to real or personal property that is no longer in the possession of the proprietor, or close associate of the proprietor, the resident may also apply to the court referred to in subsection (2) to recover the value of the property, less any consideration already received by the resident, as a debt from the proprietor or the close associate.
- (4) If the transaction relates to real or personal property that is still in the possession of the proprietor, or close associate of the proprietor, the resident may also apply to the court referred to in subsection (2) for an order that the proprietor or close associate return the property to the resident.

- (5) The rights of a resident under this section are in addition to any other rights which the resident may hold under any other Act or the common law or at equity.

**108S Proprietor to notify Secretary of offences**

S. 108S  
inserted by  
No. 55/2006  
s. 15.

- (1) If the proprietor of a supported residential service becomes aware that a close associate of the proprietor has engaged in, or is engaging in, conduct that constitutes an offence under this Part, the proprietor must, within 2 days after becoming aware of the conduct, notify the Secretary of the conduct, and in doing so provide information about the identity of the relevant close associate.

Penalty: 10 penalty units.

- (2) In this section, *engage in conduct* means—
- (a) to do an act; or
  - (b) omit to do an act.

**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.

- (1A) The proprietor of a health service establishment must, for the prescribed period, retain—
- (a) any document or record that the proprietor is required to prepare under this Act or the regulations; and
  - (b) any other document or record prescribed for the purposes of this Act.

S. 109(1A)  
inserted by  
No. 55/2006  
s. 16(1).

**s. 110**

S. 109(2)  
amended by  
Nos 13/1998  
s. 5, 55/2006  
s. 16(2)(a)(b).

- (2) A person must not during the prescribed period destroy or damage any document or record kept for the purposes of subsection (1) or (1A).

Penalty: 120 penalty units.

S. 109(3)  
inserted by  
No. 18/2004  
s. 17.

- (3) The proprietor of a supported residential service must cause to be kept in accordance with subsection (4)—

- (a) a list of current residents and corresponding room numbers; and  
(b) a current staff roster.

Penalty: 120 penalty units.

S. 109(4)  
inserted by  
No. 18/2004  
s. 17.

- (4) Any record kept for the purposes of subsection (3) must be in a format that is readily accessible for inspection by an authorised officer or a community (residential services) visitor.

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) (ILA  
s. 39B(1)).

**110 Reviews**

- (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

S. 110(1)(c)  
amended by  
No. 88/1994  
s. 16.

- (d) to suspend admissions to a supported residential service; or

S. 110(1)(d)  
amended by  
No. 88/1994  
s. 16.

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- (e) to revoke the registration of a health service establishment; or
- (f) to appoint an administrator of a supported residential service; or
- (fa) to extend the period of the appointment of 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**
- The proprietor of a health service establishment must not carry on the establishment if—
- (a) the establishment is not registered under this Part; or
- S. 110(1)(f) amended by No. 88/1994 s. 16.
- S. 110(1)(fa) inserted by No. 55/2006 s. 17.
- 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).
- S. 111 amended by Nos 13/1998 s. 6, 46/1998 s. 7(Sch. 1).

**s. 112**

S. 111(b)  
amended by  
No. 18/2004  
s. 18.

(b) the proprietor is not the holder for the time being of the certificate of registration of the establishment or a certificate of renewal 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.

S. 112  
amended by  
Nos 13/1998  
s. 7, 46/1998  
s. 7(Sch. 1).

**112 Offence to provide excess beds or accommodation**

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.

**114 Offence to contravene condition of registration**

S. 114  
amended by  
No. 13/1998  
s. 8.

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**

- (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.

S. 115(1)  
amended by  
Nos 99/1995  
s. 18(a),  
13/1998 s. 9.

Penalty: 120 penalty units.

- (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.

Health Services Act 1988  
No. 49 of 1988  
Part 4—Health Service Establishments

**s. 115**

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**S. 115(3)**  
**inserted by**  
**No. 53/1990**  
**s. 19,**  
**amended by**  
**Nos 99/1995**  
**s. 18(c),**  
**13/1998 s. 9.**

- (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.

Penalty: 120 penalty units.

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**PART 4A—MULTI PURPOSE SERVICES**

Pt 4A  
(Heading and  
ss 115A–  
115V)  
inserted by  
No. 99/1995  
s. 6.

**115A Declaration and incorporation**

S. 115A  
inserted by  
No. 99/1995  
s. 6.

(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(1)  
amended by  
No. 68/1996  
s. 30.

(1A) Without limiting subsection (1), an Order made under that subsection may provide that on and from the date specified in the Order as the date on which the Order takes effect—

S. 115A(1A)  
inserted by  
No. 66/1998  
s. 11(1).

- (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).

Health Services Act 1988  
No. 49 of 1988  
Part 4A—Multi Purpose Services

**s. 115A**

**S. 115A(1B)**  
inserted by  
No. 66/1998  
s. 11(1).

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- (1B) An Order under subsection (1) has effect as if, on and from the date specified in the Order as the date on which the Order takes effect—
- (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—
- (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.
- (4) On and from the date on which an Order referred to in subsection (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. 115A(3)  
inserted by  
No. 66/1998  
s. 11(2).

S. 115A(4)  
inserted by  
No. 66/1998  
s. 11(3).

**s. 115B**

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**

- (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.

S. 115D  
inserted by  
No. 99/1995  
s. 6.

**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

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- (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 service.

**115E Board of management**

S. 115E  
inserted by  
No. 99/1995  
s. 6.

- (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.

s. 115F

- (5) If the board does not submit a name or names for the purposes of subsection (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 subsection.
- (6) The members of a board shall be appointed by the Governor in Council.
- (7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies 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)), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 96.8), 80/2006 s. 26(Sch. item 48.5).

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.

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**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.
- (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

S. 115H  
inserted by  
No. 99/1995  
s. 6.

S. 115H(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

s. 115I

- (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**.

S. 115JA  
inserted by  
No. 52/2004  
s. 43.

#### **115JA Immunity**

- (1) A member of a board of a multi purpose service is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a member of the board of a multi purpose service attaches instead to the multi purpose service.

\* \* \* \* \*

S. 115K  
inserted by  
No. 99/1995  
s. 6,  
repealed by  
No. 52/2004  
s. 44.

**115L Validity of acts or decisions**

S. 115L  
inserted by  
No. 99/1995  
s. 6.

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.

**115M Secretary may give directions**

S. 115M  
inserted by  
No. 99/1995  
s. 6,  
amended by  
No. 46/1998  
s. 7(Sch. 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 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.

**115N Rules of multi purpose service**

S. 115N  
inserted by  
No. 99/1995  
s. 6,  
amended by  
No. 66/1998  
s. 16.

A multi purpose service must not—

- (a) change its name; or
- (b) change its objects; or
- (c) make, amend or alter its by-laws—

without the approval in writing of the Secretary.

**s. 1150**

S. 1150  
inserted by  
No. 99/1995  
s. 6.

**1150 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**

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.

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**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—

before deciding whether or not to recommend the appointment of an administrator.

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- (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 subsection (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.
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**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 subsection (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 subsection (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 subsection (4)—
  - (a) the multi purpose service shall be closed subject to and in accordance with the directions contained in the Order; and

**s. 115T**

- (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.
- (4) The Minister, on the advice of the Secretary, may approve the agreement.

S. 115T(2)  
amended by  
No. 66/1998  
s. 16.

S. 115T(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 115T(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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**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 subsection (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—
- as the case requires; and

S. 115U(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

s. 115U

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- (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

S. 115U(2)(d)  
amended by  
No. 66/1998  
s. 11(4).

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- (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 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—
- continues to have effect according to its tenor as if the trust were in relation to the new body.
- (3) An Order under subsection (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) Subsection (2), as amended by section 11(4) of the **Health Services (Further Amendment) Act 1998**, has effect with respect to—
- (a) an Order made under subsection (1) before the commencement of that section of that Act; and
- S. 115U(2)(e) inserted by No. 66/1998 s. 11(4).
- S. 115U(2)(f) inserted by No. 66/1998 s. 11(4).
- S. 115U(4) inserted by No. 66/1998 s. 11(5).

(b) an instrument of a kind referred to in subsection (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 subsection (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.

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- (4) The by-laws of a multi purpose service referred to in subsection (2) are its by-laws as existing immediately before the appointed day as amended from time to time.
- (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

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).

s. 115V

(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(7)  
inserted by  
No. 66/1998  
s. 11(7).

(7) Subsection (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 subsection (2) of this section deemed to have been made; and
- (b) an instrument of a kind referred to in subsection (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
  - (iv) any failure by the proprietor of the hospital or service to comply with the provisions of this Act; 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).

**s. 118**

S. 117(b)(v)  
amended by  
Nos 53/1990  
s. 20(a)(ii),  
18/2004 s. 19.

- (v) any complaint made to a visitor by a resident of the hospital or service or on behalf of 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(c)(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).

- (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) Subsection (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 subsection (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.
- Penalty applying to this subsection: 25 penalty units.

### 121 Request to see a visitor

- (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.

**s. 122**

- (2) The person in charge, within 7 days after receiving a request under subsection (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.
- (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 Administration Act 2004**.
- (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.
- \*                    \*                    \*                    \*                    \*
- (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  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 96.9).

S. 124(3)(b)  
amended by  
Nos 53/1990  
s. 20(j),  
51/2001  
s. 6(a).

S. 124(3)(c)  
repealed by  
No. 51/2001  
s. 6(b).

**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) Unless subsection (2) applies, a person who is or has been, at any time, a community visitor must not, either directly or indirectly—

- (a) make a record of; or
- (b) divulge or communicate to any person; or
- (c) make use of—

any information, that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—

- (d) to perform any official duties; or
- (e) to perform or exercise any function or power under this Act.

Penalty: 50 penalty units.

- (2) Subsection (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 subsection; or

S. 126(1)  
substituted by  
No. 51/2001  
s. 7.

- (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.

**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.

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**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.
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**PART 6—HEALTH PURCHASING VICTORIA**

**Division 1—Establishment**

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),  
new Pt 6  
(Heading and  
ss 129–134N)  
inserted by  
No. 18/2001  
s. 8.

**129 Establishment of Health Purchasing Victoria**

New s. 129  
inserted by  
No. 18/2001  
s. 8.

- (1) Health Purchasing Victoria is established.
- (2) HPV—
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue and be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all things that a body corporate may, by law, do and suffer.
- (3) The common seal must be kept as directed by HPV and must not be used except as authorised by HPV.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the seal was properly affixed.

New s. 130  
inserted by  
No. 18/2001  
s. 8.

### **130 HPV represents the Crown**

HPV is a public authority that represents the Crown and holds its property on behalf of the Crown.

#### **Division 2—General functions and powers**

New s. 131  
inserted by  
No. 18/2001  
s. 8.

### **131 Functions of HPV**

HPV has the following functions—

- (a) to supply or facilitate access to the supply of goods and services to public hospitals and other health or related services on best value terms;
- (b) in relation to the supply of goods and services to public hospitals and the management and disposal of goods by public hospitals—
  - (i) to develop, implement and review policies and practices to promote best value and probity; and
  - (ii) to provide advice, staff training and consultancy services;
- (c) to provide advice, staff training and consultancy services in relation to the supply of goods and services to, and the management and disposal of goods by, health or related services other than public hospitals;
- (d) to monitor compliance by public hospitals with purchasing policies and HPV directions and to report irregularities to the Minister;
- (e) to foster improvements in the use and application of purchasing systems and trading by electronic transactions by health or related services;

- (f) to establish and maintain a database of purchasing data of public hospitals and supply markets for access by public hospitals;
- (g) to ensure that probity is maintained in purchasing, tendering and contracting activities in public hospitals;
- (h) any other functions conferred on HPV by this or any other Act.

**132 Powers of HPV**

New s. 132  
inserted by  
No. 18/2001  
s. 8.

- (1) HPV has all the powers necessary to perform its functions.
- (2) Without limiting subsection (1), HPV may—
  - (a) enter into contracts or arrangements, including joint ventures, on its own behalf or on behalf of one or more health or related services;
  - (b) call and award tenders and advertise;
  - (c) give written directions to one or more public hospitals—
    - (i) relating to the purchase of goods and services by public hospitals and the management and disposal of goods by public hospitals;
    - (ii) to ensure that probity is maintained in purchasing, tendering and contracting activities;
  - (d) require the chief executive officer of a public hospital to audit compliance with purchasing policies and HPV directions and provide audit reports to HPV;

- (e) require the chief executive officer of a public hospital to provide HPV with information and data relating to the supply of goods and services and the management and disposal of goods;
  - (f) employ staff, appoint agents and act as agent;
  - (g) establish advisory committees to assist HPV in the performance of its functions;
  - (h) exercise any other powers conferred on HPV by this or any other Act.
- (3) A public hospital must comply with an HPV direction that applies to it, except to the extent that the direction is inconsistent with the terms of any contract that was entered into by the public hospital before the direction was given to the hospital by HPV.
- (4) The chief executive officer of a public hospital must provide to HPV on request within 28 days or any longer period specified in the request—
- (a) audit reports referred to in subsection (2)(d);
  - (b) information and data referred to in subsection (2)(e).

New s. 133  
inserted by  
No. 18/2001  
s. 8.

**133 Factors to which HPV must have regard in performing functions and exercising powers**

In performing functions and exercising powers under this Act, HPV must have regard to each of the following matters—

- (a) the clinical needs of patients and other users of health or related services;
- (b) the ability of suppliers to supply goods and services required by health or related services;

- (c) the price, quality and accessibility of goods and services supplied or proposed to be supplied to health or related services;
- (d) the individual conditions and requirements of health or related services;
- (e) the effect of tendering and contracting processes on the viability of small and medium-sized businesses;
- (f) local employment growth or retention.

