

# Private Health Facilities Act 2007 No 9

[2007-9]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**
  - [Health Legislation Amendment Bill 2015](#)
  - [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2015](#)

### Authorisation

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# Private Health Facilities Act 2007 No 9



New South Wales

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# Private Health Facilities Act 2007 No 9



New South Wales

An Act to provide for the licensing and control of private health facilities, to repeal the *Private Hospitals and Day Procedure Centres Act 1988*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Private Health Facilities Act 2007*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to maintain appropriate and consistent standards of health care and professional practice in private health facilities, and
- (b) to plan for and provide comprehensive, balanced and coordinated health services throughout New South Wales.

### 4 Definitions

(1) In this Act:

**Advisory Committee** means the Private Health Facilities Advisory Committee established under this Act.

**application** means:

- (a) an application for a licence under section 6, or
- (b) an application to transfer a licence under section 15, or
- (c) an application for approval to alter or extend a private health facility under section 16, or
- (d) an application for amendment of a licence under section 17.

**approval in principle** means an approval in principle under section 7 of an application for a licence.

**authorised officer** means an authorised officer appointed under section 50.

**class of facility**, in relation to a private health facility, means the class or classes of facility in respect of which a licence for the facility is issued.

**clinical area** means an area of a private health facility that is used for the provision of health services to a patient and includes any area of a facility that may be prescribed.

**Department** means the Department of Health.

**Director-General** means the Director-General of the Department.

**director of nursing** means the director of nursing of a private health facility as referred to in section 37.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**licence** means a licence issued under section 9 and in force under this Act.

**licensee** means the holder, or any one or more of the holders, for the time being of a licence.

**licensing standards** means the standards prescribed under section 5.

**patient** means a person treated at a private health facility.

**practitioner** means a medical practitioner, a dentist or other health practitioner as may be prescribed by the regulations.

**premises** includes any land, building and part of any building.

**private health facility** means premises at which any person is admitted, provided with medical, surgical or other prescribed treatment and then discharged, or premises at which a person is provided with prescribed services or treatments, but it does not include:

- (a) an institution conducted by or on behalf of the State, or
- (b) a hospital or health service under the control of a public health organisation within the meaning of the [Health Services Act 1997](#), or
- (c) a nursing home within the meaning of the [Public Health Act 2010](#), or
- (d) premises of a class prescribed by the regulations for the purposes of this

definition.

**procedure room** means a room in which medical or surgical procedures are conducted, and includes an operating theatre, labour room or other room prescribed by the regulations.

**register of patients** means the register that is required by section 38 to be kept at a private health facility.

**ward** means any room (other than a labour room or operating theatre) in a private health facility in which patients are accommodated and includes any recovery room in which a patient is monitored after an operation whilst returning to his or her pre-operative state of consciousness.

(2) A reference in this Act:

- (a) to medical, surgical or other treatment includes a reference to a diagnosis for the purposes of any such treatment, and
- (b) to the conduct of a private health facility (however expressed) is a reference to the carrying on of the business of the facility, and
- (c) to a person who conducts a private health facility (however expressed) is a reference:
  - (i) to a corporation which conducts the facility, except where that corporation is acting only in its capacity as an agent, or
  - (ii) to a natural person who conducts the facility (whether jointly with other persons or alone), except where that person is acting only in the person's capacity as an employee or an agent.

(3) Notes included in this Act do not form part of this Act.

## **Part 2 Licensing of private health facilities**

### **Division 1 Licensing standards**

#### **5 Licensing standards**

The regulations may prescribe standards for or with respect to any matter relating to the safety, care or quality of life of patients at private health facilities, including without limitation the following matters:

- (a) clinical standards, including accreditation of practitioners to provide services at the facility, delineation of clinical privileges of practitioners and quality assurance,
- (b) staffing, including qualifications of staff members, number of staff and duties,



- (c) equipment,
- (d) design and construction of clinical areas,
- (e) operational matters, including administration and support services.

## **Division 2 Applications for and issue of licences**

### **6 Application for licence**

- (1) An application for a licence for a private health facility is to be made to the Director-General by the person who intends to conduct the facility.
- (2) An application must:
  - (a) be in a form approved by the Director-General, and
  - (b) specify the class of facility for which the licence is sought, and
  - (c) specify the maximum number of patients it is proposed to accommodate at any one time in each ward of the facility, and
  - (d) specify the number (if any) of procedure rooms that are proposed to be provided at the facility, and
  - (e) demonstrate that the facility can be conducted in accordance with the licensing standards, and
  - (f) be accompanied by any fee and any particulars and documents prescribed by the regulations in relation to an application under this section in respect of that class of facility.

### **7 Approval in principle or refusal of application**

- (1) The Director-General must, after considering an application for a licence under this Division:
  - (a) give an approval in principle to the application, or
  - (b) refuse the application.
- (2) The Director-General may give an approval in principle unconditionally or subject to conditions, including conditions relating to:
  - (a) the design and construction of any clinical areas to be constructed, altered or extended for the purposes of the proposed facility, and
  - (b) the times by which any such design and construction must be completed.
- (3) In determining whether to give an approval in principle, the Director-General is not to

take into account whether any such approval has been previously given or refused.

- (4) The Director-General may refuse an application for a licence only if the Director-General is satisfied that:
- (a) the applicant, or any of the applicants, is not a fit and proper person to be a licensee or if the applicant is a corporation, a director or a person concerned in the management of the corporation is not a fit and proper person to be a licensee, or
  - (b) the proposed facility is not capable of being conducted by the applicant in accordance with the licensing standards, or
  - (c) having regard to any development guidelines approved by the Director-General and published in the Gazette:
    - (i) approval of the application will result in more than an adequate number of health services becoming available in a particular clinical or geographic area and will undermine the provision of viable, comprehensive and coordinated health services, or
    - (ii) the application should be refused for any other reason, or
  - (d) the applicant (or, where the applicant is a corporation, any director or other person concerned in the management of the corporation) has been convicted of an offence under this Act or the regulations, or
  - (e) the applicant (or, where the applicant is a corporation, any director or other person concerned in the management of the corporation) has been convicted in New South Wales of an offence punishable by imprisonment for a period of 12 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (f) the applicant (being a natural person) has been bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit, or
  - (g) where the applicant is a corporation—a receiver or manager has been appointed in respect of the property of the applicant or the applicant has been commenced to be wound up or is under official management.
- (5) The Director-General must, if he or she gives an approval in principle, notify the applicant in writing of that approval and any conditions to which the approval is subject.

## **8 Period for which approval in principle remains effective**

- (1) An approval in principle is effective for a period of one year from the date on which

the applicant is given notice of that approval under section 7 (5), subject to any extension of that period by the Director-General under this section.

- (2) The Director-General may, at the request of the applicant and in accordance with this section, extend the period for which an approval in principle remains effective (an **extension**).
- (3) An applicant may make more than one request for an extension, but any such request must be made while the approval in principle is effective.
- (4) A request for an extension is to be in the form approved by the Director-General and is to be accompanied by any fee, document or information that may be prescribed by the regulations in relation to the relevant class of private health facility.
- (5) The Director-General may grant an extension only if:
  - (a) the particular extension is for a period of no more than one year, and
  - (b) the total period for which the approval in principle will be effective is no more than 7 years, and
  - (c) the Director-General is satisfied that each applicant:
    - (i) has made a reasonable attempt to comply with any conditions to which the approval in principle is subject, and
    - (ii) is a fit and proper person to be a licensee or if the applicant is a corporation, each director and each person concerned in the management of the corporation is a fit and proper person to be a licensee.

