

Queensland



# PRIVATE HEALTH FACILITIES ACT 1999

**Reprinted as in force on 29 November 2001  
(includes amendments up to Act No. 78 of 2001)**

**Reprint No. 1B**

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

# Information about this reprint

This Act is reprinted as at 29 November 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

# Queensland



## PRIVATE HEALTH FACILITIES ACT 1999

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	9
2	Commencement . . . . .	9
3	Main object of Act and its achievement . . . . .	9
4	Outline of approval and licensing requirements . . . . .	10
5	Act binds all persons . . . . .	10
<b>PART 2—INTERPRETATION</b>		
<i>Division 1—Definitions</i>		
6	Definitions . . . . .	10
<i>Division 2—Basic concepts</i>		
7	Meaning of “health service” . . . . .	11
8	Meaning of “private health facility” . . . . .	11
9	Meaning of “private hospital” . . . . .	11
10	Meaning of “day hospital” . . . . .	11
<i>Division 3—Authority holders</i>		
11	Authority issued jointly to more than 1 person . . . . .	12
<b>PART 3—STANDARDS</b>		
12	Chief health officer may make standards . . . . .	13
<b>PART 4—SUITABILITY OF PERSONS TO BE AUTHORITY HOLDERS</b>		
13	Suitability of persons . . . . .	14
14	Suitability of associates . . . . .	16
15	Investigation of suitability of persons . . . . .	16
16	Criminal history reports for investigation . . . . .	16

**PART 5—APPROVALS***Division 1—Applications for approvals*

17	Requirements about application for an approval . . . . .	17
18	Further information or documents to support application for an approval . .	17

*Division 2—Deciding applications for approvals*

19	Decision about application for an approval . . . . .	18
20	Further consideration of application for an approval . . . . .	18
21	Application for an approval taken to be refused in certain circumstances . .	19

*Division 3—Form, conditions and term of approvals*

22	Form of approval . . . . .	19
23	Conditions of approval . . . . .	20
24	Term of approval . . . . .	20

*Division 4—Extension of term of approval*

25	Extension of term of approval . . . . .	20
26	Further information or documents to support application for extension. . . .	21
27	Decision about application for extension . . . . .	21
28	Approval continues in force while application is considered . . . . .	22

*Division 5—Dealings affecting approvals**Subdivision 1—Changing approvals*

29	Changing approval—chief health officer acting on own initiative . . . . .	22
30	Changing approval—application by approval holder . . . . .	23
31	Further information or document to support application to change an approval . . . . .	24
32	Decision about application to change an approval . . . . .	24
33	Further consideration of application to change an approval . . . . .	25
34	Application to change an approval taken to be refused in certain circumstances . . . . .	25
35	Recording changes to approvals . . . . .	26

*Subdivision 2—Other dealings affecting approvals*

36	Surviving persons taken to be approval holder . . . . .	26
37	Surrender of approvals . . . . .	26
38	Replacing approvals . . . . .	27

---

**PART 6—LICENCES**
***Division 1—Licences for operation of private health facilities***

39	Licences required to operate private health facilities . . . . .	27
40	Licences not required to operate certain day hospitals . . . . .	27

***Division 2—Applications, and materials to support applications, for licences***

41	Restriction on application for licence . . . . .	28
42	Requirements about applications for licences . . . . .	28
43	Further information or documents to support application for a licence . . . . .	28

***Division 3—Deciding applications for licences***

44	Decision about application for a licence . . . . .	29
45	Further consideration of application for a licence . . . . .	30
46	Application for licence taken to have been refused in certain circumstances . . . . .	30

***Division 4—Form, conditions and term of licences***

47	Form of licence . . . . .	31
48	Conditions of licence . . . . .	31
49	Contravention of condition . . . . .	33
50	Term of licences . . . . .	33

***Division 5—Renewal of licences***

51	Renewal of licences . . . . .	33
52	Further information or document to support application for renewal . . . . .	34

***Division 6—Deciding applications for renewal***

53	Decision about application for renewal . . . . .	34
54	Licence continues in force while application is considered . . . . .	35

***Division 7—Dealings affecting licences***
***Subdivision 1—Changing licences***

55	Changing licence—chief health officer acting on own initiative . . . . .	35
56	Licensee may apply to change a licence . . . . .	36
57	Further information or document to support application to change a licence . . . . .	36
58	Decision whether to change licence . . . . .	37
59	Further consideration of application to change a licence . . . . .	38
60	Application to change a licence taken to be refused in certain circumstances . . . . .	38