### **Division 3—Purchasing policies**

#### **134 Purchasing policies**

New s. 134  
inserted by  
No. 18/2001  
s. 8.

- (1) HPV may prepare, make, amend and revoke instruments, to be known as "purchasing policies", with respect to policies and practices (including probity) relating to the supply of goods and services to public hospitals and the management and disposal of goods by public hospitals.
- (2) A purchasing policy—
  - (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstance;
  - (c) may confer a discretionary authority or impose a duty on a specified person or class of persons;
  - (d) may leave anything to be approved by or to the satisfaction of a specified person or class of persons;
  - (e) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—

**s. 134A**

- (i) wholly or partially or as amended by the policy; or
  - (ii) as formulated, issued, prescribed or published at the time the policy is made or at any time before then; or
  - (iii) as formulated, issued, prescribed or published from time to time;
- (f) may provide in a specified case or class of cases for the exemption of public hospitals or classes of public hospitals from any of the provisions of the policy, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (3) A public hospital must comply with each purchasing policy to the extent that it applies to the public hospital.

S. 134A  
inserted by  
No. 18/2001  
s. 8,  
amended by  
No. 42/2005  
s. 13.

**134A HPV may exempt public hospitals from policies**

HPV may, by notice published in the Government Gazette, exempt a public hospital or a class of public hospital from complying with a purchasing policy or part of a purchasing policy.

S. 134B  
inserted by  
No. 18/2001  
s. 8.

**134B Procedure for making and notification of purchasing policies**

- (1) HPV must give written notice of its intention to make, amend or revoke a purchasing policy to—
- (a) each public hospital that will be affected by the making, amendment or revocation; and
  - (b) any other person that HPV considers will be affected by the making, amendment or revocation.

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- (2) HPV may give the notice referred to in subsection (1) by publishing it in a newspaper generally circulating in Victoria or in any other manner that HPV considers is likely to bring the notice to the attention of the relevant person.
- (3) The notice must—
- (a) contain a copy of the proposed policy or amendment (or in the case of a proposed revocation, the policy proposed to be revoked) or specify where a copy can be obtained; and
  - (b) invite comments or submissions within the time (being not less than 14 days after the giving or publication of the notice) specified in the notice.
- (4) In making, amending or revoking a policy, HPV must take into account any comments or submissions made within the time specified in the notice.
- (5) HPV must cause notice of the making, amendment or revocation of a policy to be forwarded to the Minister and published in the Government Gazette.
- (6) HPV must include in its report of operations for a financial year under Part 7 of the **Financial Management Act 1994**—
- (a) details of the making, amendment or revocation of any purchasing policies during the financial year; and
  - (b) a list of all purchasing policies in force at any time during the financial year; and
  - (c) details of any purchasing policy or part of a purchasing policy disallowed by the Minister during the financial year.

**s. 134C**

S. 134C  
inserted by  
No. 18/2001  
s. 8.

**134C Disallowance of purchasing policies**

- (1) The Minister may at any time, by notice in writing given to HPV and published in the Government Gazette, disallow a purchasing policy or part of a purchasing policy.
- (2) The disallowance takes effect on the publication of the notice.
- (3) Subject to subsection (4), if a purchasing policy or part of a purchasing policy is disallowed, the disallowance has the same effect as a revocation of the purchasing policy or part.
- (4) If a purchasing policy or part of a purchasing policy is disallowed—
  - (a) any purchasing policy or part that had been revoked by the disallowed purchasing policy or part is revived as from the beginning of the day on which the purchasing policy or part was disallowed; and
  - (b) any purchasing policy or part that had been amended by the disallowed purchasing policy or part takes effect without that amendment as from the beginning of the day on which the purchasing policy or part was disallowed in all respects as if the disallowed purchasing policy or part had not been made.

**Division 4—Membership and procedure**

S. 134D  
inserted by  
No. 18/2001  
s. 8,  
amended by  
Nos 52/2004  
s. 45, 108/2004  
s. 117(1)  
(Sch. 3  
item 96.10),  
substituted by  
No. 42/2005  
s. 14.

**134D Members of HPV**

- (1) HPV consists of the following members appointed by the Governor in Council on the recommendation of the Minister—
  - (a) a chairperson who, in the Minister's opinion has knowledge of or experience in purchasing, logistics or supply chain management;

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- (b) the chief executive officer of a public health service (other than a public hospital referred to in paragraph (c)(ii));
  - (c) the chief executive officer of a public hospital that—
    - (i) is listed in Schedule 1; or
    - (ii) was an old public hospital within the meaning of section 232 and became a public health service on or after 1 July 2004;
  - (d) a person employed in the Department who is nominated by the Secretary to the Department;
  - (e) a person employed in the Department administered by the Treasurer who is nominated by the Secretary to that Department;
  - (f) between 3 and 7 people who, in the opinion of the Minister, have knowledge, skills or experience relevant to the functions of HPV.
- (2) In making recommendations for appointment to the Governor in Council, the Minister must ensure that HPV has—
- (a) adequate knowledge and understanding of the operations and perspectives of rural and metropolitan public health services and hospitals; and
  - (b) expertise in financial management.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 134D(3)  
substituted by  
No. 80/2006  
s. 26(Sch.  
item 48.6).

s. 134E

- (4) Despite the reconstitution of the membership of HPV under section 14 of the **Health Legislation (Miscellaneous Amendments) Act 2005**—
- (a) HPV is deemed to be the same body after as before its reconstitution under that section; and
  - (b) a person who was a member of HPV immediately before the commencement of that section continues to be a member of HPV subject to and in accordance with this Act.

S. 134E  
inserted by  
No. 18/2001  
s. 8.

#### 134E Terms and conditions

- (1) A member of HPV 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 HPV is entitled to be paid—
  - (a) reasonable expenses incurred in holding office as member; and
  - (b) such remuneration as is specified in the instrument of appointment.
- (3) Subsection (2)(b) does not apply to a member who is—
  - (a) employed by a public health service or a hospital listed in Schedule 1; or
  - (b) an employee in the public service within the meaning of the **Public Administration Act 2004**.

S. 134E(3)(a)  
amended by  
No. 52/2004  
s. 46.

S. 134E(3)(b)  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 96.11).

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**134F Removal and resignation**

- (1) A member of HPV may resign by writing signed by that person and delivered to the Governor in Council.
- (2) If a member referred to in section 134D(1)(b) or (c) ceases to be employed by a public health service or a hospital listed in Schedule 1 (as the case may be) or a member referred to in section 134D(1)(d) or (e) ceases to be employed by the relevant Department, the office of the member becomes vacant on the day that is 3 months after the day on which the member ceased to be so employed.
- (3) The Governor in Council, on the recommendation of the Minister, may remove a member, or all members, from office.
- (4) The Minister must recommend the removal of a member if the Minister is satisfied that the member—
  - (a) is physically or mentally unable to fulfil the role of member; or
  - (b) has been convicted or found guilty of an offence, the commission of which, in the Minister's opinion, makes the person unsuitable to be a member; or
  - (c) has been absent, without leave of HPV, from all meetings of HPV held during a period of 6 months; or
  - (d) is an insolvent under administration within the meaning of the Corporations Act.

S. 134F  
inserted by  
No. 18/2001  
s. 8.

S. 134F(2)  
amended by  
No. 52/2004  
s. 47.

S. 134F(4)(d)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 61.8).

**s. 134G**

S. 134G  
inserted by  
No. 18/2001  
s. 8.

**134G Procedure of HPV**

- (1) The chairperson of HPV, or in his or her absence a member elected by the members present, must preside at a meeting of HPV.
- (2) A majority of members of HPV for the time being constitutes a quorum of HPV.
- (3) The person presiding at a meeting of HPV has a deliberative vote and, if voting is equal, a second or casting vote.
- (4) Except as otherwise provided in this Division, the procedure of HPV is in the discretion of HPV.

S. 134H  
inserted by  
No. 18/2001  
s. 8.

**134H Validity of HPV decisions**

An act or decision of HPV is not invalid by reason only of—

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

S. 134I  
inserted by  
No. 18/2001  
s. 8.

**134I Members' pecuniary interests**

- (1) A member of HPV who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by HPV must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of the interest at a meeting of HPV.

Penalty: 5 penalty units.

- (2) The person presiding at the meeting must cause the declaration to be recorded in the minutes of the meeting.

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- (3) A member who has a conflict of interest in a matter—
- (a) must not be present during any deliberations on the matter; and
  - (b) is not entitled to vote on the matter.
- (4) If a member votes on a matter in contravention of subsection (3)(b), his or her vote must be disallowed.
- (5) For the purposes of this section, a member is not to be regarded as having a pecuniary interest in a contract or arrangement only because that contract or arrangement may benefit—
- (a) a public hospital in which the member is employed; or
  - (b) a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body.

**134J Improper use of information**

A person who is, or has been, a member of HPV must not make improper use of any information acquired in the course of his or her duties to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.

Penalty: 5 penalty units.

S. 134J  
inserted by  
No. 18/2001  
s. 8.

s. 134K

S. 134K  
inserted by  
No. 18/2001  
s. 8.

**134K Delegation**

HPV may, by instrument, delegate to a member or an employee of HPV any of its powers except—

- (a) the power to make, amend or revoke purchasing policies under section 134;
- (b) this power of delegation.

**Division 5—General**

S. 134L  
inserted by  
No. 18/2001  
s. 8.

**134L Directions of the Minister or Secretary**

- (1) The Minister may give directions in writing to HPV in relation to any of its functions or powers.
- (2) Without limiting the subject-matter of directions under subsection (1), directions may be given setting limits or controls on expenditure, borrowing and entering into contracts and joint ventures.
- (3) The Secretary may give directions in writing to HPV regarding the terms and conditions on which HPV may employ staff.
- (4) A copy of each direction must be included in HPV's report of operations for a financial year under Part 7 of the **Financial Management Act 1994**.
- (5) HPV must comply with each direction of the Minister or Secretary.

S. 134M  
inserted by  
No. 18/2001  
s. 8.

**134M Strategic plans**

- (1) HPV must, at the direction of the Minister and at the time or times determined by the Minister, prepare and submit to the Minister for approval a strategic plan for HPV's operations.
- (2) A strategic plan must be prepared in accordance with the guidelines established by the Minister from time to time.

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- (3) The Minister may—
- (a) approve a strategic plan; or
  - (b) approve a strategic plan with amendments;  
or
  - (c) refuse to approve a strategic plan.
- (4) HPV must advise the Minister if it wishes to perform its functions in a manner inconsistent with its approved strategic plan.

**134N Existing supply contracts**

S. 134N  
inserted by  
No. 18/2001  
s. 8.

- (1) A public hospital is not required to comply with an HPV direction or a purchasing policy to the extent that the direction or policy is inconsistent with the terms of any contract relating to the supply of goods or services to the public hospital entered into before 1 July 2001 and in force on that day.
- (2) However, a public hospital must not agree to a variation or novation of, or exercise an option to extend or renew, a contract referred to in subsection (1) on or after 1 July 2001 without the written consent of HPV.

**134O HPV—trade practices**

S. 134O  
inserted by  
No. 98/2003  
s. 8.

- (1) Any act or thing of or relating to HPV in carrying out its functions or exercising its powers under this Part is authorised for the purposes of Part IV of the Trade Practices Act 1974 of the Commonwealth and the Competition Code within the meaning of the **Competition Policy Reform (Victoria) Act 1995**.
- (2) Any act or thing of or relating to a public hospital or a member of a board of a public hospital or a person who is engaged or employed by a public hospital in complying with an HPV direction or a purchasing policy of HPV under this Part or in relation to the purchase by, or supply to, a public

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hospital of goods or services in accordance with this Part is authorised for the purposes of Part IV of the Trade Practices Act 1974 of the Commonwealth and the Competition Code within the meaning of the **Competition Policy Reform (Victoria) Act 1995**.

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**PART 7—MISCELLANEOUS PROVISIONS**

**Division 1—Hospitals and charities fund**

**135 Definition**

In this Division, *agency* includes an ambulance service under the **Ambulance Services Act 1986**.

S. 135  
amended by  
No. 38/1998  
s. 14(1).

**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

\* \* \* \* \*

S. 136(2)(b)  
repealed by  
No. 31/1994  
s. 3(Sch. 1  
item 33(a)).

(c) all money authorised under this Act, the **Racing Act 1958**, the **Gambling Regulation Act 2003** or any other Act to be paid, or otherwise made available for payment, into the Fund.

S. 136(2)(c)  
amended by  
Nos 31/1994  
s. 3(Sch. 1  
item 33(b)),  
73/2000 s. 100,  
114/2003  
s. 12.1.3(Sch.  
6 item 6).

(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. 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  
Nos 42/1993  
s. 23(1),  
48/2006  
s. 42(Sch.  
item 17).

(c) amounts determined by the Minister for Community Services 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),  
48/2006  
s. 42(Sch.  
item 17).

### 137 Payments out of Fund to agencies

In making determinations under section 136(3)(b) or (c), the Minister or the Minister for Community Services 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 for Community Services thinks fit.

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**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

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 subsection (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).

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**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 of certain immunities in respect of proceedings; and

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  
No. 49 of 1988  
Part 7—Miscellaneous Provisions

s. 139

(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 subsections (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 subsection (1) has been made must not either directly or indirectly—

S. 139(3)(a)  
amended by  
No. 53/1990  
s. 21(d)(i).

(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.