## **9 Issue of licence approved in principle**

- (1) The Director-General must grant an application and issue a licence to an applicant if the Director-General has approved the application in principle and all conditions to which the approval in principle was subject have been complied with, unless:
  - (a) the approval in principle has expired, or
  - (b) the Director-General is satisfied that the proposed facility is not capable of being conducted by the applicant in accordance with the licensing standards, or
  - (c) the Director-General is satisfied that the applicant, or any of the applicants, is not a fit and proper person to be a licensee or if the applicant is a corporation, a director or a person concerned in the management of the corporation is not a fit and proper person to be a licensee.
- (2) The Director-General is to notify the applicant in writing if the Director-General grants an application and issues a licence.

## **Division 3 Provisions relating to licences**

### **10 Classes of private health facilities**

- (1) For the purposes of this Act, the classes of private health facilities are the classes (if any) prescribed by the regulations.
- (2) A private health facility may fall into more than one class, and in such a case, a provision requiring a fee to be paid under the Act in respect of a class of facility, means the highest fee that would be payable if the facility were to fall into only one of those classes.

### **11 Form of licence**

Without limiting the particulars that may be included in a licence, a licence is to specify:

- (a) the person to whom it is issued, and
- (b) the address of the private health facility for which it is issued, and
- (c) the class of facility in respect of which it is issued, and
- (d) the maximum number of patients who can be accommodated at any one time in each ward of the facility, and
- (e) any conditions to which the licence is subject (other than the conditions referred to in section 12 (2)).

### **12 Conditions of licence**

- (1) The Director-General may issue a licence subject to such conditions as may be specified in the licence.

**Note—**

Conditions, other than those referred to in subsection (2), may be amended by the Director-General under section 17 (3) (c).

- (2) A licence is subject to the conditions that the licensee, in respect of the facility concerned, must:
  - (a) hold or otherwise be covered by insurance, or other liability cover, as may be prescribed by the regulations in relation to that class of facility, and
  - (b) ensure that, at all times, a medical advisory committee is appointed in accordance with this Act and the regulations in respect of the facility, and
  - (c) comply with all other provisions of this Act and the regulations, and
  - (d) ensure that the facility is conducted in accordance with the licensing standards applicable to it, and

- (e) ensure that reasonable standards of patient care and safety are maintained at the facility, and
- (f) provide to the Director-General in the time and manner specified by the Director-General, such information as may be prescribed.

### **13 Duration of licence**

A licence comes into force from the date on which the applicant is notified by the Director-General under section 9 (2) or 15 (5) or when a new licence is issued under section 17 (4) (b) and remains in force (except when suspended) until cancelled under this Act.

### **14 Annual licence fees**

- (1) The licensee of a private health facility must, on or before 31 December in each year, or such other date as may be notified to the licensee in writing by the Director-General, pay to the Director-General the annual licence fee (if any) prescribed by the regulations in relation to that class of facility.
- (2) The Director-General may accept a late payment of an annual licence fee, but only if an additional late fee of 50% of the annual licence fee is paid at the same time as the licence fee.

### **15 Transfer of licence to another licensee**

- (1) A person who intends to take over the conduct of a private health facility may, with the consent of the licensee of the facility, apply to the Director-General to transfer the relevant licence from the licensee to the applicant.
- (2) Except as provided by subsection (4), the Director-General must, if the application is made in accordance with this section, transfer the licence to the applicant:
  - (a) by an appropriate endorsement on the licence, or
  - (b) by cancelling the licence and issuing a new licence in respect of the facility to the applicant.
- (3) An application under this section must:
  - (a) be in a form approved by the Director-General, and
  - (b) be accompanied by any fee and any particulars and documents prescribed by the regulations in relation to an application under this section in respect of that class of facility.
- (4) The Director-General may refuse an application under this section only if the Director-General is satisfied:
  - (a) that the applicant, or any of the applicants, is not a fit and proper person to be a

licensee or if the applicant is a corporation, a director or a person concerned in the management of the corporation is not a fit and proper person to be a licensee, or

(b) that the proposed facility is not capable of being conducted by the applicant in accordance with the licensing standards.

(5) The Director-General is to notify the applicant in writing if the Director-General approves an application.

## **16 Alterations or extensions to licensed facilities**

(1) The licensee of a private health facility must not cause or permit any clinical areas of the facility to be altered or extended (whether by construction of new buildings or otherwise) unless:

(a) the approval of the Director-General to the alteration or extension is first obtained, and

(b) the facility is altered or extended in accordance with plans and specifications approved by the Director-General.

Maximum penalty: 1,000 penalty units.

(2) An application for approval under this section must:

(a) be in a form approved by the Director-General, and

(b) be accompanied by any fee and any particulars and documents prescribed by the regulations in relation to an application under this section in respect of that class of facility.

(3) The Director-General may refuse an application under this section for any reason the Director-General might refuse under Division 2 an application for a licence for the facility as altered or extended.

(4) The approval of the Director-General is not required under this section for any alteration or extension required to be carried out under an improvement notice given under Part 5.

## **17 Amendment of licences**

(1) An application to amend a licence for a private health facility is to be made to the Director-General by the licensee of the facility.

(2) An application must:

(a) be in a form approved by the Director-General, and

(b) specify the facility to which the licence relates, and

- (c) specify the amendment that is sought, and
  - (d) demonstrate that the facility can, if the amendment is granted, be conducted in accordance with the licensing standards, and
  - (e) be accompanied by any fee and any particulars and documents prescribed by the regulations in relation to an application under this section in respect of that class of facility.
- (3) The Director-General may on the application of the licensee, or if the Director-General otherwise considers it necessary, amend a licence in any one or more of the following ways:
- (a) by amending the class of private health facility to which the licence relates,
  - (b) by amending the number of patients who may be accommodated at any one time in each ward of the private health facility,
  - (c) by amending or revoking any condition of the licence (other than a condition referred to in section 12 (2)) or attaching further conditions to the licence.
- (4) A licence may be amended under this section:
- (a) by endorsing the licence with the amendment, or
  - (b) by cancelling the licence and issuing a new licence incorporating the amendment, or
  - (c) by notice in writing served on the licensee.
- (5) If a notice is served under subsection (4) (c), the licence to which it relates is immediately taken to be amended in accordance with the notice.
- (6) The Director-General may, by notice in writing served on a licensee, require the licensee to forward his or her licence to the Director-General for the purposes of this section.
- (7) A licensee must comply with a notice served on the licensee under subsection (6).  
Maximum penalty: 50 penalty units.
- (8) The Director-General may refuse an application under this section if the Director-General is satisfied on any of the grounds set out in section 7 (4).

## **Division 4 General provisions relating to applications**

### **18 Additional information**

- (1) The Director-General may, by notice in writing served on an applicant, direct the applicant to provide to the Director-General any information the Director-General may

reasonably require for the purpose of determining the application.

- (2) Despite any other provision of this Act, the Director-General may refuse an application on the ground that the applicant has failed to comply with a direction under this section.