---

61	Recording change of licence . . . . .	39
	<b><i>Subdivision 2—Making prescribed alterations to private health facilities</i></b>	
62	Meaning of “prescribed alteration” . . . . .	39
63	Requirements about applications for approval of prescribed alterations . . .	39
64	Further information or document to support applications for approval of prescribed alterations. . . . .	40
65	Decision about applications for approval of prescribed alterations . . . . .	40
66	Application for approval of a prescribed alteration taken to be refused in certain circumstances . . . . .	41
	<b><i>Subdivision 3—Transfers of licences</i></b>	
67	Transfer of licence . . . . .	41
68	Requirements about transfer applications . . . . .	42
69	Further information or documents to support transfer application . . . . .	42
70	Decision about transfer application. . . . .	42
71	Further consideration of application to transfer a licence . . . . .	43
72	Application to transfer a licence taken to be refused in certain circumstances . . . . .	44
73	Recording transfer of licence . . . . .	44
	<b><i>Subdivision 4—Other dealings with licences</i></b>	
74	Encumbrances have no effect . . . . .	44
75	Death of sole licensee . . . . .	45
76	Surviving persons taken to be licensee . . . . .	45
77	Surrender of licences . . . . .	45
78	Surrender before operation of facility stops . . . . .	46
79	Replacing licences. . . . .	46
	<b>PART 7—SUSPENSION AND CANCELLATION OF AUTHORITIES</b>	
80	Grounds for suspension or cancellation . . . . .	47
81	Show cause notice . . . . .	48
82	Consideration of representations. . . . .	49
83	Ending show cause process without further action . . . . .	49
84	Suspension and cancellation of authorities . . . . .	49
85	Immediate suspension of licence. . . . .	50
86	Cancellation or reduction of period of suspension of authority . . . . .	51

---

**PART 8—INVESTIGATION AND ENFORCEMENT**
*Division 1—Authorised persons*

87	Appointment and qualifications . . . . .	51
88	Functions and powers . . . . .	51
89	Appointment conditions . . . . .	52
90	Identity cards . . . . .	52
91	Failure to return identity card . . . . .	53
92	Production or display of identity card . . . . .	53

*Division 2—Powers of authorised persons**Subdivision 1—Power to enter places*

93	Power to enter places . . . . .	53
----	---------------------------------	----

*Subdivision 2—Procedure for entry*

94	Entry with consent . . . . .	54
95	Application for warrant . . . . .	55
96	Issue of warrant . . . . .	55
97	Special warrants . . . . .	56
98	Warrants—procedure before entry . . . . .	57

*Subdivision 3—Powers after entry*

99	General powers after entering places . . . . .	58
100	Exercise of general powers . . . . .	59
101	Failure to help authorised person . . . . .	59
102	Failure to give information . . . . .	59

*Subdivision 4—Power to seize evidence*

103	Seizing evidence at a place that may be entered without consent or warrant . . . . .	59
104	Seizing evidence at place that may only be entered with consent or warrant . . . . .	60
105	Securing seized things . . . . .	60
106	Tampering with seized things . . . . .	61
107	Powers to support seizure . . . . .	61
108	Receipts for seized things . . . . .	62
109	Forfeiture by authorised person . . . . .	62
110	Forfeiture on conviction . . . . .	63

111	Dealing with forfeited things . . . . .	63
112	Return of seized things . . . . .	64
113	Access to seized things . . . . .	64

***Subdivision 5—Power to obtain information***

114	Power to require name and address . . . . .	64
115	Failure to give name or address . . . . .	65
116	Power to require production of documents . . . . .	65
117	Failure to certify copy of document . . . . .	66
118	Failure to produce document . . . . .	66
119	Power to require information . . . . .	66

***Subdivision 6—Enforcement matters***

120	Notice of damage . . . . .	67
121	Compensation . . . . .	67
122	False or misleading statements . . . . .	68
123	False or misleading documents . . . . .	68
124	Obstructing and impersonating authorised persons . . . . .	69
125	Compliance notices . . . . .	69

**PART 9—REVIEWS AND APPEALS**

***Division 1—Reviews***

126	Appeal process starts with internal review . . . . .	71
127	Who may apply for review . . . . .	71
128	Applying for review . . . . .	71
129	Review decision . . . . .	71
130	Stay of operation of decision . . . . .	72

***Division 2—Appeals***

131	Who may appeal . . . . .	73
132	District Court to which appeal may be made . . . . .	73
133	Starting appeal . . . . .	73
134	Stay of operation of decisions . . . . .	74
135	Hearing procedures . . . . .	74
136	Powers of court on appeal . . . . .	74