S. 139(3A)  
inserted by  
No. 42/1993  
s. 21(3),  
amended by  
No. 2/1994  
s. 26.

(3A) Subsection (3) has effect despite anything to the contrary in section 12 of the **Audit Act 1994**.

Health Services Act 1988  
No. 49 of 1988  
Part 7—Miscellaneous Provisions

s. 139

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- |   |   |
|---|---|
| (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 subsection (1) has been made shall not be required by reason only of being such a member, officer or employee—  | S. 139(4)<br>amended by<br>No. 53/1990<br>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)<br>amended by<br>No. 53/1990<br>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)<br>amended by<br>No. 53/1990<br>s. 21(e)(iii). |
| (4A) Subsections (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)<br>inserted by<br>No. 42/1993<br>s. 21(4).       |
| (4B) Subsection (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)<br>inserted by<br>No. 42/1993<br>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 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(5)<br>amended by<br>No. 53/1990<br>s. 21(f)(i)(ii).  |
| (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.  | S. 139(6)<br>inserted by<br>No. 53/1990<br>s. 21(g).        |
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## 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 subsection: 100 penalty units.

## 141 Confidentiality

- (1) In this section—

*relevant person* 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
- (ca) a person who is or has been a delegate to a board of a public hospital appointed under section 40C; or
- (cb) a person who is or has been a delegate to a board of a public health service appointed under section 65ZAA; 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),  
substituted as  
*relevant person*  
by  
No. 67/2003  
s. 4(1)(a),  
amended by  
No. 52/2004  
s. 48(1).

*relevant health service* means—

- (a) a public hospital or denominational hospital; or
- (b) a private hospital; or
- (c) a multi purpose service; or

S. 141(1)  
def. of  
*relevant health service*  
amended by  
Nos 88/1994  
s. 19, 99/1995  
s. 9.

Health Services Act 1988  
No. 49 of 1988  
Part 7—Miscellaneous Provisions

s. 141

- (d) a day procedure centre; or
- (e) a community health centre.

S. 141(2)  
amended by  
No. 67/2003  
s. 4(1)(b)

- (2) A relevant person 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 relevant person 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.

S. 141(2A)  
inserted by  
No. 2/2001  
s. 103(1).

- (2A) For the purposes of subsection (2)(c), "any other Act" does not include the Health Privacy Principles in the **Health Records Act 2001** or Part 3 or Part 5 of that Act.

S. 141(2B)  
inserted by  
No. 67/2003  
s. 4(2).

- (2B) Subsection (2) does not apply to a person (other than an independent contractor) who is a relevant person in relation to a relevant health service who gives information in accordance with HPP 2 of the Health Privacy Principles in the **Health Records Act 2001** to another person (other than an independent contractor) who is a relevant person in relation to that relevant health service.

(3) Subsection (2) does not apply—

- (a) to the giving of information with the prior consent (which may be express or implied) of the person to whom it relates or, if that person has died, with the consent (which may be express or implied) 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
  - (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—
  - (i) required in connection with the further treatment of a patient; or
  - (ii) subject to the regulations (if any), by a person engaged or employed by or on behalf of a public hospital or a denominational hospital by means of an electronic records system established for the purpose of enabling the sharing of information in or between public

S. 141(3)(a)  
amended by  
No. 67/2003  
s. 4(3)(a).

S. 141(3)(e)  
substituted by  
No. 2/2001  
s. 103(2)(a).

s. 141

hospitals and denominational hospitals  
for the treatment of patients at any  
time; or

S. 141(3)(ea)  
inserted by  
No. 68/1996  
s. 33.

(ea) to the giving of information in accordance  
with an agreement under section 53(1)  
or 69B(1); or

S. 141(3)(eb)  
inserted by  
No. 2/2001  
s. 103(2)(b),  
amended by  
No. 67/2003  
s. 4(3)(b).

(eb) to the giving of information as described in  
HPP 2.2(a), 2.2(f), 2.2(h), 2.2(k), 2.2(l)  
or 2.5 of the Health Privacy Principles in the  
**Health Records Act 2001**; or

S. 141(3)(ec)  
inserted by  
No. 67/2003  
s. 4(3)(c).

(ec) to the giving of information relating to a  
notification, claim or potential claim to a  
person or body providing insurance or  
indemnity (including discretionary  
indemnity) for any liability of the relevant  
health service or a person who is a relevant  
person in relation to the relevant health  
service arising from the provision of services  
by, on behalf of or at the relevant health  
service; 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

S. 141(3)(g)(ii)  
amended by  
No. 2/2001  
s. 103(2)(c)(i).

(ii) the giving of information does not  
conflict with any prescribed  
requirements; and

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- (iii) the giving of information is in accordance with HPP 2.2(g) of the **Health Privacy Principles in the Health Records Act 2001**; or
- (ga) to the giving of information to a case mix auditor under Division 1A of Part 3 of this Act;
- (gaa) to the giving of information to an auditor under Division 8A of Part 3 of this Act;
- (gb) to the giving of information to or by a person, or a person in a class of persons, designated under subsection (5) in the course of carrying out support functions designated under subsection (5); or
- (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.
- (3A) A person must not use or collect, or attempt to use or collect, information about a person from an electronic records system referred to in subsection (3)(e)(ii) if that second-mentioned person could be identified from that information unless—
- (a) the use or collection is by a person engaged or employed by or on behalf of a public hospital or a denominational hospital; and
- (b) the use or collection is—
- (i) to enable the treatment of that second-mentioned person at or by that hospital; or
- S. 141(3)(g)(iii) inserted by No. 2/2001 s. 103(2)(c)(ii).
- S. 141(3)(ga) inserted by No. 112/1993 s. 10(2), amended by No. 52/2004 s. 48(2)(a).
- S. 141(3)(gaa) inserted by No. 52/2004 s. 48(2)(b).
- S. 141(3)(gb) inserted by No. 39/2000 s. 9(1), amended by No. 52/2004 s. 48(2)(a).
- S. 141(3A) inserted by No. 2/2001 s. 103(3).

s. 141

(ii) to charge or bill that second-mentioned person for treatment at or by that hospital; and

(c) the use or collection is in accordance with the regulations (if any).

Penalty: 50 penalty units.

(4) A person who receives information by reason of the giving of information under subsection (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 subsection (3); and

(b) does not conflict with any prescribed requirements; and

S. 141(4)(b)  
amended by  
No. 2/2001  
s. 103(4)(a).

(c) the giving of information in accordance with HPP 2.2(g) of the Health Privacy Principles in the **Health Records Act 2001**.

S. 141(4)(c)  
inserted by  
No. 2/2001  
s. 103(4)(b).

Penalty: 50 penalty units.

(5) For the purposes of subsection (3)(gb), the Governor in Council, may by Order published in the Government Gazette designate—

(a) a person, or a class or classes of persons, engaged by—

(i) a public hospital or denominational hospital; or

(ii) a multi-purpose service; or

(iii) a community health centre; and

(b) support functions carried out or to be carried out by those persons.

S. 141(5)  
inserted by  
No. 39/2000  
s. 9(2).

S. 141(5)(a)  
amended by  
No. 67/2003  
s. 4(3)(d).

## 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.

## 143 Delegation by Minister

If the Minister is not the Minister referred to in section 8B of the **Health Act 1958**, the Minister may, by instrument, delegate to any person or class of persons employed in the Department or to any other officer or class of officers in the public service any power or function of the Minister under this or any other Act or under the regulations under this or any other Act, other than this power of delegation.

S. 143  
repealed by  
No. 88/1994  
s. 20,  
new s. 143  
inserted by  
No. 18/2004  
s. 20.

## 144 Inquiry by Secretary

- (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
  - (b) the board of a registered funded agency or health service establishment or proprietor of a health service establishment must permit the Secretary or an authorised officer to have access to any document in the possession or

S. 144(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 144(2)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 144(2)(b)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
18/2004  
s. 21(a).

s. 145

under the control of the agency or establishment; and

S. 144(2)(c) amended by No. 35/1996 s. 453(Sch. 1 item 38), substituted by No. 18/2004 s. 21(b), amended by No. 18/2005 s. 18(Sch. 1 item 49).

- (c) an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**) or any other person authorised in writing by a registered funded agency or a health service establishment may represent—
- (i) the board of the agency or establishment;
  - (ii) any officer of the agency or establishment;
  - (iii) the proprietor of the establishment.

S. 145 amended by No. 46/1998 s. 7(Sch. 1).

#### 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.

#### 146 Identity cards

S. 146(1) amended by No. 46/1998 s. 7(Sch. 1).

- (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(2)(c) amended by No. 46/1998 s. 7(Sch. 1).

S. 146(3) substituted by No. 18/2004 s. 22.

- (3) An authorised officer must produce his or her identity card for inspection—
  - (a) before exercising a power under this Act; and

- (b) at any time during the exercise of a power under this Act if asked to do so.

Penalty: 10 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
- (ea) require a proprietor or any member of staff of the health service establishment—
  - (i) to answer a question to the best of that person's knowledge, information and belief;
  - (ii) to take reasonable steps to produce documents; 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.

S. 147(1)(ea)  
inserted by  
No. 18/2004  
s. 23(1).

**s. 147A**

- (2) If any thing is seized by an authorised officer under subsection (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.
- (3) If an authorised officer requires a person referred to in subsection (1)(ea) to answer a question to the best of that person's knowledge, information and belief, the authorised officer must advise the person that it is a reasonable excuse for that person to refuse to comply with the request if it would tend to incriminate that person.

S. 147(3)  
inserted by  
No. 18/2004  
s. 23(2).

S. 147A  
inserted by  
No. 99/1995  
s. 19.

**147A Entry to unregistered premises—search warrant**

- (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.

- (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.

#### **149 Offence to obstruct or hinder**

- (1) 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.

- (2) A person is not guilty of an offence under subsection (1) if the authorised officer exercising a power under this Act—

S. 149  
amended by  
Nos 13/1998  
s. 10(1),  
18/2004 s. 24  
(ILA s. 39B(1)).

S. 149(2)  
inserted by  
No. 18/2004  
s. 24.

s. 150

- (a) failed to produce his or her identity card in accordance with section 146(3); or
- (b) failed to warn the person of the effect of subsection (1).

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**

S. 151(1)  
amended by  
No. 13/1998  
s. 11(1).

- (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.

Penalty: 120 penalty units.

S. 151(2)  
amended by  
No. 13/1998  
s. 11(1).

- (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.

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.

S. 152  
amended by  
No. 13/1998  
s. 11(2).

### **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.

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 (other than an infringement 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—

S. 154(1)  
amended by  
No. 32/2006  
s. 94(Sch.  
item 25(1)(a)).

- (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 (other than an infringement 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—

S. 154(2)  
amended by  
No. 32/2006  
s. 94(Sch.  
item 25(1)(b)).

- (a) without the name of the proprietor, if it is addressed to the proprietor;

s. 155

(b) if there are two or more proprietors by being so served on or given to one of them.

S. 154(3) amended by No. 44/2001 s. 3(Sch. item 61.9).

(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 109X and 601CX of the Corporations Act.

Note to s. 154 inserted by No. 32/2006 s. 94(Sch. item 25(2)).

**Note**

Service of infringement notices is dealt with by the **Infringements Act 2006**.

**155 Infringement notice**

S. 155(1) amended by No. 32/2006 s. 94(Sch. item 25(3)).

(1) An authorised officer may serve an infringement notice 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.

S. 155(2) substituted by No. 32/2006 s. 94(Sch. item 25(4)).

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 155(3) substituted by No. 32/2006 s. 94(Sch. item 25(5)).

(3) For the purposes of subsection (1), an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional prescribed details.

S. 155(4) repealed by No. 32/2006 s. 94(Sch. item 25(6)).

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S. 155(5)  
amended by  
No. 57/1989  
s. 5(3),  
repealed by  
No. 32/2006  
s. 94(Sch.  
item 25(6)).

S. 155(6)  
repealed by  
No. 32/2006  
s. 94(Sch.  
item 25(6)).

### 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.

#### 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.

S. 156A  
inserted by  
No. 73/1997  
s. 9 (as  
amended by  
No. 13/1998  
s. 15).

### 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**

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.

S. 157A  
inserted by  
No. 42/1993  
s. 20(2).

**157A Supreme Court—limitation of jurisdiction—  
section 126A**

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.

S. 157B  
inserted by  
No. 112/1993  
s. 11.

**157B Supreme Court—limitation of jurisdiction—  
section 18F**

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.

S. 157C  
inserted by  
No. 46/1995  
s. 11.

**157C Supreme Court—limitation of jurisdiction—  
sections 17AA, 40J or 65O**

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**.

**157F Supreme Court—limitation of jurisdiction**

S. 157F  
inserted by  
No. 66/1998  
s. 12.

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**.

**157G Supreme Court—limitation of jurisdiction**

S. 157G  
inserted by  
No. 39/2000  
s. 10.

It is the intention of section 226 to alter or vary section 85 of the **Constitution Act 1975**.

**157H Supreme Court—limitation of jurisdiction**

S. 157H  
inserted by  
No. 52/2004  
s. 49.

It is the intention of sections 243 and 270 to alter or vary section 85 of the **Constitution Act 1975**.

**158 Regulations**

- (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;

S. 158(1)(b)  
amended by  
No. 88/1994  
s. 21(a)(i).

**s. 158**

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**S. 158(1)(d)**  
substituted by  
No. 53/1990  
s. 23(a).