### **19 Notice of reasons for refusal of application**

- (1) If the Director-General refuses an application, he or she is to notify the applicant in writing of the following:
  - (a) that the application has been refused,
  - (b) the grounds on which it has been refused,
  - (c) if the application has been refused on the ground that an applicant (or if the applicant is a corporation, a director or a person concerned in the management of the corporation) is not a fit and proper person to be a licensee—the reasons why the person is not a fit and proper person to be a licensee,
  - (d) that the applicant can apply under Division 5 for a review of the decision to refuse the application.
- (2) A person whose application has been refused for any reason is not entitled to a refund of any fee paid in relation to that application.

### **20 Advertising of applications**

- (1) Before:
  - (a) approving in principle an application for a licence, or refusing any such application, or
  - (b) determining an application to transfer a licence,the Director-General is to publicly advertise the application in the manner the Director-General thinks fit.
- (2) The Director-General is to take into consideration any representations made in relation to an application within the time specified in the advertisement.

### **21 Amendment of applications**

An applicant may, with the approval of the Director-General, amend his or her application.

## **Division 5 Review of decisions of Director-General**

### **22 Definition**

In this Division, ***decision of the Director-General*** means:



- (a) a decision of the Director-General to refuse an application, or
- (b) a determination by the Director-General, when issuing a licence, of the class of facility for which the licence is issued, or
- (c) a determination by the Director-General, when issuing a licence, of the maximum number of patients who may be accommodated at any one time in each ward of the private health facility for which the licence is issued, or
- (d) a determination by the Director-General of the conditions subject to which a licence is issued, or
- (e) a decision of the Director-General to amend a licence (otherwise than on the application of the licensee).

### **23 Chairperson of Committees of Review**

- (1) The Minister may appoint a person to be Chairperson of Committees of Review.
- (2) Schedule 1 has effect with respect to the Chairperson of Committees of Review.

### **24 Application for review of Director-General's decision**

- (1) A person aggrieved by a decision of the Director-General in relation to a private health facility may apply to the Minister to review the decision.
- (2) An application under this section must:
  - (a) be in a form approved by the Minister, and
  - (b) be accompanied by any fee and any particulars and documents prescribed by the regulations in relation to an application under this section in respect of that class of facility, and
  - (c) must be made within 30 days after the day on which the person is notified of the decision.
- (3) On receipt of an application for review, the Minister is to forward the application to the Chairperson of Committees of Review, who is to establish a Committee of Review to advise the Minister on the application.

### **25 Constitution of Committee of Review**

- (1) A Committee of Review is to comprise the Chairperson of Committees of Review and 3 other persons appointed by the Chairperson, being:
  - (a) a person with knowledge of the private health facility industry, and
  - (b) a person with experience as a health care practitioner in a private health facility, and

(c) a person who can represent the views of consumers of services provided by private health facilities.

- (2) The Chairperson may not appoint a person if the Chairperson knows, or has reason to believe, that the person has a pecuniary interest in the subject-matter of the application for review.
- (3) Schedule 2 has effect with respect to Committees of Review.

## **26 Committee of Review to make recommendation to Minister**

- (1) A Committee of Review may investigate the subject-matter of an application for review to the extent it considers necessary.
- (2) A Committee of Review must, after its investigation, give a written report to the Minister recommending that the decision of the Director-General be confirmed, or that the decision be revoked and:
- (a) in the case of a decision to refuse an application, recommend that the application concerned be granted, or
  - (b) in any other case, recommend that the Director-General be directed to take such other action under this Act as the Committee considers appropriate.
- (3) A Committee of Review is, in its report, to give reasons for its recommendation.
- (4) If the members of a Committee of Review are unable to agree on the recommendation that the Committee should make to the Minister, the Committee's report is to include the recommendation, and the reasons for the recommendation, of each member.

## **27 Determination of application for review by Minister**

- (1) The Minister may, in relation to an application for review, after such investigation as the Minister considers necessary and after having regard to the report of the Committee of Review, either:
- (a) confirm the decision of the Director-General, or
  - (b) revoke that decision and:
    - (i) in the case of a decision to refuse an application, direct the Director-General to grant the application concerned, or
    - (ii) in any other case, direct the Director-General to take such other action under this Act as the Minister considers appropriate.
- (2) The Director-General is to give effect to a direction of the Minister under this section.
- (3) The Minister is not required, before determining an application for review under this

section, to have regard to a report of the Committee of Review to which the application has been referred if that Committee has failed to submit a report to the Minister within such time as the Minister may have communicated to the Chairperson of Committees of Review.

## **28 Applicant to provide information**

The Minister or a Committee of Review to which an application for review is referred may (as a condition of dealing with the application) require the applicant:

- (a) to provide the Minister or the Committee (as the case may require) with such additional information as the Minister or the Committee may reasonably require to determine the application, and
- (b) to allow the Minister or members of the Committee (or a person nominated by the Minister or the Committee) to enter and inspect any premises to which the application for review relates.

## **Division 6 Suspension and cancellation of licences**

### **29 Suspension of licence**

- (1) The Director-General may suspend a licence in respect of a private health facility if:
  - (a) the licensee is in breach of a licensing standard and that breach is likely to cause a serious and substantial risk to the health or safety of patients at the facility, or
  - (b) the licensee does not have a medical advisory committee appointed in accordance with this Act in respect of the facility.
- (2) A licence is suspended:
  - (a) from the date notice of the suspension is given in writing by the Director-General to the licensee, and
  - (b) until the date specified in the notice as the date when the period of suspension ends, or if no such date is specified, until the Director-General gives a further written notice to the licensee ending the period of suspension.
- (3) A licence ceases to be in force during any period that it is suspended.
- (4) The Director-General may, as he or she thinks fit, notify any person of a decision to suspend a licence under this section.

### **30 Cancellation of licence without notice**

- (1) The Director-General may cancel the licence for a private health facility (including a licence that is suspended) without holding an inquiry or giving any notice to the licensee:

- (a) if the licensee requests the Director-General in writing to cancel the licence, or
  - (b) if the premises to which the licence relates have ceased to be a facility of a class in respect of which the licence was issued.
- (2) The Director-General may, as he or she thinks fit, notify any person of a decision to cancel a licence under this section.

### **31 Cancellation of licence with notice**

- (1) The Director-General may cancel the licence for a private health facility (including a licence that is suspended):
- (a) if the annual licence fee (and any late fee) payable under this Act in respect of the facility has not been paid within 3 months after the due date, or
  - (b) if the Director-General is satisfied that the licensee, or any of the licensees, is not a fit and proper person to be a licensee or if the licensee is a corporation, a director or a person concerned in the management of the corporation is not a fit and proper person to be a licensee, or
  - (c) if the licensee breaches any condition to which the licence is subject, or
  - (d) if the licensee (or, where the licensee is a corporation, any director or other person concerned in the management of the corporation) is convicted of an offence under this Act or the regulations, or
  - (e) if the licensee (or, where the licensee is a corporation, any director or other person concerned in the management of the corporation) is convicted in New South Wales of an offence punishable by imprisonment for a period of 12 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (f) if the licensee (being a natural person) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) where the licensee is a corporation, if a receiver or manager has been appointed in respect of the property of the licensee or if the licensee is commenced to be wound up or is under official management, or
  - (h) if the facility is conducted in such a manner that the cancellation of the licence is otherwise in the public interest.
- (2) The Director-General may, for the purpose of exercising any of the Director-General's powers under subsection (1), cause an inquiry to be made by a person appointed by the Director-General for that purpose.