**PART 10—LEGAL PROCEEDINGS***Division 1—Evidence*

137	Application of div 1 . . . . .	75
138	Appointments and authority . . . . .	75
139	Signatures . . . . .	75
140	Evidentiary aids . . . . .	75

*Division 2—Proceedings*

141	Summary proceedings for offences . . . . .	76
142	Responsibility for acts or omissions of representatives . . . . .	76
143	Executive officers must ensure corporation complies with Act. . . . .	77

**PART 11—MISCELLANEOUS**

143A	Authority holder to notify chief executive of certain events . . . . .	78
144	Submission of reports . . . . .	79
145	False or misleading report . . . . .	80
146	Protecting officials from liability . . . . .	80
147	Confidentiality of information . . . . .	80
148	Delegations . . . . .	83
149	Advisory committees . . . . .	83
150	Approval of forms . . . . .	84
151	Regulation-making power . . . . .	84

**PART 12—SAVING AND TRANSITIONAL PROVISIONS***Division 1—Interpretation*

152	Definitions for pt 12 . . . . .	84
-----	---------------------------------	----

*Division 2—Saving and transitional provisions*

153	References to repealed division . . . . .	85
154	Consents . . . . .	85
155	Existing licences to erect . . . . .	86
156	Existing licences to use . . . . .	86
157	Pending applications . . . . .	88
158	Action to cancel or suspend an existing licence to use . . . . .	89
159	Suspended licences to use . . . . .	89
160	Proposed additions or alterations . . . . .	89

---

161	Offences. . . . .	90
162	Application of offence provision requiring licences for day hospitals and other provision . . . . .	90
163	Licences not required to operate certain day hospitals . . . . .	90
164	Inclusion of statement in certain licences . . . . .	91
	<b>SCHEDULE 1</b> . . . . .	92
	<b>DECISIONS FOR WHICH INFORMATION NOTICES MUST BE GIVEN</b>	
	<b>SCHEDULE 3</b> . . . . .	94
	<b>DICTIONARY</b>	
	<b>ENDNOTES</b>	
1	Index to endnotes. . . . .	98
2	Date to which amendments incorporated. . . . .	98
3	Key . . . . .	98
4	Table of earlier reprints . . . . .	99
5	List of legislation . . . . .	99
6	List of annotations . . . . .	99
7	List of forms. . . . .	100

# PRIVATE HEALTH FACILITIES ACT 1999

[as amended by all amendments that commenced on or before 29 November 2001]

## **An Act to provide for the regulation of private health facilities and for other purposes**

### **PART 1—PRELIMINARY**

#### **1 Short title**

This Act may be cited as the *Private Health Facilities Act 1999*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Main object of Act and its achievement**

(1) The main object of this Act is to provide a framework for protecting the health and wellbeing of patients receiving health services at private health facilities.

(2) The object is to be achieved mainly by—

- (a) enabling standards to be made for the provision of health services at private health facilities; and
- (b) requiring persons proposing to operate private health facilities to first hold approvals; and
- (c) requiring persons to hold licences for the operation of the facilities; and
- (d) providing for compliance with this Act to be monitored and enforced.

#### **4 Outline of approval and licensing requirements**

(1) Only a licensee may operate a private health facility.<sup>1</sup>

(2) Only the person operating the facility is required to be licensed (not, for example, another person who merely owns the facility).

(3) A person may become the licensee of a private health facility only if—

- (a) the person first holds an approval for the facility; or
- (b) the person is the transferee of the licence for the facility;<sup>2</sup> or
- (c) the person is the personal representative of a deceased licensee's estate and is taken to be a licensee under section 75.<sup>3</sup>

#### **5 Act binds all persons**

This Act binds all persons, including the State.

## **PART 2—INTERPRETATION**

### *Division 1—Definitions*

#### **6 Definitions**

The dictionary in schedule 3 defines particular words used in this Act.

---

1 See section 39 (Licences required to operate private health facilities).

2 See part 6 (Licences), division 7 (Dealings affecting licences), subdivision 3 (Transfers of licences).

3 Section 75 (Death of sole licensee)

*Division 2—Basic concepts***7 Meaning of “health service”**

A “**health service**” is a service provided to a person for maintaining, improving or restoring the person’s health and wellbeing.

**8 Meaning of “private health facility”**

A “**private health facility**” is—

- (a) a private hospital; or
- (b) a day hospital.