(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 emergency procedures and the provision of equipment, access and fire escapes;

**S. 158(1)(g)**  
substituted by  
No. 53/1990  
s. 23(b).

(g) requirements for staffing of health service establishments, including but not limited to appointments, numbers, qualifications, rostering and staffing arrangements;

(h) requirements for the provision and maintenance of facilities, equipment, furnishings and fittings in health service establishments;

**S. 158(1)(i)**  
amended by  
No. 53/1990  
s. 23(c).

(i) requirements for suitable storage facilities for food and medicines in health service establishments;

(j) requirements for meal arrangements and for the supervision of medication in health service establishments;

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- (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 and the period for which records are to be retained;
- (na) requirements or conditions relating to the giving or the use or collection of information for the purposes of section 141(3)(e)(ii) or section 141(3A) including, but not limited to, prescribing a class or classes of person who may give, use or collect that information; **S. 158(1)(na) inserted by No. 2/2001 s. 103(5).**
- (o) returns to be made to the Secretary by proprietors of health service establishments; **S. 158(1)(o) amended by No. 46/1998 s. 7(Sch. 1).**

Health Services Act 1988  
No. 49 of 1988  
Part 7—Miscellaneous Provisions

s. 158

**S. 158(1)(oa)**  
inserted by  
No. 1/2001  
s. 4(1).

- (oa) requirements relating to the conduct of elections for members of boards of community health centres including provisions for voting at those elections, the counting of the votes and the method of determining the next eligible candidate for the purpose of filling casual or extraordinary vacancies in the offices of members;
- (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—

**S. 158(2)(ba)**  
inserted by  
No. 53/1990  
s. 23(f),  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstances; and
- (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).

\* \* \* \* \*

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- (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—
- (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.
- (2B) The Minister must ensure that the Victorian Electoral Commission is consulted before any regulations are made for the purposes of subsection (1)(oa).
- (2C) Regulations made for the purposes of subsection (1)(oa) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Victorian Electoral Commission.
- (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 subsection (3) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.
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S. 158(2A)  
inserted by  
No. 42/1993  
s. 22(2).

S. 158(2B)  
inserted by  
No. 1/2001  
s. 4(2),  
amended by  
No. 23/2002  
s. 194(3)(a).

S. 158(2C)  
inserted by  
No. 1/2001  
s. 4(2),  
amended by  
No. 23/2002  
s. 194(3)(b).

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**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
    - (ii) a day procedure centre registered under this Act—as the Secretary determines; or

S. 160(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- 
- (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
- (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)(b) amended by No. 53/1990 s. 25(a).
- S. 160(3)(d) amended by No. 46/1998 s. 7(Sch. 1).
- S. 160(3)(e) amended by No. 53/1990 s. 25(b).

s. 161

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

S. 161(3)(c)  
amended by  
Nos 53/1990  
s. 26(c)(ii),  
46/1998  
s. 7(Sch. 1).

- (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)(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.

s. 164

#### 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)(ii),  
substituted by  
No. 18/2004  
s. 25.

#### 165 Residential statements

Section 106(3) as amended by section 12(3) of the **Health Services (Supported Residential Services) Act 2004** only applies to a person who becomes a resident after the commencement of section 12(3) of that Act.

#### 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.

S. 166(2)  
repealed by  
No. 31/1990  
s. 3(1)(b).

\* \* \* \* \*

S. 166A  
inserted by  
No. 31/1990  
s. 3(2).

#### 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.

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- (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.

**166B Fairfield Hospital**

S. 166B  
inserted by  
No. 31/1990  
s. 3(2).

- (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.

**167 Tweddle Baby Hospital**

S. 167  
substituted by  
No. 31/1990  
s. 4.

- (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 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.

s. 168

S. 167(4)  
amended by  
Nos 42/1993  
s. 23(2),  
46/1998  
s. 7(Sch. 1).

- (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.

S. 167(6)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (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. 168  
amended by  
No. 53/1990  
s. 27(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.

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**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.
- (3) This section does not apply to The Tweddle Baby Hospital. **S. 170(3) inserted by No. 31/1990 s. 5.**

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**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 subsection (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 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

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).

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become vacant at each of the next three annual meetings.

**172 Transitional provision for chief executive officers**

S. 172  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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.

**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 subsection (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)**

New s. 177  
inserted by  
No. 66/1998  
s. 13.

\* \* \* \* \*

S. 177(1)  
repealed by  
No. 52/2004  
s. 50(1).

- (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.

**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.

S. 178A  
inserted by  
No. 2/2001  
s. 104.

**178A Transitional provisions—Health Records Act 2001**

- (1) Section 141(3)(g) as amended by the **Health Records Act 2001** does not apply to the giving of information for the purposes of medical or social research if the use to which the information will be put and the research methodology has been approved by an ethics committee under that section before the commencement of that amendment even if the giving of the information occurs after that commencement.
- (2) Section 141(4) as amended by the **Health Records Act 2001** does not apply to the giving of information, the giving of which has been approved as required by that section before the commencement of that amendment, even if the giving of the information occurs after that commencement.

**PART 9—TRANSITIONAL PROVISIONS RELATING TO  
METROPOLITAN HEALTH SERVICES**

**Division 1—Preliminary**

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),  
new Pt 9  
(Heading and  
ss 179–229)  
inserted by  
No. 39/2000  
s. 11.

**179 Definitions**

New s. 179  
inserted by  
No. 39/2000  
s. 11.

In this Part—

*instrument* includes a document and an oral agreement;

*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.

**180 Extra-territorial operation**

New s. 180  
inserted by  
No. 39/2000  
s. 11.

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

- (a) land situated outside Victoria, whether in or outside Australia;

**s. 181**

- (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 Part, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

**Division 2—Establishment of metropolitan health services**

New s. 181  
inserted by  
No. 39/2000  
s. 11.

**181 Order establishing a metropolitan health service**

- (1) The Governor in Council, by Order published in the Government Gazette may, on the recommendation of the Minister, establish a metropolitan health service.
- (2) If an Order is made under subsection (1)—
  - (a) a new metropolitan health service with the name specified in the Order comes into existence; and
  - (b) Schedule 5 is amended by the addition of the name of the new metropolitan health service in the appropriate alphabetical position.

New s. 182  
inserted by  
No. 39/2000  
s. 11.

**182 Establishment of first board**

- (1) Despite section 65T, the board of a metropolitan health service that comes into existence under an Order under section 181 consists of the persons (being not less than 6 and not more than 9) named in the Order.

- (2) For the purposes of Division 9B of Part 3, the Order under section 181 constitutes the instrument of appointment of the directors of the board and may include terms and conditions of appointment.

**183 Appointment of first chief executive officer**

New s. 183  
inserted by  
No. 39/2000  
s. 11.

- (1) The Governor in Council, by Order published in the Government Gazette, may on the recommendation of the Minister, appoint a person to act as the first chief executive officer of a metropolitan health service established by Order under section 181.
- (2) The Order may specify the period (being not more than 6 months) of appointment and the terms and conditions of appointment of the chief executive officer.
- (3) If a person is appointed to act as chief executive officer of a metropolitan health service under subsection (1)—
- (a) the person is deemed to have been appointed by the board of the metropolitan health service; and
  - (b) the appointment is deemed to be approved by the Secretary under section 25.

**184 First by-laws of metropolitan health service**

New s. 184  
inserted by  
No. 39/2000  
s. 11.

- (1) The Governor in Council, by Order published in the Government Gazette, may on the recommendation of the Minister, specify the by-laws of a metropolitan health service established by Order under section 181.
- (2) The by-laws must specify the objects including the core objects, of the metropolitan health service.

s. 185

- (3) By-laws of a metropolitan health service specified in an Order under subsection (1) have effect as if made by the board of the metropolitan health service and approved by the Secretary under section 24.

New s. 185  
inserted by  
No. 39/2000  
s. 11.

### **185 Limited period to make Orders**

An Order under this Division may not be made after the day that is 12 months after the date of commencement of the **Health Services (Governance) Act 2000**.

## **Division 3—Establishment of community health centres**

New s. 186  
inserted by  
No. 39/2000  
s. 11.

### **186 Order establishing a community health centre**

- (1) The Governor in Council, by Order published in the Government Gazette may, on the recommendation of the Minister, establish a community health centre.
- (2) The Order must specify the area served by the community health centre.
- (3) If an Order is made under subsection (1)—
- (a) a new community health centre with the name specified in the Order comes into existence; and
  - (b) the community health centre is deemed to be an association incorporated under the **Associations Incorporation Act 1981**; and
  - (c) the community health centre is deemed to be an agency registered under Division 2 of Part 3; and
  - (d) the community health centre named in the Order is deemed to be declared under section 45 to be a community health centre; and

- (e) the area specified in the Order is deemed to be declared under section 45 to be the area served by the community health centre.

**187 Establishment of first board of management**

New s. 187  
inserted by  
No. 39/2000  
s. 11.

- (1) Despite section 46, the board of management of a community health centre that comes into existence under an Order under section 186 consists of the persons named in the Order.
- (2) The Order under section 186 is deemed for the purposes of Division 6 of Part 3 to be the instrument of appointment of the members of the board of management and may include terms and conditions of appointment.
- (3) A member of the board of management may be appointed under the Order until the day that is 12 months after the date of commencement of the **Health Services (Governance) Act 2000** or for a lesser period specified in the Order.

**188 First rules of community health centre**

New s. 188  
inserted by  
No. 39/2000  
s. 11.

- (1) The Governor in Council, by Order published in the Government Gazette, may on the recommendation of the Minister, specify the rules of a community health centre established by Order under section 186.
- (2) The rules of a community health centre specified in an Order under subsection (1) have effect as if made and approved under the **Associations Incorporation Act 1981**.
- (3) An Order under subsection (1) may incorporate the model rules under the **Associations Incorporation Act 1981** subject to any variations specified in the Order.

s. 189

New s. 189  
inserted by  
No. 39/2000  
s. 11.

**189 Limited period to make orders**

An Order under this Division may not be made after the day that is 12 months after the date of commencement of the **Health Services (Governance) Act 2000**.

Pt 9 Div. 4  
(Heading and  
ss 190–192)  
inserted by  
No. 39/2000  
s. 11,  
repealed by  
No. 52/2004  
s. 50(2).

\* \* \* \* \*

**Division 5—Transfer of property, rights and liabilities of metropolitan hospitals on cancellation of incorporation**

New s. 193  
inserted by  
No. 39/2000  
s. 11.

**193 Definitions**

In this Division—

*transferring hospital*, in relation to an Order under section 181, means a metropolitan hospital the incorporation of which is cancelled under the Order;

*effective date*, in relation to an Order under section 181, means the date specified in the Order to be the effective date of that Order;

*new health service*, in relation to an Order under section 181, means the metropolitan health service which comes into existence under that Order;

*old instrument* means an instrument subsisting immediately before the effective date of an Order under section 181—

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

- (c) that refers to a transferring hospital; or
- (d) under which—
  - (i) money is, or may become, payable to or by a transferring hospital; or
  - (ii) other property is to be, or may become liable to be, transferred to or by a transferring hospital;

*transferred hospital employee* means a person who, by reason of section 204(1), is regarded as being employed by a new health service with effect from the effective date of an Order under section 181.

**194 Cancellation of incorporation of metropolitan hospital**

New s. 194  
inserted by  
No. 39/2000  
s. 11.

- (1) If the Minister recommends to the Governor in Council the establishment of a metropolitan health service by Order under section 181, the Minister may also recommend to the Governor in Council that the Order cancel the incorporation of a metropolitan hospital.
- (2) If the Minister recommends the cancellation of the incorporation of a metropolitan hospital, the Governor in Council may provide for the cancellation of the incorporation in an Order made under section 181.

**195 Transfer from metropolitan hospital to metropolitan health service**

New s. 195  
inserted by  
No. 39/2000  
s. 11.

If an Order is made under section 181 cancelling the incorporation of a metropolitan hospital, then on a date specified in the Order—

- (a) the incorporation of the metropolitan hospital to which the Order relates is cancelled; and
- (b) Schedule 3 is amended by the omission of the name of that metropolitan hospital; and

**s. 196**

- (c) the directors of the board of the metropolitan hospital go out of office; and
- (d) the chief executive officer of the metropolitan hospital goes out of office.

New s. 196  
inserted by  
No. 39/2000  
s. 11.

**196 New metropolitan health service to be successor in law**

On the coming into existence of a metropolitan health service under an Order under section 181 which also cancels the incorporation of a metropolitan hospital—

- (a) all property and rights of the transferring hospital, wherever located, vest in the new health service; and
- (b) all liabilities of the transferring hospital, wherever located, become liabilities of the new health service; and
- (c) the new health service becomes the successor in law of the transferring hospital; and
- (d) on and from the effective date of the Order, the transferring hospital must, for the purposes of any trust in relation to that hospital, be taken not to have had its incorporation cancelled and the new health service must be taken to be the same body as the transferring hospital for those purposes.

New s. 197  
inserted by  
No. 39/2000  
s. 11.

**197 Substitution of party to agreement**

Where, under section 196, the rights and liabilities of a transferring hospital under an agreement vest in, or become liabilities of, a new health service—

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

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

**198 Old instruments**

New s. 198  
inserted by  
No. 39/2000  
s. 11.

- (1) Each old instrument (including an instrument made under an Act) has effect and continues to have effect according to its tenor on and after the effective date of an Order under section 181 as if a reference in the instrument to a transferring hospital were a reference to the new health service.
- (2) Without limiting the effect of subsection (1), on and from the effective date of an Order under section 181, an instrument creating a trust in relation to—
- (a) a transferring hospital to which the Order relates; or
- (b) a former agency of which such a transferring hospital is the successor agency—

has effect and continues to have effect according to its tenor as if the trust were in relation to the new health service.

**199 Proceedings**

New s. 199  
inserted by  
No. 39/2000  
s. 11.