- (3) The Director-General is not to cancel a licence under this section unless, before cancelling the licence, the Director-General:
  - (a) has given notice to the licensee that the Director-General intends to cancel the licence, and
  - (b) has specified in that notice the reasons for the Director-General's intention to cancel the licence, and
  - (c) has given the licensee (whether in the course of an inquiry under subsection (2) or otherwise) a reasonable opportunity to make submissions to the Director-General in relation to the proposed cancellation, and
  - (d) has taken into consideration any such submissions by the licensee.
- (4) The cancellation of a licence under this section does not take effect until the expiration of 14 days after notice of the Director-General's decision is served on the licensee, subject to any order made by the Civil and Administrative Tribunal under Division 2 of Part 3 of Chapter 3 of the *Administrative Decisions Review Act 1997*.
- (5) The Director-General may, as he or she thinks fit, notify any person of a decision to cancel a licence under this section.

### **32 Right to apply to Civil and Administrative Tribunal for administrative review**

- (1) The licensee of a private health facility may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision of the Director-General to suspend or cancel the licence for the facility (except where the cancellation occurs in accordance with section 30).
- (2) An application under subsection (1) must be made within 30 days after the notice of the decision is served on the licensee.

## **Part 3 Conduct of private health facilities**

### **33 Unlicensed private health facility**

A person must not conduct a private health facility unless:

- (a) the private health facility is licensed, and
- (b) the person is the licensee.

Maximum penalty: 5,000 penalty units.

### **34 Executor or administrator regarded as licensee**

If the only licensee of a private health facility dies, the executor of the will or administrator of the estate of the licensee is taken to be the licensee for a period not

exceeding 2 months or such longer period following the death as the Director-General may, in any particular case, approve.

### **35 Purposes for which facilities may be used**

The licensee of a private health facility must not cause or permit the licensed premises to be used for any purpose other than the following purposes:

- (a) a private health facility of the class specified in the licence,
- (b) a pharmacist's shop or dispensary,
- (c) a purpose permitted by the licence,
- (d) a purpose permitted by the regulations.

Maximum penalty: 1,000 penalty units.

### **36 Overcrowding**

- (1) The licensee of a private health facility must not cause or permit the number of patients accommodated at any one time in a ward of the facility to exceed the number of patients specified in the licence in relation to that ward of the facility.

Maximum penalty: 1,000 penalty units.

- (2) The licensee is not guilty of an offence under this section in respect of anything done in an emergency.

### **37 Nursing requirements for private health facilities**

- (1) The licensee of a private health facility must:

- (a) ensure that a registered nurse is on duty at the facility at all times during which there is a patient at the facility, and
- (b) ensure that a registered nurse is appointed as a director of nursing of the facility, and
- (c) ensure that any vacancy in the position of director of nursing of the facility is filled within 7 days (or such other period as may be prescribed) after the vacancy occurs.

Maximum penalty: 1,000 penalty units.

- (2) The regulations may prescribe the minimum necessary qualifications for a registered nurse to be appointed as a director of nursing at a facility.
- (3) The licensee of a private health facility must, except as may be provided by the regulations, notify the Director-General in accordance with this section of the name

and qualifications of the person appointed as director of nursing of the facility.

Maximum penalty: 50 penalty units.

- (4) A notification under subsection (3) must:
  - (a) be in writing, and
  - (b) be given before the person is appointed as director of nursing or, if that is not practicable, immediately after that time, and
  - (c) be accompanied by any particulars that may be prescribed.
- (5) Nothing in this Act prevents a licensee, if qualified, from carrying out the duties of director of nursing.
- (6) It is a defence to a prosecution for an offence arising under this section if the defendant proves that the defendant took all reasonable steps to avoid being guilty of the offence.
- (7) In this section:

***director of nursing*** of a private health facility means the registered nurse responsible for the care of patients at the facility.

### **38 Register of patients**

- (1) The licensee of a private health facility must cause a register of patients to be kept at the facility.
- (2) The register of patients is to be kept in a form approved by the Director-General subject to any requirements that may be prescribed by the regulations.
- (3) The following particulars must be entered in the register of patients:
  - (a) the name, age and residential address of each patient at the facility,
  - (b) the date when the patient was received at the facility,
  - (c) the date when the patient left the facility or, in the event of the patient's death, the date of death,
  - (d) the name of the practitioner attending the patient,
  - (e) any other particulars that may be prescribed.
- (4) The particulars must be entered in the register of patients by the persons, at the time, and in the manner, prescribed for the purposes of this subsection.
- (5) A person must not:

- (a) enter in the register of patients any particular that the person knows or has reason to believe to be false or misleading in a material particular, or
- (b) wilfully fail to enter in the register of patients any particular that the person is required to enter.

Maximum penalty: 1,000 penalty units.

### **39 Medical advisory committee**

- (1) The licensee of a private health facility must appoint, in accordance with any requirements prescribed by the regulations, a medical advisory committee for the facility consisting of at least 5 medical practitioners (each of whom holds general or specialist registration in the medical profession under Part 7 of the Health Practitioner Regulation National Law) and such other health practitioners as the licensee considers appropriate.

Maximum penalty: 1,000 penalty units.

- (2) The medical advisory committee is to be responsible for:
  - (a) advising the licensee on the accreditation of practitioners to provide services at the facility and the delineation of their clinical responsibilities, and
  - (b) advising the licensee on matters concerning clinical practice at the facility, and
  - (c) advising the licensee on matters concerning patient care and safety at the facility, and
  - (d) any other matter that may be prescribed by the regulations.
- (3) The medical advisory committee may include nominees or representatives of other health care providers, learned colleges or other relevant professional organisations.
- (4) It is a duty of a medical advisory committee of a private health facility to report to the Director-General any repeated failure by the licensee of the facility to act on the committee's advice on matters specified in subsection (2) where that failure is likely to adversely impact on the health or safety of patients.
- (5) A licensee of a private health facility may be a member of the medical advisory committee for the facility, but must not chair the committee and must not, with other licensees of the facility, comprise a majority of the committee.
- (6) The licensee of a private health facility must, as soon as is reasonably practicable, notify the Director-General in writing:
  - (a) of the name, contact details and qualifications of each person who becomes a member of a medical advisory committee for the facility, and



(b) of the date on which each such person ceases to be a member of the committee.

(7) Despite any other provision of this section, the licensee of a private health facility is responsible for the safety of patients at the facility and for clinical governance of the facility.

#### **40 Act and regulations to be readily available**

The licensee of a private health facility must, at all times while the facility is being conducted, ensure that the director of nursing of the facility has ready access to a copy of this Act and the regulations.

Maximum penalty: 50 penalty units.

### **Part 4 Root cause analysis teams**

#### **41 Definitions**

In this Part:

**health service** includes any administrative or other service related to a health service.

**reportable incident** means an incident relating to the provision of health services by a private health facility, being an incident of a type prescribed by the regulations or set out in a document adopted by the regulations.

**team** means a root cause analysis team appointed under section 42.

#### **42 Appointment of root cause analysis teams to deal with reportable incidents**

(1) When a reportable incident involving a private health facility is reported to the licensee of the facility, the licensee is to appoint a root cause analysis team in relation to the reportable incident within 30 days after that incident.

(1A) When an incident involving the provision of health services by a private health facility (other than a reportable incident) is reported to the licensee of the facility, the licensee may appoint a root cause analysis team in relation to the incident if the licensee is of the opinion that the incident may be the result of a serious systemic problem that justifies the appointment of such a team.

(2) The licensee is, subject to the regulations, to appoint such members to the team as the licensee considers appropriate to undertake the functions of the team in relation to the incident.