**9 Meaning of “private hospital”**

(1) A “**private hospital**” is a facility at which health services are provided to persons who are discharged from the facility on a day other than the day on which the persons were admitted to the facility.

(2) However, a private hospital does not include the following—

- (a) a hospital operated by the State;
- (b) a nursing home, hostel, or other facility at which accommodation, and nursing or personal care, is provided to persons who, because of infirmity, illness, disease, incapacity or disability, have a permanent need for nursing or personal care.

**10 Meaning of “day hospital”**

(1) A “**day hospital**” is a facility at which day hospital health services are provided to persons who are admitted to, and discharged from, the facility on the same day, but does not include a facility operated by the State.

(2) However, a facility is not a day hospital merely because a day hospital health service is provided to a person at the facility if—

- (a) the service is provided to the person in an emergency; and
- (b) it would be unreasonable, having regard to the health and wellbeing of the person, to move the person to another facility to receive the health service.

(3) In this section—

**“day hospital health service”** means any of the following health services—

- (a) a diagnostic, surgical or other procedure performed by a medical practitioner involving—
  - (i) the administration of a general, spinal or epidural anaesthetic; or
  - (ii) sedation, other than simple sedation;
- (b) a diagnostic, surgical or other procedure—
  - (i) performed by, or under the direction of, a medical practitioner; and
  - (ii) involving a significant risk that a person on whom the procedure is performed may, because of cardiac, respiratory or other complications arising from the performance of the procedure, require resuscitation; and
  - (iii) prescribed under a regulation.

**“simple sedation”** means the administration of one or more drugs to a person, that depress the person’s central nervous system, to allow a procedure to be performed on the person by a medical practitioner in a way that—

- (a) allows communication with the person to be maintained while the procedure is being performed; and
- (b) makes loss of the person’s consciousness unlikely.

### *Division 3—Authority holders*

#### **11 Authority issued jointly to more than 1 person**

A reference in this Act to an authority holder, for an authority issued jointly to more than 1 person, is a reference to each of the persons.

## **PART 3—STANDARDS**

### **12 Chief health officer may make standards**

(1) The chief health officer may make standards under this Act for the protection of the health and wellbeing of patients receiving health services at private health facilities.

(2) Standards may be made about the following—

- (a) the particular types of health services to which patients at a private health facility must have access (whether or not the services are provided at the facility) when other health services of a particular type are provided at the facility;
- (b) processes for—
  - (i) evaluating the credentials of medical practitioners providing, or seeking to provide, health services at private health facilities; and
  - (ii) deciding which health services may be provided by the medical practitioners at the facilities;
- (c) processes for deciding ethical issues;
- (d) processes for monitoring, evaluating and improving the quality of health services provided at private health facilities;
- (e) the day to day care and safety of patients, including admission and discharge procedures and patient records;
- (f) management and staffing arrangements;
- (g) minimum patient throughput for health services provided at private health facilities and prescribed under a regulation;
- (h) equipment, fittings and furnishings at private health facilities;
- (i) infection control;
- (j) a matter prescribed under a regulation for this subsection.

*Example for paragraph (a)—*

A standard may be made requiring that a licensee of a private health facility licensed to provide major surgical services to patients must also—

- (a) provide intensive care and coronary care services to the patients at the facility; or

- (b) arrange for intensive care and coronary care services to be provided to the patients at another facility.

(3) A standard has no effect unless the Minister notifies the making of the standard by gazette notice.

(4) A standard takes effect—

- (a) on the day the gazette notice is published in the gazette; or
- (b) if a later day is stated in the gazette notice—on the later day.

(5) The gazette notice must state the places where copies of the standard and the provisions of any document applied, adopted or incorporated by the standard are available for inspection, without charge, during normal business hours.

(6) The gazette notice is subordinate legislation.

(7) In this section—

**“minimum patient throughput”** means the minimum number of patients required to receive a particular health service during a stated period to maintain the clinical skills of the staff providing the health service.

## **PART 4—SUITABILITY OF PERSONS TO BE AUTHORITY HOLDERS**

### **13 Suitability of persons**

(1) This section applies to the chief health officer in deciding—

- (a) whether a person who has applied for an authority for a private health facility or a proposed private health facility is a suitable person to hold the authority; or
- (b) whether a person who holds an authority for a private health facility or a proposed private health facility is a suitable person to continue to hold the authority.