If, immediately before the effective date of an Order under section 181, proceedings (including arbitration proceedings) to which a transferring hospital was a party were pending or existing in any court or tribunal, then, on and after the publication of the Order, the new health service is substituted for the transferring hospital as a party to the proceedings and has the same rights in the proceedings as the transferring hospital had.

**s. 200**

New s. 200  
inserted by  
No. 39/2000  
s. 11.

**200 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 181, a transferring 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 health service is to be taken to be the registered proprietor of that interest in land; and
- (b) the new health service has the same rights and remedies in respect of that interest as the transferring hospital had.

New s. 201  
inserted by  
No. 39/2000  
s. 11.

**201 Amendment of Register**

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. 202  
inserted by  
No. 39/2000  
s. 11.

**202 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. 203  
inserted by  
No. 39/2000  
s. 11.

**203 Evidence**

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferring hospital if an Order had not been made under section 181, is admissible for or against the interests of the new health service.

- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of a transferring hospital and to entries made in those books of account before the effective date of an Order under section 181.
- (3) In subsection (2), ***books of account*** has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

**204 Transfer of hospital employees to new health service**

S. 204  
inserted by  
No. 39/2000  
s. 11.

- (1) A person who, immediately before the effective date of an Order under section 181, was an employee (other than the chief executive officer) of a transferring hospital is to be regarded as—
  - (a) having been employed by the new health service 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 transferring hospital; and
  - (c) having accrued an entitlement to benefits, in connection with that employment by the new health service, that is equivalent to the entitlement that the person had accrued, as an employee of the transferring hospital immediately before that date.
- (2) The service of a transferred hospital employee as an employee of the new health service 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 181, as an employee of the transferring hospital.
- (3) A transferred hospital employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the transferring hospital because of this Division.

s. 205

- (4) A certificate purporting to be signed by the chief executive officer of the new health service certifying that a person named in the certificate was, with effect from the effective date of the Order under section 181, employed, by virtue of this section by the new health service is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

S. 205  
inserted by  
No. 39/2000  
s. 11.

## **205 Future terms and conditions of transferred employees**

Nothing in section 204 prevents—

- (a) any of the terms and conditions of employment of a transferred 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 181; or
- (b) a transferred hospital employee from resigning, or the termination of a transferred 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 health service.

## **Division 6—Transfer of property, rights and liabilities before cancellation of incorporation of metropolitan hospital**

S. 206  
inserted by  
No. 39/2000  
s. 11.

## **206 Definitions**

In this Division—

*effective date*, in relation to an Order under section 208, 214 or 215, means the date specified in the Order to be the effective date of that Order;

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***former hospital property*** means property, rights or liabilities of a metropolitan hospital that, under this Division, have vested in, or become liabilities of, a metropolitan health service or community health centre;

***old instrument*** means an instrument subsisting immediately before the effective date of an Order under section 208—

- (a) to which a transferring hospital was a party; or
- (b) that was given to or in favour of a transferring hospital; or
- (c) that refers to a transferring hospital; or
- (d) under which—
  - (i) money is, or may become, payable to or by a transferring hospital; or
  - (ii) other property is to be, or may become liable to be, transferred to or by a transferring hospital;

***staff transfer date*** in relation to a list referred to in section 220 means the date fixed by the Minister under section 219 as the staff transfer date for the purposes of that list;

***transferred hospital employee*** means a person who, by reason of section 221 is regarded as being employed by a metropolitan health service or a community health centre with effect from the relevant staff transfer date;

***transferring hospital***, in relation to an Order under section 208, means the metropolitan hospital specified in the Order.

s. 207

S. 207  
inserted by  
No. 39/2000  
s. 11.

### **207 Division to prevail**

If there is any inconsistency between this Division and Division 9A of Part 3, this Division prevails to the extent of the inconsistency.

S. 208  
inserted by  
No. 39/2000  
s. 11.

### **208 Transfer Order**

- (1) The Governor in Council, by Order published in the Government Gazette, may, on the recommendation of the Minister—
  - (a) allocate to a metropolitan health service such of the property, rights and liabilities of a metropolitan hospital as are specified in the Order; or
  - (b) allocate to a community health centre such of the property, rights and liabilities of a metropolitan hospital as are specified in the Order.
- (2) Without limiting subsection (1), an Order under that subsection may allocate property, rights and liabilities by reference—
  - (a) to a campus of a metropolitan hospital or other place; or
  - (b) to a class or category of property, rights or liabilities; or
  - (c) to a combination of paragraphs (a) and (b).

S. 209  
inserted by  
No. 39/2000  
s. 11.

### **209 Property rights and liabilities transferred to metropolitan health service or community health centre**

If an Order is made under section 208, then on the effective date of the Order—

- (a) all property and rights of the transferring hospital specified in the Order vest in the metropolitan health service or community health centre specified in the Order; and

- (b) all liabilities of the transferring hospital specified in the Order become liabilities of the metropolitan health service or community health centre specified in the Order; and
- (c) the metropolitan health service or community health centre specified in the Order becomes the successor in law of the transferring hospital in relation to the property, rights and liabilities specified in the Order.

### **210 Substitution of party to agreement**

S. 210  
inserted by  
No. 39/2000  
s. 11.

If, under section 209, the rights and liabilities of a transferring hospital under an agreement vest in, or become liabilities of, a metropolitan health service or community health centre—

- (a) the metropolitan health service or community health centre becomes, on the effective date of the relevant Order under section 208, a party to the agreement in place of the transferring hospital; and
- (b) on and after the effective date of the relevant Order under section 208, the agreement has effect as if the metropolitan health service or community health centre had always been a party to the agreement.

### **211 Proceedings**

S. 211  
inserted by  
No. 39/2000  
s. 11.

If, immediately before the effective date of an Order under section 208, proceedings relating to former hospital property (including arbitration proceedings) to which a transferring hospital was a party were pending or existing in any court or tribunal, then, on and after the effective date of the relevant Order, the metropolitan health service or community health centre specified in the Order is substituted for the transferring hospital as a party

s. 212

to the proceedings and has the same rights in the proceedings as the transferring hospital had.

S. 212  
inserted by  
No. 39/2000  
s. 11.

## 212 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 208, a transferring hospital is, in relation to former hospital property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the metropolitan health service or community health centre specified in the Order is to be taken to be the registered proprietor of that interest in land; and
- (b) the metropolitan health service or community health centre specified in the Order has the same rights and remedies in respect of that interest as the transferring hospital had.

S. 213  
inserted by  
No. 39/2000  
s. 11.

## 213 Old instruments

- (1) Each old instrument relating to property rights and liabilities of a metropolitan hospital that, under this Division, have vested in, or become liabilities of, a metropolitan health service or community health centre has effect and continues to have effect according to its tenor on and after the effective date of the relevant Order under section 208 as if a reference in the instrument to the transferring hospital were a reference to the metropolitan health service or community health centre specified in the Order.
- (2) This section does not apply to an instrument creating a trust to which section 214 or 215 applies.

**214 Trusts in respect of metropolitan hospitals existing on 31 July 1995**

S. 214  
inserted by  
No. 39/2000  
s. 11.

- (1) The Governor in Council, by Order published in the Government Gazette, may, on the recommendation of the Minister, designate a metropolitan health service as the successor of a metropolitan hospital existing on 31 July 1995 and designated in the Order, for the purposes of any trust in relation to that metropolitan hospital.
- (2) The Minister must not recommend the designation of a metropolitan health service or metropolitan hospital under subsection (1) unless the Minister is satisfied that the metropolitan health service is the appropriate successor for the metropolitan hospital having regard, where relevant, to the campuses operated or to be operated by the metropolitan health service.
- (3) On and from the effective date of an Order under this section, an instrument creating a trust in relation to—
  - (a) a metropolitan hospital designated in the Order; or
  - (b) a former agency of which the metropolitan hospital is the successor agency—

has effect and continues to have effect according to its tenor as if the trust were in relation to the metropolitan health service designated in the Order as the successor of the metropolitan hospital.

- (4) On and from the effective date of an Order under this section, a metropolitan health service designated in the Order must, for the purposes of any trust in relation to a metropolitan hospital designated in the Order, be taken to be the same body as that metropolitan hospital.

- (5) This section has effect despite anything to the contrary in sections 65D and 65F.

S. 215  
inserted by  
No. 39/2000  
s. 11.

**215 Trusts in respect of metropolitan hospitals created on or after 1 August 1995**

- (1) The Governor in Council, by Order published in the Government Gazette, may, on the recommendation of the Minister, designate a metropolitan health service as the successor of a metropolitan hospital created on or after 1 August 1995 and designated in the Order, for the purposes of any trust or class or category of trusts specified in the Order in relation to the metropolitan hospital.
- (2) The Minister must not recommend the designation of a metropolitan health service or metropolitan hospital under subsection (1) unless the Minister is satisfied that the metropolitan health service is the appropriate successor for the metropolitan hospital having regard, where relevant, to the campuses operated or to be operated by the metropolitan health service.
- (3) On and from the effective date of an Order under this section, an instrument creating a trust specified, or in a class or category specified, in the Order in relation to a metropolitan hospital designated in the Order has effect and continues to have effect according to its tenor as if the trust were in relation to the metropolitan health service designated in the Order as the successor of the metropolitan hospital.
- (4) On and from the effective date of an Order under this section, a metropolitan health service designated in the Order must, for the purposes of any trust specified, or in a class or category specified, in the Order in relation to a metropolitan hospital designated in the Order, be

taken to be the same body as that metropolitan hospital.

- (5) This section has effect despite anything to the contrary in sections 65D and 65F.

**216 Amendment of the Register**

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. 216  
inserted by  
No. 39/2000  
s. 11.

**217 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. 217  
inserted by  
No. 39/2000  
s. 11.

**218 Evidence**

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferring hospital if an Order had not been made under section 208, is admissible for or against the interests of the metropolitan health service or community health centre specified in the Order.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of a transferring hospital and to entries made in those books of account before the effective date of an Order under section 208, whether or not they relate to former hospital property.

S. 218  
inserted by  
No. 39/2000  
s. 11.

s. 219

- (3) In subsection (2), *books of account* has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

S. 219  
inserted by  
No. 39/2000  
s. 11.

#### **219 Staff transfer date**

- (1) The Minister, by notice published in the Government Gazette, may determine a date that is to be the staff transfer date for the purposes of a list under section 220.
- (2) The Minister may give more than one notice under this section in respect of a metropolitan hospital.

S. 220  
inserted by  
No. 39/2000  
s. 11.

#### **220 List of staff**

- (1) Before the relevant staff transfer date, the Secretary must prepare a list of employees (other than the chief executive officer) of a metropolitan hospital who are to become employees of a metropolitan health service or community health centre on that date.
- (2) The list may specify the employees—
- (a) by name or position; or
  - (b) by class or category; or
  - (c) by reference to a campus of a metropolitan hospital or other place; or
  - (d) by any combination of paragraphs (a) to (c).
- (3) The list must specify the metropolitan health service or community health centre which on the staff transfer date is to become the employer of each employee specified on the list.
- (4) Nothing in this section prevents a person specified on a list as an employee of a metropolitan hospital from resigning or being dismissed at any time before the relevant staff transfer date in accordance with the terms and conditions of his or her employment.

**221 Transfer of staff**

S. 221  
inserted by  
No. 39/2000  
s. 11.

- (1) A person listed as an employee of a metropolitan hospital in a list prepared under section 220 who was such an employee immediately before the relevant staff transfer date is to be regarded as—
  - (a) having been employed by the metropolitan health service or community health centre specified in the list with effect from the staff transfer date; and
  - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the staff transfer date, as an employee of the metropolitan hospital; and
  - (c) having accrued an entitlement to benefits, in connection with that employment with the metropolitan health service or community health centre, that is equivalent to the entitlement that the person had accrued, as an employee of the metropolitan hospital immediately before the staff transfer date.
- (2) The service of a transferred hospital employee as an employee of the metropolitan health service or community health centre is to be regarded for all purposes as having been continuous with the service of the transferred hospital employee, immediately before the relevant staff transfer date, as an employee of the metropolitan hospital.
- (3) A transferred hospital employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a metropolitan hospital because of this Division.

s. 222

- (4) A certificate purporting to be signed by the chief executive officer of the metropolitan health service or community health centre certifying that a person named in the certificate was, with effect from the relevant staff transfer date, employed, by virtue of this section by the metropolitan health service or community health centre named in the certificate is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

S. 222  
inserted by  
No. 39/2000  
s. 11.

## **222 Future terms and conditions of transferred employees**

Nothing in section 221 prevents—

- (a) any of the terms and conditions of employment of a transferred hospital employee from being altered by or under any law, award or agreement with effect from any time after the relevant staff transfer date; or
- (b) a transferred hospital employee from resigning, or the termination of a transferred hospital employee's employment, at any time after the relevant staff transfer date in accordance with the then existing terms and conditions of his or her employment by the metropolitan health service or community health centre.

S. 223  
inserted by  
No. 39/2000  
s. 11.

## **223 Abolition of metropolitan hospital**

- (1) An administrator appointed under Division 4 in respect of a metropolitan hospital may recommend to the Minister that the incorporation of that metropolitan hospital be cancelled.
- (2) If a recommendation is made under subsection (1) and the Minister is satisfied that as far as practicable the property, rights and liabilities of the metropolitan hospital have been transferred to

another agency or other agencies, the Minister may recommend to the Governor in Council that the incorporation of the metropolitan hospital be cancelled.