(3) The licensee must cause a written record to be kept of the persons appointed under this section as members of the team in relation to a particular incident.

Maximum penalty: 100 penalty units.

#### 43 Restrictions on root cause analysis teams

- (1) A root cause analysis team does not have authority to conduct an investigation relating to the competence of an individual in providing health services.
- (2) A report furnished or information made available by a team must not disclose:
  - (a) the name or address of an individual who is a provider or recipient of health services unless the individual has consented in writing to that disclosure, or
  - (b) as far as is practicable, any other material that identifies, or may lead to the identification of, such an individual.
- (3) A member of a root cause analysis team is to act in a fair and reasonable manner in the exercise of his or her functions as such a member.

#### 44 Responsibilities of root cause analysis team in relation to incident

- (1) A root cause analysis team is to notify in writing the licensee and the chair of the medical advisory committee for the relevant facility if the team is of the opinion that the incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a person who is accredited to provide health services at the facility or a staff member of the facility or may indicate that such a person is suffering from an impairment.
- (2) A team may notify in writing the licensee and the chair of the medical advisory committee for the relevant facility if the team is of the opinion that the incident that it is considering raises matters that may involve unsatisfactory professional performance by a person who is accredited to provide health services at the facility or a staff member of the facility, but not to the extent that would constitute professional misconduct or unsatisfactory professional conduct.
- (2A) A notification under subsection (1) or (2) is to disclose the identity of the person to whom the notification relates (regardless of whether the person consents to the disclosure) and specify whether the notification relates to:
  - (a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the person, or
  - (b) the person suffering from an impairment.
- (2B) A root cause analysis team may notify in writing the licensee and the chair of the medical advisory committee for the relevant facility if the team is of the opinion that the incident that it is considering raises matters that indicate a problem giving rise to a risk of serious and imminent harm to a person.
- (3) On completion of its consideration of an incident, a team must prepare a report in writing (an **incident report**) that contains the following:

- (a) a description of the incident,
- (b) a causation statement, being a statement that indicates the reasons why the team considers the incident concerned occurred,
- (c) if the team has any recommendations as to the need for changes or improvements in relation to a procedure or practice arising out of the incident—those recommendations.

(3A) Subject to section 47, the contents of a report of a root cause analysis team under subsection (3) may be disclosed to any person and used for any purpose.

(4) The team is to provide the licensee and the chair of the medical advisory committee for the relevant facility with a copy of the incident report.

(5) The licensee must, within 30 days after being provided with an incident report under subsection (4), forward a copy of the report to the Director-General.

Maximum penalty (subsection (5)): 50 penalty units.

(6) In this section:

**impairment** has the same meaning it has in the [Health Practitioner Regulation National Law \(NSW\)](#).

**professional misconduct** and **unsatisfactory professional conduct** have the same meanings that they have in Part 8 of the [Health Practitioner Regulation National Law \(NSW\)](#).

**unsatisfactory professional performance** means professional performance that is unsatisfactory within the meaning of Division 5 of Part 8 of the [Health Practitioner Regulation National Law \(NSW\)](#).

#### 45 Disclosure of information

A person who is or was a member of a root cause analysis team must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a member, except:

- (a) for the purpose of exercising the functions of a member, or
- (b) for the purposes of any recommendation of a team, or
- (c) for the purposes of any notification or report under section 44, or
- (d) in accordance with the regulations.

Maximum penalty: 50 penalty units.

#### **46 Information not to be given in evidence**

- (1) A person is neither competent nor compellable to produce any document or disclose any communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a root cause analysis team.
- (2) Subsection (1) does not apply to a requirement made in proceedings in respect of any act or omission by a team or by a member of a team as a member.
- (3) Subsection (1) does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a root cause analysis team.

#### **47 Notifications and reports not to be admitted in evidence**

- (1) Evidence as to the contents of a notification or report of a root cause analysis team under section 44 cannot be adduced or admitted in any proceedings.
- (2) Subsection (1) does not apply to proceedings in respect of any act or omission by a root cause analysis team or by a member of a root cause analysis team as a member.

#### **48 Personal liability of members of root cause analysis team**

- (1) Anything done or omitted to be done by a root cause analysis team, a member of a team or any person acting under the direction of a team, in good faith for the purposes of the exercise of the team's functions, does not subject such a member or person personally to any action, liability, claim or demand.
- (2) Without limiting subsection (1), a member of a team has qualified privilege in proceedings for defamation in respect of:
  - (a) any statement made orally or in writing in the exercise of the functions of a member, or
  - (b) the contents of any report or other information published by the team.
- (3) The members of a team are, and are entitled to be, indemnified by the licensee of the facility for which the team is appointed in respect of any costs incurred in defending proceedings in respect of a liability against which they are protected by this section.

#### **49 Regulations concerning root cause analysis teams**

The regulations may make provision for or with respect to the following:

- (a) the constitution and membership of teams,
- (b) the functions of teams,

- (c) the procedure of teams and the manner in which they are to exercise their functions,
- (d) permitting or requiring teams to make specified information available to the public,
- (e) permitting or requiring teams to furnish reports concerning their activities to the Minister and to the Director-General,
- (f) the conduct of reviews or audits of investigations conducted by root cause analysis teams.

## **Part 5 Enforcement**

### **50 Authorised officers**

- (1) The Director-General may appoint a member of staff of the Department, or a person of a class prescribed by the regulations, to be an authorised officer for the purposes of this Act.
- (2) An authorised officer may exercise such functions as are conferred on an authorised officer by this Act or the regulations.
- (3) The Director-General is to provide each authorised officer with an identification card that:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred, and
  - (d) states the date (if any) on which it expires, and
  - (e) is signed by the Director-General.
- (4) In the course of exercising the functions of an authorised officer under this Act, the authorised officer must, if requested to do so by a person affected by the exercise of any such function, produce the authorised officer's identification card to the person.

### **51 Power to enter and inspect**

- (1) An authorised officer may, at any time, enter and inspect any premises for the purposes of determining whether there has been a contravention of this Act, the regulations or a licence condition.
- (2) The powers of entry conferred by this section are not exercisable in relation to any part of premises used only for residential purposes except with the permission of the occupier of the premises.
- (3) An authorised officer may do any one or more of the following:

- (a) require the production of any document, record or other thing,
  - (b) inspect and copy all or part of any document, record or other thing,
  - (c) take and retain possession of any prescribed document, record or other thing for the period necessary to inspect and copy all or part of it,
  - (d) take photographs or video recordings,
  - (e) make such investigations and inquiries as may be necessary to ascertain whether an offence under this Act is being or has been committed.
- (4) If an authorised officer has possession of any document, record or other thing pursuant to subsection (3) (c), the authorised officer must at any reasonable time:
- (a) permit the inspection of it by a person who is entitled to inspect it, and
  - (b) permit a person to make an entry in it if the person is required to do so under this or any other Act or law.
- (5) Subsection (3) (c) does not authorise an authorised officer to remove any document, record or other thing if:
- (a) it relates to a person who is then a patient of the facility, and
  - (b) it may be required to be referred to for the purposes of providing the patient with nursing care or medical, surgical or other treatment.