- (3) The Governor in Council, on a recommendation under subsection (2), may by Order published in the Government Gazette, cancel the incorporation of a metropolitan hospital.
- (4) If an Order is made under this section, then on the date specified in the Order—
  - (a) the incorporation of the metropolitan hospital to which the Order relates is cancelled; and
  - (b) Schedule 3 is amended by the omission of the name of the metropolitan hospital.

#### **224 Effect of Order**

- (1) On the cancellation of the incorporation of a metropolitan hospital under section 223—
  - (a) all property and rights of the metropolitan hospital, wherever located, vest in the Crown; and
  - (b) all liabilities of the metropolitan hospital, wherever located, become liabilities of the Crown; and
  - (c) the Crown becomes the successor in law of the metropolitan hospital in respect of that property and those rights and liabilities; and
  - (d) this Division applies as if any reference—
    - (i) to an Order under section 208 were a reference to an Order under section 223; and

S. 224  
inserted by  
No. 39/2000  
s. 11.

- (ii) to former hospital property were a reference to property, rights and liabilities vested in the Crown under this subsection; and
- (iii) to a metropolitan health service were a reference to the Crown.

(2) This section does not apply to a trust.

### **Division 7—General**

#### **225 Validity of things done under this Part**

Nothing effected by this Part or suffered under this Part—

- (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 offence; 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

S. 225  
inserted by  
No. 39/2000  
s. 11.

- 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.

**226 Operation of provisions not subject to review**

Nothing done under Division 2, 3, 5 or 6 or section 190 gives rise to any cause or right of action or application before any court or tribunal.

S. 226  
inserted by  
No. 39/2000  
s. 11.

**227 Application of property cy-pres not affected**

- (1) Nothing in section 198(2) in relation to an Order under section 181 affects the operation of—
  - (a) an order of a court for the application of property cy-pres made before the effective date of that Order; or
  - (b) a scheme or authority for the application of property cy-pres sanctioned or given by the Attorney-General under the **Charities Act 1978** before the effective date of that Order.
- (2) Nothing in section 214 or 215 in relation to an Order under section 214 or 215 affects the operation of—
  - (a) an order of a court for the application of property cy-pres made before the effective date of that Order; or
  - (b) a scheme or authority for the application of property cy-pres sanctioned or given by the Attorney-General under the **Charities Act 1978** before the effective date of that Order.

S. 227  
inserted by  
No. 39/2000  
s. 11.

s. 228

S. 228  
inserted by  
No. 39/2000  
s. 11.

## 228 Application to trusts whenever created

The amendments made to this Act by the **Health Services (Governance) Act 2000** apply with respect to a trust (within the meaning of section 3(1)) in relation to a body, whether the trust was created before, on or after the commencement of section 11 of that Act.

S. 229  
inserted by  
No. 39/2000  
s. 11.

## 229 Saving of quality assurance bodies

- (1) This section applies to a committee, council or other body established by one or more metropolitan hospitals and declared to be an approved quality assurance body under section 139.
- (2) The Minister, by notice published in the Government Gazette, may declare that a designated committee, council or body to which this section applies is to be taken to be a body established by a designated metropolitan health service.
- (3) On the publication of a notice under subsection (2)—
  - (a) the notice has effect according to its tenor; and
  - (b) the declaration of the designated committee, council or body under section 139 continues to have effect and may be revoked in accordance with that section.
- (4) This section has effect despite anything to the contrary in the by-laws of the designated metropolitan health service.

**PART 10—FURTHER TRANSITIONALS**

Pt 10  
(Heading and  
ss 187–193)  
repealed by  
No. 42/1993  
s. 23(3),  
new Pt 10  
(Heading and  
s. 230)  
inserted by  
No. 1/2001  
s. 5.

**230 Transitional provision for boards of community health centres**

S. 230  
inserted by  
No. 1/2001  
s. 5.

- (1) The board of a community health centre as constituted immediately before 1 April 2001 (including a board established under section 186) continues as the board of the centre until the next annual general meeting of the centre.
- (2) A person holding office as a member of a board of a community health centre referred to in subsection (1) continues as a member of the board until the next annual general meeting unless he or she sooner resigns or is removed from office.
- (3) A vacancy on a board of a community health centre referred to in subsection (1) must not be filled before the next annual general meeting unless it is necessary to do so to ensure that there are at least 7 members of the board.
- (4) A vacancy filled in accordance with subsection (3) may be filled in the manner determined by the Secretary.
- (5) The board of a community health centre referred to in subsection (1) must hold an annual general meeting in relation to the financial year ending on 30 June 2001 in the third or fourth week of October 2001.

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- (6) At the first annual general meeting of a community health centre held after 1 April 2001—
- (a) the offices of all members of the board fall vacant; and
  - (b) each vacancy must be filled in accordance with Division 6 of Part 3 as in force at the date of the annual general meeting; and
  - (c) each person elected or appointed to fill a vacancy holds office in accordance with Division 6 of Part 3 as in force at the date of the annual general meeting.
- (7) The Minister must consult with the members of a board who were in office immediately before the annual general meeting referred to in subsection (6) before nominating a person as a board member to the Governor in Council for the purposes of appointing members to a board under section 46(2)(b).
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**PART 11—DEEMED PUBLICATION**

Pt 11  
(Heading and  
ss 194–198)  
amended by  
No. 1/1989  
s. 4(h),  
repealed by  
No. 42/1993  
s. 23(3),  
new Pt 11  
(Heading and  
s. 231)  
inserted by  
No. 67/2003  
s. 5.

**231 Deemed publication of Order in Council**

S. 231  
inserted by  
No. 67/2003  
s. 5.

The Order in Council made under section 8(1)(c) on 30 September 1997 changing the name of the Numurkah and District War Memorial Hospital to the Numurkah District Health Service is deemed to have been published on 2 October 1997 in the Government Gazette as if the words "Numurkah and District Health Service" were "Numurkah District Health Service".

Pt 12  
(Heading and  
ss 199–201)  
repealed by  
No. 42/1993  
s. 23(3),  
new Pt 12  
(Heading and  
ss 232–243)  
inserted by  
No. 52/2004  
s. 51.

S. 232  
inserted by  
No. 52/2004  
s. 51.

## PART 12—TRANSITIONAL PROVISIONS RELATING TO PUBLIC HEALTH SERVICES

### 232 Definitions

In this Part—

*commencement day* means the day on which section 53(1) of the **Health Services (Governance and Accountability) Act 2004** comes into operation;

*effective date*, in relation to an Order under this Part, means the date specified in the Order to be the effective date of that Order;

*instrument* includes a document and an oral agreement;

*metropolitan health service* means a body that was listed in Schedule 5 immediately before the commencement day or premises occupied by such a body;

*old metropolitan health service instrument* means an instrument subsisting immediately before the commencement day—

- (a) to which a metropolitan health service was a party; or
- (b) that was given to or in favour of a metropolitan health service; or
- (c) that refers to a metropolitan health service; or

(d) under which—

- (i) money is, or may become, payable to or by a metropolitan health service; or
- (ii) other property is to be, or may become liable to be, transferred to or by a metropolitan health service;

***old public hospital*** means—

- (a) Ballarat Health Services; or
- (b) Barwon Health; or
- (c) Bendigo Health Care Group; or
- (d) Goulburn Valley Health; or
- (e) Latrobe Regional Hospital; or
- (f) a public hospital referred to in an Order under section 239;

***old public hospital instrument*** means an instrument subsisting immediately before the effective date of an Order under section 239 in the case of an old public hospital referred to in paragraph (f) of the definition of ***old public hospital*** or immediately before 1 July 2004 in the case of any other old public hospital—

- (a) to which an old public hospital was a party; or
- (b) that was given to or in favour of an old public hospital; or
- (c) that refers to an old public hospital; or

s. 233

(d) under which—

- (i) money is, or may become, payable to or by an old public hospital; or
- (ii) other property is to be, or may become liable to be, transferred to or by an old public 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.

S. 233  
inserted by  
No. 52/2004  
s. 51.

### 233 Extra-territorial operation

It is the intention of the Parliament that the operation of this Part 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 Part, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

S. 234  
inserted by  
No. 52/2004  
s. 51.

### 234 Public health service same body as former metropolitan health service

A body listed in Schedule 5, that on the commencement day becomes a public health service, is taken to be the same body that it was before that day, despite it ceasing to be a metropolitan health service.

**235 Certain public health services same body as certain former public hospitals**

S. 235  
inserted by  
No. 52/2004  
s. 51.

- (1) A body, that on 1 July 2004 becomes a public health service, is taken to be the same body that it was before that date, despite it ceasing to be a public hospital.
- (2) A body, that on the effective date of an Order under section 239 becomes a public health service, is taken to be the same body that it was before that date, despite it ceasing to be a public hospital and any change to its name.

**236 First directors of boards of certain public health service**

S. 236  
inserted by  
No. 52/2004  
s. 51.

- (1) Without limiting the effect of section 234, the directors of the board of a metropolitan health service (that on the commencement day becomes a public health service) continue to hold office as directors of the board of that public health service on and after that day for the period for which they were appointed, subject to section 65V, and on the same terms and conditions that applied to them immediately before that day.
- (2) Without limiting the effect of section 235—
  - (a) the members of the board of a public hospital (that on 1 July 2004 becomes a public health service) continue to hold office as directors of that public health service on and after that date for the period for which they were appointed, subject to section 65V, and on the same terms and conditions that applied to them immediately before that date; and
  - (b) the member of the board of a public hospital (that on 1 July 2004 becomes a public health service) who immediately before that date was the chairperson or president (by whatever name so called) of the board is

taken to have been appointed the chairperson of the board of that public health service until 31 October 2004.

S. 237  
inserted by  
No. 52/2004  
s. 51.

**237 Old instruments referring to metropolitan health service**

- (1) Each old metropolitan health service instrument (including an instrument made under an Act) has effect and continues to have effect according to its tenor on and after the commencement day as if a reference in the instrument to a metropolitan health service were a reference to the public health service that the metropolitan health service becomes on that day.
- (2) Without limiting the effect of subsection (1), on and after the commencement day, an instrument creating a trust in relation to—
  - (a) a metropolitan health service; or
  - (b) a former agency of which a metropolitan health service is the successor agency—

has effect and continues to have effect according to its tenor as if the trust were in relation to the public health service that the metropolitan health service becomes on that day.

S. 238  
inserted by  
No. 52/2004  
s. 51.

**238 Old instruments referring to public hospitals**

- (1) Subsections (2) and (3) apply to a body that is a public health service and, immediately before 1 July 2004, was a public hospital.
- (2) Each old public hospital instrument (including an instrument made under an Act) that relates to the body has effect and continues to have effect according to its tenor on and after 1 July 2004 as if a reference in the instrument to the body were a reference to the body as the public health service that the body becomes on that date.

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(3) Without limiting the effect of subsection (2), on and after 1 July 2004, an instrument creating a trust in relation to—

(a) the body; or

(b) a former agency of which the body is the successor agency—

has effect and continues to have effect according to its tenor as if the trust were in relation to the public health service that the body becomes on that date.

(4) Subsections (5) and (6) apply to a body that is a public health service and, immediately before the effective date of an Order under section 239 in relation to that body, was a public hospital.

(5) Each old public hospital instrument (including an instrument made under an Act) that relates to the body has effect and continues to have effect according to its tenor on and after the effective date of an Order under section 239 as if a reference in the instrument to the body were a reference to the body as the public health service that the body becomes on that date.

(6) Without limiting the effect of subsection (5), on and after the effective date of an Order under section 239, an instrument creating a trust in relation to—

(a) the body; or

(b) a former agency of which the body is the successor agency—

has effect and continues to have effect according to its tenor as if the trust were in relation to the public health service that the body becomes on that date.

S. 239  
inserted by  
No. 52/2004  
s. 51.

### **239 Order establishing a public health service**

- (1) If, following consultation with the board of a public hospital, the Minister considers that it is in the public interest that the public hospital become a public health service, the Minister may recommend that an Order be made under subsection (3).
- (2) In making a recommendation under subsection (1), the Minister must have regard to—
  - (a) the nature and scope of the health services provided by the public hospital; and
  - (b) the size of the public hospital's budget; and
  - (c) any proposal for major redevelopment of the public hospital or major capital investment by the Crown in the public hospital; and
  - (d) any other matter that the Minister considers relevant.
- (3) The Governor in Council, by Order published in the Government Gazette, on the recommendation of the Minister under subsection (1), may establish a public health service by the name specified in the Order.
- (4) If an Order is made under subsection (3)—
  - (a) the public hospital whose name is specified in the Order becomes a public health service; and
  - (b) Schedule 1 is amended by the omission of the name of the public hospital whose name is specified in the Order; and
  - (c) Schedule 5 is amended by the addition of the name specified in the Order of the new public health service in the appropriate alphabetical position.

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**240 Establishment of first board of certain public health services**

S. 240  
inserted by  
No. 52/2004  
s. 51.

If, on the effective date of an Order under section 239, a public hospital becomes a public health service—

- (a) the members of the board of the public hospital go out of office; and
- (b) a board must be appointed in accordance with section 65T.

**241 First by-laws**

S. 241  
inserted by  
No. 52/2004  
s. 51.

(1) If, on the effective date of an Order under section 239 or on 1 July 2004, a public hospital becomes a public health service—

- (a) the by-laws of the public hospital are taken to have been revoked; and
- (b) the Governor in Council, by Order published in the Government Gazette, on the recommendation of the Minister, may specify the by-laws, including the core objects, of the public health service.

(2) The by-laws of a public health service specified in an Order under subsection (1) are taken to have been made by the board of the public health service and approved by the Secretary under section 24.