## **52 Improvement notices**

- (1) An authorised officer may give an improvement notice to a licensee of a private health facility requiring the licensee to take the action specified in the notice within the period (if any) specified in the notice for the purpose of ensuring that the licensee complies with this Act, the regulations or a licence condition.
- (2) An authorised officer may amend or revoke an improvement notice in the same manner that the authorised officer may give the notice.
- (3) A licensee given an improvement notice is liable for any reasonable costs incurred in complying with the notice.
- (4) An improvement notice is to be given in writing either personally or by post.
- (5) The licensee of a private health facility may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision of an authorised officer to give, amend or revoke an improvement notice in respect of the facility.
- (6) The lodging of an application for an administrative review does not, except to the

extent that the Civil and Administrative Tribunal otherwise directs, operate to stay action on the decision that is the subject of the decision.

- (7) A person who is given an improvement notice under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty (subsection (7)): 200 penalty units.

### **53 Obstruction of officers**

A person must not:

- (a) wilfully delay or obstruct an authorised officer in the exercise of the authorised officer's functions under this Act, or
- (b) fail to comply with a requirement under this Part to produce a document, record or other thing in the person's possession, custody, or control.

Maximum penalty: 200 penalty units.

#### **Note—**

Section 307B of the [Crimes Act 1900](#) makes it an offence to provide false or misleading information to an authorised officer.

## **Part 6 Private Health Facilities Advisory Committee**

### **54 Constitution of Advisory Committee**

- (1) There is established by this Act a Private Health Facilities Advisory Committee.
- (2) The Advisory Committee is to consist of not less than 9 members appointed by the Director-General.
- (3) The members are to include the following:
  - (a) a member of staff of the Department who is to be the Chairperson of the Advisory Committee,
  - (b) one or more health professionals who practise in private health facilities,
  - (c) one or more persons with expertise in the management of private health facilities,
  - (d) one or more persons with expertise in health insurance,
  - (e) one or more persons representing consumers of services provided by private health facilities.
- (4) The Director-General is, as far as practicable, to seek the views of relevant industry and professional organisations on the composition of the Advisory Committee.

- (5) Schedule 3 has effect with respect to the members and procedure of the Advisory Committee.

### **55 Functions of Advisory Committee**

The principal function of the Advisory Committee is to provide advice to the Minister and the Director-General on the following matters:

- (a) the effective operation of this Act,
- (b) proposed regulations,
- (c) any other matters in respect of private health facilities that may be referred to the Advisory Committee by the Minister or the Director-General.

### **56 Sub-committees of Advisory Committee**

- (1) The Advisory Committee may establish sub-committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a sub-committee are not members of the Advisory Committee.
- (3) The procedures for the calling of meetings of a sub-committee and for the conduct of business at those meetings are to be determined by the Advisory Committee or (subject to any determination of the Advisory Committee) by the sub-committee.

## **Part 7 Miscellaneous**

### **57 Director-General may direct licensee to engage external expert**

- (1) The Director-General may give a direction in writing to the licensee of a private health facility requiring the licensee to engage an external person or body to provide expert advice to the licensee on specified matters that relate to the conduct of the facility.
- (2) The Director-General may, in such a direction, specify that the licensee must engage a person or body having specified expertise or knowledge.
- (3) A direction may only be given under this section if the Director-General has reason to believe that the licensee is not conducting the facility in accordance with this Act, the regulations or a licence condition.
- (4) A person who is given a direction under this section is liable for any costs incurred in complying with the direction.
- (5) A person who is given a direction under this section must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: 200 penalty units.



### **58 Disclosure of pecuniary interests to patients**

- (1) If a practitioner has a pecuniary interest in a private health facility, the practitioner must not:
- (a) advise a person to be admitted to the facility, or
  - (b) arrange the admission of a person to the facility, or
  - (c) provide medical, surgical or other treatment to, or arrange the provision of any such treatment to, any person at the facility,

unless, before so doing, the practitioner has notified the person, in the prescribed manner, that the practitioner has a pecuniary interest in the facility.

Maximum penalty: 200 penalty units.

- (2) The regulations may prescribe, for the purposes of subsection (1), that the manner of notification is to be any one or more of the following:
- (a) a statement made by the practitioner,
  - (b) a written notification given by the practitioner and, if required by the regulations, signed by the person to whom it is given,
  - (c) a notice displayed at the facility,
  - (d) a notice displayed in any office or other premises of the practitioner.
- (3) A practitioner is not guilty of an offence under subsection (1) if the practitioner proves that he or she:
- (a) contravened that subsection in the course of providing emergency medical, surgical or other treatment to a person, or
  - (b) was not, at the time the contravention occurred, aware that he or she had a pecuniary interest in the facility concerned.
- (4) For the purposes of this section, a practitioner has a pecuniary interest in a facility only if the practitioner has an interest in the facility which is prescribed by the regulations as a pecuniary interest in the facility.
- (5) The regulations may prescribe an interest of a relative or associate of a practitioner as a pecuniary interest of the practitioner.

### **58A Sharing or exchange of information about health practitioner appointments**

- (1) A licensee may share or exchange appointment information about a health practitioner with another licensee or a public health organisation if the licensee:

- (a) reasonably believes that the health practitioner practises at the private health facility of the other licensee or at a hospital or health institution of the public health organisation, and
  - (b) reasonably considers that the disclosure of that information to the other licensee or the public health organisation is necessary because it raises serious concerns about the safety of patients.
- (2) Information is **appointment information** about a health practitioner for the purposes of this section if:
- (a) the health practitioner practises (or formerly practised) at the private health facility of the licensee (whether under a contract or otherwise), and
  - (b) the information relates to the variation, suspension or termination by the licensee of clinical privileges of the health practitioner.
- (3) The disclosure of appointment information about a health practitioner by a licensee (or a person acting at the direction of the licensee) to another licensee or a public health organisation does not, if the disclosure was made in good faith, subject the licensee or person personally to any action, liability, claim or demand.

- (4) In this section:

**clinical privileges** has the same meaning as it has in Part 4 of Chapter 8 of the [Health Services Act 1997](#).

**health practitioner** has the same meaning as in the [Health Practitioner Regulation National Law \(NSW\)](#).

**hospital, health institution** and **public health organisation** have the same meanings as they have in the [Health Services Act 1997](#).

## 59 Onus of proof regarding reasonable excuse

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

## 60 Evidentiary certificates

A certificate which purports to be signed by the Director-General and which states that, on a date specified in the certificate:

- (a) a person so specified was or was not the licensee of a private health facility so specified, or
- (b) any premises so specified were or were not licensed, or

- (c) the licence for a private health facility so specified was cancelled or suspended, or
- (d) any particulars so specified were the particulars specified in the licence for a private health facility so specified, or
- (e) the licence for a private health facility so specified was subject to any condition so specified, or
- (f) an improvement notice was given under section 52 in respect of a private health facility requiring the licensee of the facility to take the action specified,

is, without proof of signature, admissible in evidence in any legal proceedings (whether proceedings under this Act or otherwise) and is evidence of the matters stated in the certificate.

## **61 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be given to, or served on, any person may be given or served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be given to, or served on, a person in any other manner.

## **62 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned

in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (1A) Subsection (1) does not apply in respect of a contravention of section 16 (1), 17 (7) or 40.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

### **63 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence are to be commenced not later than 2 years from when the offence was alleged to have been committed.

### **64 Delegation**

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### **65 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the display of licences at facilities,
  - (b) the keeping of records by licensees and inspections of those records,
  - (c) the functions and procedures of medical advisory committees,
  - (d) the provision of information to the Director-General by applicants and licensees (including the provision of a copy of the register of patients).
- (3) A regulation (including a regulation prescribing a licensing standard) may create an offence punishable by a penalty not exceeding 200 penalty units.