**242 Registrar of Titles**

S. 242  
inserted by  
No. 52/2004  
s. 51.

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 Part.

**s. 243**

**s. 243**  
inserted by  
**No. 52/2004**  
s. 51.

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**243 Operation of provisions not subject to review**

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

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**PART 13—RE-ORGANISATION OF PUBLIC HOSPITALS  
AND PUBLIC HEALTH SERVICES**

Pt 13  
(Heading and  
ss 244–273)  
inserted by  
No. 52/2004  
s. 51.

**244 Definitions**

S. 244  
inserted by  
No. 52/2004  
s. 51.

In this Part—

*agency* means—

- (a) a public hospital; or
- (b) a public health service;

*effective date*, in relation to an Order under this Part, means the date specified in the Order to be the effective date of that Order;

*instrument* includes a document and an oral agreement;

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

*old instrument* means an instrument subsisting immediately before the effective date of an Order under section 248—

- (a) to which a transferring agency was a party; or
- (b) that was given to or in favour of a transferring agency; or
- (c) that refers to a transferring agency; or
- (d) under which—
  - (i) money is, or may become, payable to or by a transferring agency; or
  - (ii) other property is to be, or may become liable to be, transferred to or by a transferring agency;

*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;

*receiving agency* means an agency to which property, rights or liabilities are transferred under this Part;

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

*staff transfer date* in relation to a list referred to in section 263 means the date fixed by the Minister under section 262 as the staff transfer date for the purposes of that list;

*transferred hospital employee* means a person who, by reason of section 264 is regarded as being employed by a receiving agency with effect from the relevant staff transfer date;

*transferring agency* means an agency from which property, rights or liabilities are transferred under this Part.

S. 245  
inserted by  
No. 52/2004  
s. 51.

## 245 Extra-territorial operation

It is the intention of the Parliament that the operation of this Part 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 Part, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

**246 Part to prevail**

If there is any inconsistency between this Part and Division 9 of Part 3 or Division 5 or 6 of Part 9, this Part prevails to the extent of the inconsistency.

S. 246  
inserted by  
No. 52/2004  
s. 51.

**247 Minister to consider report**

- (1) If the Minister proposes to recommend under this Part the re-organisation of an agency or the services it provides, the Minister must cause a report of the proposal to be prepared and made available to the board of each agency affected by the proposal.
- (2) The Minister, after consideration of any written submission made on a report under subsection (1) within 30 days after the report is made available and having regard to the objectives of this Act and the public interest, may make a recommendation under section 248.
- (3) Despite subsections (1) and (2), the Minister, having regard to the objectives of this Act and public interest, may make a recommendation under section 248 at any time in relation to Women's and Children's Health.

S. 247  
inserted by  
No. 52/2004  
s. 51.

**248 Order in Council**

- (1) The Governor in Council, by Order published in the Government Gazette, on the recommendation of the Minister, may do one or more of the following—
- (a) establish an agency;

S. 248  
inserted by  
No. 52/2004  
s. 51.

- 
- (b) appoint a person to act as the first chief executive officer of an agency established by Order under this section and may specify the period (being not more than 6 months) of appointment and the terms and conditions of appointment;
  - (c) specify the by-laws, including the core objects, of an agency established by Order under this section;
  - (d) allocate to an agency or agencies (whether or not established by Order under this section) such of the property, rights and liabilities (wherever located) of another agency (whether or not its incorporation is cancelled by Order under this section) as are specified in the Order;
  - (e) cancel the incorporation of an agency from which property, rights and liabilities are transferred.
- (2) Without limiting subsection (1)(d), an Order may allocate property, rights and liabilities by reference—
- (a) to a campus of an agency or other place; or
  - (b) to a class or category of property, rights or liabilities; or
  - (c) to a combination of paragraphs (a) and (b).
- (3) Before making a recommendation to make an Order under subsection (1)(e), the Minister must be satisfied that as far as practicable the property, rights and liabilities, wherever located, of the transferring agency whose incorporation is to be cancelled, have been transferred to another agency or agencies.
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**249 Amendment of Schedules if new agency established**

S. 249  
inserted by  
No. 52/2004  
s. 51.

If an agency is established by Order under section 248—

- (a) a new agency with the name specified in the Order comes into existence; and
- (b) in the case of a new public hospital, Schedule 1 is amended by the addition of the name of the new public hospital in the appropriate alphabetical position; and
- (c) in the case of a new public health service, Schedule 5 is amended by the addition of the name of the new public health service in the appropriate alphabetical position.

**250 Establishment of first board**

S. 250  
inserted by  
No. 52/2004  
s. 51.

(1) If a public hospital is established by Order under section 248—

- (a) despite section 33(3) to (11), the board of the public hospital consists of the persons (being not less than 6 and not more than 12) named in the Order; and
- (b) for the purposes of Division 4 of Part 3, the Order constitutes the instrument of appointment of the members of the board and may include terms and conditions of appointment.

(2) If a public health service is established by Order under section 248—

- (a) despite section 65T, the board of the public health service consists of the persons (being not less than 6 and not more than 9) named in the Order; and

s. 251

- (b) for the purposes of Division 9B of Part 3, the Order constitutes the instrument of appointment of the directors of the board and may include terms and conditions of appointment.

S. 251  
inserted by  
No. 52/2004  
s. 51.

### **251 First by-laws of agency**

If, by Order under section 248, an agency is established and the agency's by-laws are specified, the by-laws are taken to have been made by the board of the agency and approved by the Secretary under section 24.

S. 252  
inserted by  
No. 52/2004  
s. 51.

### **252 Appointment of first chief executive officer**

If, by Order under section 248, an agency is established and a chief executive officer of the agency is appointed, the appointment is taken to have been made by the board of the agency and approved by the Secretary under section 25.

S. 253  
inserted by  
No. 52/2004  
s. 51.

### **253 Cancellation of agency's incorporation**

- (1) If the incorporation of a public hospital is cancelled by Order under section 248—
  - (a) Schedule 1 is amended by the omission of the name of that public hospital; and
  - (b) the members of the board of the public hospital go out of office; and
  - (c) the chief executive officer of the public hospital goes out of office.
- (2) If the incorporation of a public health service is cancelled by Order under section 248—
  - (a) Schedule 5 is amended by the omission of the name of that public health service; and
  - (b) the directors of the board of the public health service go out of office; and

- 
- (c) the chief executive officer of the public health service goes out of office.
- (3) If the incorporation of an agency is cancelled by Order under section 248 and all its property, rights and liabilities have not been allocated to another agency, on the effective date of the Order—
- (a) the remaining property and rights of the agency, wherever located, vest in the Crown; and
- (b) the remaining liabilities of the agency, wherever located, become liabilities of the Crown; and
- (c) the Crown becomes the successor in law of the agency in respect of that property and those rights and liabilities; and
- (d) this Part applies as if any reference—
- (i) to property, rights and liabilities of a transferring agency whose incorporation is cancelled by Order under section 248 were a reference to property, rights and liabilities vested in the Crown under this subsection; and
- (ii) to a receiving agency were a reference to the Crown.
- (4) Subsection (3) does not apply to a trust.

**254 Vesting of property, rights and liabilities**

If property, rights or liabilities are allocated by Order under section 248 from one agency to another agency, on the effective date of the Order—

- (a) all the property and rights specified in the Order of the transferring agency vest in the receiving agency; and

S. 254  
inserted by  
No. 52/2004  
s. 51.

- (b) all the liabilities specified in the Order of the transferring agency become liabilities of the receiving agency; and
- (c) the receiving agency becomes the successor in law of the transferring agency in respect of that property and those rights and liabilities.

S. 255  
inserted by  
No. 52/2004  
s. 51.

### **255 Substitution of party to agreement**

If, under section 253 or 254, the rights and liabilities of a transferring agency under an agreement vest in, or become liabilities of, a receiving agency—

- (a) the receiving agency becomes, on the effective date of the relevant Order, a party to the agreement in place of the transferring agency; and
- (b) on and after the effective date of the relevant Order, the agreement has effect as if the receiving agency had always been a party to the agreement.

S. 256  
inserted by  
No. 52/2004  
s. 51.

### **256 Proceedings**

- (1) This section applies if—
  - (a) property or rights of a transferring agency vest in a receiving agency under section 253 or 254; or
  - (b) liabilities of a transferring agency become the liabilities of a receiving agency under section 253 or 254.
- (2) If, immediately before the effective date of the relevant Order, proceedings relating to the property, rights or liabilities (including arbitration proceedings) to which the transferring agency was a party were pending or existing in any court or tribunal, then, on and after that date, the receiving agency is substituted for the transferring agency as

a party to the proceedings and has the same rights in the proceedings as the transferring agency had.

### 257 Interests in land

S. 257  
inserted by  
No. 52/2004  
s. 51.

- (1) This section applies if property of a transferring agency vests in a receiving agency under section 253 or 254.
- (2) Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if immediately before the effective date of the relevant Order, a transferring agency is, in relation to the property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—
  - (a) the receiving agency is taken to be the registered proprietor of that interest in land; and
  - (b) the receiving agency has the same rights and remedies in respect of that interest as the transferring agency had.
- (3) 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 Part.

### 258 Old instruments

S. 258  
inserted by  
No. 52/2004  
s. 51.

- (1) Each old instrument relating to property, rights and liabilities of a transferring agency that, under this Part, have vested in, or become liabilities of, a receiving agency has effect and continues to have effect according to its tenor on and after the effective date of the relevant Order as if a reference in the instrument to the transferring agency were a reference to the receiving agency.

s. 259

- (2) This section does not apply to an instrument creating a trust to which section 266 applies.

S. 259  
inserted by  
No. 52/2004  
s. 51.

## 259 Taxes

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

S. 260  
inserted by  
No. 52/2004  
s. 51.

## 260 Evidence

- (1) This section applies if—
- (a) property or rights of a transferring agency vest in a receiving agency under section 253 or 254; or
  - (b) liabilities of a transferring agency become the liabilities of a receiving agency under section 253 or 254.
- (2) Documentary or other evidence that would have been admissible for or against the interests of a transferring agency if the relevant Order had not been made under section 248, is admissible for or against the interests of the receiving agency.
- (3) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of a transferring agency and to entries made in those books of account before the effective date of the relevant Order under section 248, whether or not they relate to the property, rights or liabilities.
- (4) In subsection (3), *books of account* has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

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**261 Saving of quality assurance bodies**

S. 261  
inserted by  
No. 52/2004  
s. 51.

- (1) This section applies to a committee, council or other body established by one or more transferring agencies and declared to be an approved quality assurance body under section 139.
- (2) The Minister, by notice published in the Government Gazette, may declare that a designated committee, council or body to which this section applies is to be taken to be a body established by a designated receiving agency.
- (3) On the publication of a notice under subsection (2)—
  - (a) the notice has effect according to its tenor; and
  - (b) the declaration of the designated committee, council or body under section 139 continues to have effect and may be revoked in accordance with that section.
- (4) This section has effect despite anything to the contrary in the by-laws of the designated receiving agency.

**262 Staff transfer date**

S. 262  
inserted by  
No. 52/2004  
s. 51.

- (1) The Minister, by notice published in the Government Gazette, may determine a date that is to be the staff transfer date for the purposes of a list under section 263.
- (2) The Minister may give more than one notice under this section in respect of a transferring agency.

s. 263

S. 263  
inserted by  
No. 52/2004  
s. 51.

### 263 List of staff

- (1) Before the relevant staff transfer date, the Secretary must prepare a list of employees (other than the chief executive officer) of a transferring agency who are to become employees of a receiving agency on that date.
- (2) The list may specify the employees—
  - (a) by name or position; or
  - (b) by class or category; or
  - (c) by reference to a campus of a transferring agency or other place; or
  - (d) by any combination of paragraphs (a) to (c).
- (3) The list must specify the receiving agency which on the staff transfer date is to become the employer of each employee specified in the list.
- (4) Nothing in this section prevents a person specified in a list as an employee of a transferring agency from resigning or being dismissed at any time before the relevant staff transfer date in accordance with the terms and conditions of his or her employment.

S. 264  
inserted by  
No. 52/2004  
s. 51.

### 264 Transfer of staff

- (1) A person listed as an employee of a transferring agency in a list prepared under section 263 who was such an employee immediately before the relevant staff transfer date is to be regarded as—
  - (a) having been employed by the receiving agency specified in the list with effect from the staff transfer date; and
  - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the staff transfer date, as an employee of the transferring agency; and

- (c) having accrued an entitlement to benefits, in connection with that employment with the receiving agency, that is equivalent to the entitlement that the person had accrued, as an employee of the transferring agency immediately before the staff transfer date.
- (2) The service of a transferred hospital employee as an employee of the receiving agency is to be regarded for all purposes as having been continuous with the service of the transferred hospital employee, immediately before the relevant staff transfer date, as an employee of the transferring agency.
- (3) A transferred hospital employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a transferring agency because of this Part.
- (4) A certificate purporting to be signed by the chief executive officer of the receiving agency certifying that a person named in the certificate was, with effect from the relevant staff transfer date, employed, by virtue of this section by the receiving agency named in the certificate is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

**265 Future terms and conditions of transferred employees**

S. 265  
inserted by  
No. 52/2004  
s. 51.

Nothing in section 264 prevents—

- (a) any of the terms and conditions of employment of a transferred hospital employee from being altered by or under any law, award or agreement with effect from any time after the relevant staff transfer date;  
or

- (b) a transferred hospital employee from resigning, or the termination of a transferred hospital employee's employment, at any time after the relevant staff transfer date in accordance with the then existing terms and conditions of his or her employment by the receiving agency.

S. 266  
inserted by  
No. 52/2004  
s. 51.

### **266 Trusts in respect of transferring agencies**

- (1) The Governor in Council, by Order published in the Government Gazette, on the recommendation of the Minister, may designate an agency as the successor of a designated transferring agency, for the purposes of any trust or class or category of trusts specified in the Order in relation to the transferring agency.
- (2) The Minister must not recommend the designation of an agency under subsection (1) unless the Minister is satisfied that the agency is the appropriate successor for the transferring agency having regard, where relevant, to the campuses operated or to be operated by the designated agency.
- (3) On and after the effective date of an Order under this section, an instrument creating a trust specified, or in a class or category specified, in the Order in relation to—
- (a) a transferring agency designated in the Order; or
  - (b) a former agency of which the transferring agency is the successor agency—

has effect and continues to have effect according to its tenor as if the trust were in relation to the agency designated in the Order as the successor of the transferring agency.

- (4) On and after the effective date of an Order under this section, an agency designated in the Order must, for the purposes of any trust specified, or in a class or category specified, in the Order in relation to a transferring agency designated in the Order, be taken to be the same body as that transferring agency.

**267 Application of property cy-pres not affected**

S. 267  
inserted by  
No. 52/2004  
s. 51.

Nothing in section 266 in relation to an Order under that section affects the operation of—

- (a) an order of a court for the application of property cy-pres made before the effective date of that Order; or
- (b) a scheme or authority for the application of property cy-pres sanctioned or given by the Attorney-General under the **Charities Act 1978** before the effective date of that Order.

**268 Application to trusts whenever created**

S. 268  
inserted by  
No. 52/2004  
s. 51.

The amendments made to this Act by the **Health Services (Governance and Accountability) Act 2004** apply with respect to a trust (within the meaning of section 3(1)) in relation to a body, whether the trust was created before, on or after the commencement of section 51 of that Act.

**269 Validity of things done under this Part**

S. 269  
inserted by  
No. 52/2004  
s. 51.

Nothing done under or by this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil offence; 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,

s. 270

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 obligor wholly or in part from any obligation.

S. 270  
inserted by  
No. 52/2004  
s. 51.

## **270 Operation of provisions not subject to review**

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

S. 271  
inserted by  
No. 52/2004  
s. 51.

## **271 Appointment of administrator**

- (1) If the Minister proposes to make a recommendation under section 248, or has made a recommendation under section 248, and the Minister considers that the appointment of an administrator of an agency will assist the efficient re-organisation of an agency or the services it provides, the Minister may make a recommendation under subsection (2).

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- (2) The Governor in Council, on the recommendation of the Minister, may do one of the following—
    - (a) appoint an administrator for an agency;
    - (b) appoint an administrator for an agency and remove the agency's chief executive officer from office.
  - (3) The appointment of an administrator may be for such period and subject to such terms and conditions as are specified in the instrument of appointment.
  - (4) On the appointment of an administrator to an agency under this section—
    - (a) the directors or members of the board of the agency cease to hold office; and
    - (b) in the case of a public hospital, sections 33(3) to (11), 34 and 35 cease to apply in relation to the board of the public hospital and continue not to apply during the period of appointment of the administrator; and
    - (c) in the case of a public health service, sections 65T, 65U and 65V cease to apply in relation to the board of the public health service and continue not to apply during the period of appointment of the administrator.
  - (5) Section 61 does not apply to the appointment of an administrator under this Part.
  - (6) Sections 61 and 62 do not apply to an agency for which an administrator has been appointed under this Part.
  - (7) The Governor in Council, on the recommendation of the Minister, may at any time revoke the appointment of an administrator and if necessary appoint a new administrator for an agency.
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s. 272

S. 272  
inserted by  
No. 52/2004  
s. 51.

### **272 Functions of administrator**

- (1) The functions of an administrator of an agency are—
  - (a) to carry out the functions of the board of the agency; and
  - (b) to facilitate the transfer of property, rights and liabilities of an agency to another agency or other agencies under this Part.
- (2) An administrator of an agency appointed under this Part has and may exercise all the powers and functions and is subject to all the duties of the board of the agency under, and comprises that board for the purposes of, this Act and the by-laws of the agency.

S. 273  
inserted by  
No. 52/2004  
s. 51.

### **273 Direction of Secretary**

An administrator appointed under this Part is subject to the direction of the Secretary in the exercise of the administrator's functions and powers and the performance of the administrator's duties under this Part.

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**SCHEDULES**

**SCHEDULE 1<sup>3</sup>**

Section 3

**PUBLIC HOSPITALS**

Alexandra District Hospital  
Bairnsdale Regional Health Service  
Bass Coast Regional Health  
Beaufort and Skipton Health Service  
Beechworth Health Service  
Benalla and District Memorial Hospital  
Boort District Hospital  
Casterton Memorial Hospital  
Central Gippsland Health Service  
Cobram District Hospital  
Cohuna District Hospital  
Colac Area Health  
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  
Hepburn Health Service  
Hesse Rural Health Service

**Sch. 1**

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Heywood Rural Health  
Inglewood and Districts Health Service  
Kerang District Health  
Kilmore and District Hospital, The  
Kooweerup Regional Health Service  
Kyabram and District Health Services  
Kyneton District Health Service  
Lorne Community Hospital  
Maldon Hospital  
Manangatang and District Hospital  
Mansfield District Hospital  
Maryborough District Health Service  
McIvor Health and Community Services  
Moyne Health Services  
Mt Alexander Hospital  
Nathalia District Hospital  
Northeast Health Wangaratta  
Numurkah and District Health Service  
Omeo District Health  
Portland District Health  
Queen Elizabeth Centre, The  
Rochester and Elmore District Health Service  
Rural Northwest Health  
Seymour District Memorial Hospital  
South Gippsland Hospital  
South West Healthcare  
Stawell Regional Health

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Swan Hill District Hospital  
Tallangatta Health Service  
Terang and Mortlake Health Service  
Tweddle Child and Family Health Service  
West Gippsland Healthcare Group  
West Wimmera Health Service  
Western District Health Service  
Wimmera Health Care Group  
Wodonga Regional Health Service  
Yarram and District Health Service  
Yarrawonga District Health Service  
Yea and District Memorial Hospital

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Sch. 2

Sch. 2  
amended by  
GGs 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,  
SG (No. 21)  
6.3.01 p. 1,  
GGs 5.7.01  
p. 1605,  
22.12.05  
p. 3053,  
13.3.08 p. 548.

**SCHEDULE 2**

Section 3

**DENOMINATIONAL HOSPITALS**

Calvary Health Care Bethlehem 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  
GGs 27.7.95  
pp 1977-1983,  
21.12.95  
p. 3655,  
SG (No. 56)  
23.5.96 p. 1,  
GG 25.9.97  
pp 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

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**SCHEDULE 4**

**PRIVATELY-OPERATED HOSPITALS**

New Latrobe Regional Hospital

New Mildura Base Hospital

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Sch. 4  
inserted by  
No. 68/1996  
s. 36,  
amended by  
GGs 27.8.98  
p. 2322,  
24.8.00  
p. 2163.

Sch. 5

Sch. 5  
inserted by  
No. 39/2000  
s. 12,  
amended by  
SG (No. 96)  
30.6.00  
pp 3–11,  
GG 17.4.03  
p. 808,  
No. 52/2004  
s. 53(2)(a)–(c),  
SG (No. 159)  
30.6.04 p. 1,  
GG 9.6.05  
p. 1220.  
Sch. 5  
(Heading)  
substituted by  
No. 52/2004  
s. 53(1).

**SCHEDULE 5**

**PUBLIC HEALTH SERVICES**

Austin Health  
Ballarat Health Services  
Barwon Health  
Bayside Health  
Bendigo Health Care Group  
Dental Health Services Victoria  
Eastern Health  
Goulburn Valley Health  
Latrobe Regional Hospital  
Melbourne Health  
Northern Health  
Peninsula Health  
Peter MacCallum Cancer Institute  
Southern Health  
The Royal Children's Hospital  
The Royal Victorian Eye and Ear Hospital  
The Royal Women's Hospital  
Western Health

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## ENDNOTES

### 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.

## 2. Table of Amendments

This Version incorporates amendments made to the **Health Services Act 1988** by Acts and subordinate instruments.

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### **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**

*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

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Health Services Act 1988  
No. 49 of 1988

Endnotes

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**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** (as amended by No. 74/2000)

*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  
*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

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Health Services Act 1988  
No. 49 of 1988

Endnotes

**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**

*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; s. 14(1) on 1.12.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

Health Services Act 1988  
No. 49 of 1988

Endnotes

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**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. 12/1999<sup>4</sup>**

*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**

**Dental Practice Act 1999, No. 26/1999**

*Assent Date:* 1.6.99  
*Commencement Date:* S. 107(Sch. item 4) on 1.7.00: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Health Services Act 1988**

**Health Services (Governance) Act 2000, No. 39/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* Ss 4–12 on 30.6.00: Special Gazette (No. 88) 23.6.00  
p. 11  
*Current State:* This information relates only to the provision/s  
amending the **Health Services Act 1988**

**Public Lotteries Act 2000, No. 73/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 100 on 1.7.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Health Services Act 1988**

Health Services Act 1988  
No. 49 of 1988

Endnotes

**Health Services (Amendment) Act 2001, No. 1/2001**

*Assent Date:* 27.3.01  
*Commencement Date:* 1.4.01: s. 2  
*Current State:* All of Act in operation

**Health Records Act 2001, No. 2/2001**

*Assent Date:* 10.4.01  
*Commencement Date:* S. 103(1)(2)(b) on 1.3.02: Government Gazette 28.2.02 p. 318; ss 103(2)(a)(c)(3)–(5), 104 on 1.7.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Services (Health Purchasing Victoria) Act 2001, No. 18/2001**

*Assent Date:* 29.5.01  
*Commencement Date:* 1.7.01: s. 2  
*Current State:* All of Act in operation

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 61) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Community Visitors Legislation (Miscellaneous Amendments) Act 2001, No. 51/2001**

*Assent Date:* 25.9.01  
*Commencement Date:* Ss 6, 7 on 1.2.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 32) on 24.4.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Electoral Act 2002, No. 23/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* S. 194 on 1.9.02: Government Gazette 29.8.02 p. 2333  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Legislation (Amendment) Act 2003, No. 67/2003**

*Assent Date:* 14.10.03  
*Commencement Date:* Ss 4, 5 on 15.10.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Legislation (Further Amendment) Act 2003, No. 98/2003**

*Assent Date:* 2.12.03  
*Commencement Date:* S. 13 on 3.12.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

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**Gambling Regulation Act 2003, No. 114/2003**

*Assent Date:* 16.12.03  
*Commencement Date:* S. 12.1.3(Sch. 6 item 6) on 1.7.04: Government Gazette 1.7.04 p. 1843  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Services (Supported Residential Services) Act 2004, No. 18/2004**

*Assent Date:* 18.5.04  
*Commencement Date:* Ss 5, 10, 11, 20 on 1.9.04: Special Gazette (No. 189) 1.9.04 p. 1; ss 4, 6–9, 12–19, 21–25 on 31.12.04: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Services (Governance and Accountability) Act 2004, No. 52/2004**

*Assent Date:* 22.6.04  
*Commencement Date:* Ss 4–51, 53(1) on 23.6.04: s. 2(1); ss 52, 53(2) on 1.7.04: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 96) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 49) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Legislation (Miscellaneous Amendments) Act 2005, No. 42/2005**

*Assent Date:* 2.8.05  
*Commencement Date:* Ss 8–14 on 3.8.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 27) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006**

*Assent Date:* 13.6.06  
*Commencement Date:* S. 94(Sch. item 25) on 1.7.06: Government Gazette 29.6.06 p. 1315  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

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Health Services Act 1988  
No. 49 of 1988

**Endnotes**

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**Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 17) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Health Services (Supported Residential Services) Act 2006, No. 55/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* Ss 9, 17 on 12.10.06: Government Gazette 12.10.06 p. 2171; ss 4–8, 10–16 on 1.1.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 48) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Health Services Act 1988**

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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  
Government Gazette 20 September 1989 page 2427  
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

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Health Services Act 1988  
No. 49 of 1988

Endnotes

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|                              |                                   |
|------------------------------|-----------------------------------|
| Government Gazette           | 18 December 1991 page 3541        |
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Health Services Act 1988  
No. 49 of 1988

**Endnotes**

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Health Services Act 1988  
No. 49 of 1988

Endnotes

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|                              |                            |
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### 3. Explanatory Details

<sup>1</sup> 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.

<sup>2</sup> S. 80 (*repealed*): See note 1.

<sup>3</sup> 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. 212, 17.6.92 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, SG (No. 95) 21.12.93 p. 5, GGs 24.3.94 p. 756, 28.7.94 p. 2098, 15.9.94 pp 2503, 2504, 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 pp 821, 822, 20.4.95 pp 930, 931, No. 46/1995 s. 12, GGs 15.6.95 p. 1439, 22.6.95 pp 1531, 1532, 29.6.95 pp 1681, 1682, 17.8.95 pp 2177, 2178, SG (No. 108) 31.10.95 pp 1, 2, No. 99/1995 s. 11, GGs 21.12.95 p. 3656, 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 pp 594, 595, 26.3.98 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, 2.12.99 p. 2570, SG (No. 101) 5.7.00 p. 1, GGs 15.3.01 p. 458, 28.6.01 p. 1499, 17.1.02 p. 70, 24.1.02 p. 130, 20.6.02 p. 1399, 10.10.02 p. 2735, 19.12.02

Health Services Act 1988  
No. 49 of 1988

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<sup>4</sup> 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.