## **66 Savings, transitional and other provisions**

Schedule 4 has effect.

## **67 (Repealed)**

## **68 Review of section 7 (4) (c) (i)**

- (1) The Minister is to review section 7 (4) (c) (i) of this Act to determine whether the policy objectives of that provision remain valid and whether the terms of that provision remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **69 Repeal of [Private Hospitals and Day Procedure Centres Act 1988 No 123](#)**

The [Private Hospitals and Day Procedure Centres Act 1988](#) is repealed.

## **Schedule 1 Provisions relating to Chairperson of Committees of Review**

(Section 23 (2))

### **1 Deputy Chairperson**

- (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson, and may revoke any such appointment.
- (2) In the absence of a Chairperson, the Chairperson's deputy may, if available, act in the place of the Chairperson.
- (3) While acting in the place of the Chairperson, a person has all the functions of the Chairperson and is taken to be the Chairperson.
- (4) For the purposes of this clause, a vacancy in the office of the Chairperson is taken to be an absence of the Chairperson.

### **2 Term of office**

Subject to this Schedule and the regulations, the Chairperson holds office for such period (not exceeding 3 years) as is specified in the Chairperson's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

The Chairperson is entitled to be paid such remuneration (including travelling and

subsistence allowances) as the Minister may from time to time determine in respect of the Chairperson.

#### **4 Vacancy in office**

- (1) The office of the Chairperson becomes vacant if the Chairperson:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove the Chairperson from office at any time for any or no reason and without notice.
- (3) A person is not entitled to any compensation by reason of ceasing to hold office as Chairperson.
- (4) A person:
  - (a) who ceases to hold office as Chairperson because he or she resigns or completes a term of office and is not re-appointed, and
  - (b) who was part of a Committee of Review that had partially investigated an application for review immediately before the person ceased to hold office,may, unless the Minister directs otherwise, continue to investigate that application and report to the Minister as if the person had not ceased to hold office as Chairperson.
- (5) A person referred to in subclause (4) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

#### **5 Filling of vacancy in office of Chairperson**

If the office of the Chairperson becomes vacant, a person is, subject to this Act and the

regulations, to be appointed to fill the vacancy.

## **6 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of the Chairperson and a person is not, as Chairperson, subject to that Act (except Chapter 5).
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of Chairperson or from accepting and retaining any remuneration payable to the person under this Act as Chairperson.

## **Schedule 2 Provisions relating to Committees of Review**

(Section 25 (3))

### **1 Disclosure of pecuniary interests**

- (1) If the Chairperson or any other member of a Committee of Review has a direct or indirect pecuniary interest in the subject-matter of an application for review, the Chairperson or other member must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Minister.
- (2) After the Chairperson has disclosed the nature of an interest in the subject-matter of an application for review:
  - (a) the Chairperson must not, unless the Minister otherwise determines, act as Chairperson of the Committee of Review to which that application is referred, and
  - (b) the deputy of the Chairperson is to act as Chairperson of that Committee.
- (3) The deputy of the Chairperson, while acting as Chairperson under subclause (2), has all the functions of the Chairperson and is taken to be the Chairperson.
- (4) After a member of a Committee of Review (other than the Chairperson) has disclosed the nature of an interest in the subject-matter of an application for review:
  - (a) the member must not, unless the Minister otherwise determines, act as a member of the Committee of Review, and
  - (b) the Chairperson is to appoint another person to be a member of that Committee.

(5) A contravention of this clause does not invalidate any recommendation of the Committee of Review or any recommendation of the Chairperson or the member (as the case may require).

## 2 Personal liability

A matter or thing done or omitted to be done by a Committee of Review, the Chairperson or any member, or any person acting under the direction, of a Committee of Review does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the Chairperson, a member or a person so acting personally to any action, liability, claim or demand.

## 3 General procedure

The procedure for the calling of meetings of a Committee of Review and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Chairperson of the Committee.

## 4 Presiding member

The Chairperson is to preside at a meeting of the Committee.

# Schedule 3 Constitution and procedure of Private Health Facilities Advisory Committee

(Section 54 (5))

## Part 1 General

### 1 Definitions

In this Schedule:

**Chairperson** means the Chairperson of the Committee.

**Committee** means the Private Health Facilities Advisory Committee.

**Deputy Chairperson** means the Deputy Chairperson of the Committee.

**member** means a member of the Committee.

## Part 2 Constitution

### 2 Terms of office of members

Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.



### **3 Part-time appointments**

A member holds office as a part-time member.

### **4 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Director-General may from time to time determine in respect of the member.

### **5 Deputies**

- (1) The Director-General may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.

### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Director-General, or
  - (d) is removed from office by the Director-General under this clause, or
  - (e) is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Director-General or unless the member is excused by the Director-General for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Director-General may remove a member from office at any time for any or no reason and without notice.

(3) A person is not entitled to any compensation by reason of ceasing to hold office as a member.

## **7 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **8 Chairperson and Deputy Chairperson**

(1) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:

(a) is removed from that office by the Director-General under this clause, or

(b) resigns that office by instrument in writing addressed to the Director-General, or

(c) ceases to be a member of the Committee.

(2) The Director-General may remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson at any time for any or no reason and without notice.

(3) A person is not entitled to any compensation by reason of ceasing to hold office as Chairperson or Deputy Chairperson.

## **9 Disclosure of pecuniary interests**

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Committee, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure by a member at a meeting of the Committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Director-General or the Committee otherwise determines:
- (a) be present during any deliberation of the Committee with respect to the matter, or
- (b) take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Committee for the purpose of making the determination, or
- (b) take part in the making by the Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Committee.
- (7) This clause applies to a member of a sub-committee and a sub-committee in the same way as it applies to a member of the Committee and the Committee.

## **10 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable

to the person under this Act as a member.

### **11 Personal liability**

A matter or thing done or omitted to be done by the Committee, a member of the Committee or a person acting under the direction of the Committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **12 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.

### **13 Quorum**

The quorum for a meeting of the Committee is a majority of its members for the time being.

### **14 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **15 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

### **16 Transaction of business outside meetings or by telephone**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **17 First meeting**

The Director-General may call the first meeting of the Committee in such manner as the Director-General thinks fit.

## **Schedule 4 Savings, transitional and other provisions**

(Section 66)

### **Part 1 General**

#### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

[Health Legislation Amendment Act 2010](#) (but only to the extent that it amends this Act)

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 Provisions consequent on enactment of this Act

### 2 Definitions

In this Part:

**establishment** has the same meaning that it had in the former Act.

**former Act** means the *Private Hospitals and Day Procedure Centres Act 1988*.

**new Committee** means the Private Health Facilities Advisory Committee as established by this Act.

**old Committee** means the Private Hospitals and Day Procedure Centres Advisory Committee as established by the former Act.

**sub-committee** means a sub-committee established by the old Committee.

### 3 Abolition of the old Committee

- (1) The old Committee is abolished.
- (2) Each sub-committee is abolished.

### 4 Members of the old Committee

- (1) A person who, immediately before the repeal of section 4 of the former Act, held office as a member of the old Committee:
  - (a) ceases to hold office on that day, and
  - (b) is eligible (if otherwise qualified) to hold office as a member of the new Committee.
- (2) A person who, immediately before the repeal of section 4 of the former Act, held office as a member of a sub-committee ceases to hold office on that day.
- (3) A person who ceases to hold office as a member of the old Committee or a sub-committee because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

### 5 No compensation for removal of bed cap

- (1) The purpose of this clause is to exclude the payment of compensation for any deregulation of the private hospital industry by or on behalf of the Crown.
- (2) Compensation for deregulation is:
  - (a) compensation because of the enactment or operation of this Act, including the repeal of provisions of the former Act, or for any consequence of that enactment

or operation, or

(b) compensation because of the removal of the bed cap under section 9 (3) (d) of the former Act or for any consequence of that removal, or

(c) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or (b) or to the deregulation of the private hospital industry in connection with any such matter.

(3) Compensation for deregulation is not payable by or on behalf of the Crown.

(4) This clause applies to or in respect of any event, act, omission, statement or conduct whether occurring before or after the commencement of this clause.

(5) In this clause:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes a representation of any kind:

(a) whether made verbally or in writing, and

(b) whether negligent, false, misleading or otherwise.

**the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes an officer, employee or agent of the Crown.

## 6 Existing licences

(1) A licence for an establishment that was in force under the former Act immediately before the commencement of section 9 of this Act is taken to have been issued under that section.

(2) Any such licence is taken to be subject to the conditions specified in the licence immediately before the commencement of section 9.

(3) Nothing in subclause (2) affects the operation of section 17 of this Act.

## 7 Pending applications for licences and approvals in principle

(1) An application for a licence for an establishment made under the former Act that has not been determined before the repeal of section 9 of the former Act is taken to be an application for a licence under section 6 of this Act.

(2) If the Director-General has, under section 9 of the former Act, approved (whether or not subject to conditions) the plans and specifications relating to the design and construction of any building to be constructed, altered or extended for the purposes of a proposed establishment, that accompany an application for a licence for that establishment, the Director-General:

- (a) may not, under section 6 of this Act, impose a condition relating to the construction or design of the building on an approval of the application in principle, and
  - (b) may, without limiting the operation of Division 2 of Part 2 of this Act, refuse an application if the building is not constructed, altered or extended in accordance with those plans and specifications or if a condition to which the approval of the plans and specifications was subject has not been complied with.
- (3) An approval of an application for a licence in principle given under section 9 of the former Act is taken to be an approval in principle under this Act and is subject to the conditions to which the approval was subject immediately before the repeal of that section.
- (4) A notice given under section 9 (4) of the former Act is taken to be a notice given under section 7 (5) of this Act.

#### **8 Pending applications to transfer licences**

An application to transfer a licence for an establishment made under section 18 of the former Act that has not been determined before the repeal of that section is taken to have been made under this Act and is to be dealt with in accordance with the provisions of this Act.

#### **9 Pending applications to alter establishments**

An application to alter or extend an establishment under section 19 of the former Act that has not been determined before the repeal of that section is taken to have been made under this Act and is to be dealt with in accordance with the provisions of this Act.

#### **10 Notice to effect repairs**

- (1) A notice given to a licensee of an establishment under section 20 of the former Act and in force immediately before the repeal of that section is taken to have been given under section 52 of this Act and is to have effect according to its tenor.
- (2) If notice was given to a licensee of an establishment under section 20 of the former Act less than 14 days before the repeal of that section:
  - (a) the licensee has a right under section 24 of this Act to apply to the Minister for a review of the decision of the Director-General to issue the notice as if the decision to issue the notice were a decision of the Director-General within the meaning of section 22 of this Act, and
  - (b) the notice does not take effect:
    - (i) until the expiration of 14 days after notice has been given to the licensee, or



- (ii) if the licensee applies for a review of the Director-General's decision under section 24 of this Act before the expiration of the period referred to in subparagraph (i)—until the application for review is dealt with or withdrawn.

### **11 Pending applications to amend licences**

An application for amendment of a licence for an establishment under section 21 of the former Act that has not been determined before the repeal of that section is taken to be a request that the Director-General amend the licence under section 17 of this Act.

### **12 Requests for review**

A request for review of a decision of the Director-General relating to an establishment that was made under section 28 of the former Act and that has not been determined by the Minister immediately before the repeal of that section is taken to be an application for review made under section 24 of this Act and is to be dealt with in accordance with the provisions of this Act.

### **13 Chairperson of Committees of Review**

The person holding office as the Chairperson of Committees of Review immediately before the repeal of section 27 of the former Act is taken to have been appointed, for the same term, as the Chairperson of Committees of Review under section 23 of this Act and Schedule 1 to this Act has effect with respect to that appointment.

### **14 Investigation**

If, immediately before the repeal of section 30 of the former Act, an investigation relating to the cancellation of a licence for an establishment is being conducted:

- (a) any Committee of Review established in relation to the investigation is taken to have been established under this Act, and
- (b) the investigation may continue and is taken to be an investigation under Division 5 of Part 2 of this Act.

### **15 Cancellation**

A cancellation of a licence for an establishment under Division 6 of Part 3 of the former Act that has not taken effect immediately before the repeal of that Division is taken to be a cancellation of a licence under Division 6 of Part 2 of this Act and any notice of the cancellation given under section 34 of the former Act is taken to be a notice given under section 31 of this Act.

### **16 Appeal**

Any appeal against a decision of the Director-General to cancel the licence for an establishment pending under section 35 of the former Act immediately before the repeal of that section is taken to be pending under section 32 of this Act, and may be heard and

determined accordingly.

### **17 Register of patients**

A register of patients kept at an establishment pursuant to section 44 of the former Act immediately before the repeal of that section is taken to be kept pursuant to section 38 of this Act.

### **18 Authority to enter and inspect premises**

- (1) Any person who, immediately before the repeal of section 47 of the former Act, is authorised under that section to enter premises is taken to be an authorised officer under this Act.
- (2) A certificate of authority provided by the Director-General under section 47 of the former Act to such a person and in force immediately before the repeal of that section is taken to be an identification card provided under section 50 of this Act.
- (3) Nothing in this clause prevents the Director-General revoking the appointment of any person as an authorised officer.

### **19 References to former Act**

A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to, or required (immediately before the repeal of clause 17 of Schedule 4 to the former Act) to be construed as a reference to, the *Private Hospitals and Day Procedure Centres Act 1988* is, in so far as the reference relates to private health facilities, to be read as a reference to this Act.

### **20 References to private hospitals and day procedure centres**

A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to a private hospital or a day procedure centre within the meaning of the former Act is, after the repeal of that Act, taken to be a reference to a private health facility.

## **Part 3 Provisions consequent on enactment of [Health Legislation Amendment Act 2010](#)**

### **21 Definition**

In this Part:

**amending Act** means the [Health Legislation Amendment Act 2010](#).

### **22 Appointment of root cause analysis teams**

Section 42 (1A), as inserted by the amending Act, does not extend to an incident that was reported to the licensee of a private health facility before the commencement of that

subsection.

### **23 Root cause analysis team not required to make recommendations**

Section 44 (3) (c), as substituted by the amending Act, extends to an investigation commenced before that substitution.

### **24 Information not to be given in evidence**

Section 46 (1), as substituted by the amending Act, extends to:

- (a) a document that was prepared or a communication that was made before that substitution, and
- (b) proceedings that are pending on that substitution.

### **25 Notifications and reports not to be admitted in evidence**

Section 47, as substituted by the amending Act, extends to:

- (a) a notification that was given or a report that was prepared before that substitution, and
- (b) proceedings that are pending on that substitution.

## **Schedule 5 (Repealed)**