(2) The chief health officer may have regard to the following—

- (a) whether the person—



- (i) has the appropriate skills, knowledge and experience to operate the facility under a licence in accordance with the standards; or
  - (ii) has, or is able to obtain, the services of other persons with the appropriate skills, knowledge and experience to enable the person to operate the facility under a licence in accordance with the standards;
- (b) if the person is a corporation, the skills, knowledge and experience of the corporation's executive officers that are relevant to operating the facility under a licence in accordance with the standards;
- (c) if the person has been convicted of a prescribed offence, the nature, and circumstances of the commission, of the offence;
- (d) if the person is a corporation and any of the corporation's executive officers have been convicted of a prescribed offence, the nature, and circumstances of the commission, of the offence;
- (e) whether the person held any of the following that was suspended or cancelled—
  - (i) an authority;
  - (ii) a licence under the repealed division;
  - (iii) the equivalent of an authority under a corresponding law;
- (f) if the person is a corporation, whether any of the corporation's executive officers held any of the following that was suspended or cancelled—
  - (i) an authority;
  - (ii) a licence under the repealed division;
  - (iii) the equivalent of an authority under a corresponding law;
- (g) the person's current financial position and financial background;
- (h) whether the person has, or is able to obtain, financial resources the chief health officer reasonably considers are required for the financial viability of the operation of, or proposed operation of, the facility under a licence;
- (i) the suitability of associates of the person, as mentioned in section 14;

- (j) anything else relevant to the health and wellbeing of persons who are receiving, or may receive, health services at the facility operated, or proposed to be operated, by the person.

(3) In this section—

**“prescribed offence”** means an indictable offence or an offence against this Act, the repealed division or a corresponding law.

#### **14 Suitability of associates**

The chief health officer may also have regard to the matters mentioned in section 13(2) as they apply to an associate of the applicant or authority holder in deciding—

- (a) for an applicant for an authority—whether the applicant is a suitable person to hold the authority; or
- (b) for an authority holder—whether the authority holder is a suitable person to continue to hold the authority.

#### **15 Investigation of suitability of persons**

The chief health officer may investigate an applicant for an authority, an authority holder or an associate of an applicant or authority holder, to help in deciding—

- (a) for an applicant for an authority—whether the applicant is a suitable person to hold an authority of the kind applied for; or
- (b) for an authority holder—whether the authority holder is a suitable person to continue to hold the authority.

#### **16 Criminal history reports for investigation**

(1) The chief health officer, in investigating a person under section 15, may ask the commissioner of the police service for a written report about the person’s criminal history.

(2) If asked by the chief health officer, the commissioner of the police service must give the chief health officer a written report about the criminal

history of the person, including the criminal history in the commissioner's possession or to which the commissioner has access.<sup>4</sup>

## **PART 5—APPROVALS**

### *Division 1—Applications for approvals*

#### **17 Requirements about application for an approval**

An application for an approval must—

- (a) be made to the chief health officer; and
- (b) be in the approved form; and
- (c) be accompanied by the fee prescribed under a regulation.

#### **18 Further information or documents to support application for an approval**

(1) The chief health officer may, by written notice given to an applicant for an approval, require the applicant to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) A notice under subsection (1) must be given to the applicant within 60 days after the chief health officer receives the application.

(5) If the applicant fails to comply with the requirement within the stated time, the applicant is taken to have withdrawn the application.

---

<sup>4</sup> See section 147 (Confidentiality of information) for restrictions on disclosing information in a report under this section.

## ***Division 2—Deciding applications for approvals***

### **19 Decision about application for an approval**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may grant an application for an approval only if the chief health officer is satisfied—

- (a) the applicant is a suitable person to hold the approval applied for;<sup>5</sup> and
- (b) the proposed facility, and the health services proposed to be provided at the facility, will comply with the relevant standards.

(3) If the chief health officer decides to grant the application, the chief health officer must immediately issue the approval to the applicant.

(4) If the chief health officer decides to refuse the application, the chief health officer must immediately give the applicant an information notice<sup>6</sup> about the decision.

### **20 Further consideration of application for an approval**

(1) This section applies if the chief health officer considers more time is needed to decide the application because of the complexity of the issues that need to be considered in deciding the application.

(2) The chief health officer may, at any time before the final consideration day, give written notice to the applicant that—

- (a) because of the complexity of the issues, the chief health officer needs more time to decide the application; and
- (b) the time within which the chief health officer must decide the application is extended to a stated day that is not more than 60 days after the final consideration day.

(3) In this section—

**“final consideration day”** means the later of the following days—

- (a) the day that is 60 days after receipt of the application;

---

<sup>5</sup> See part 4 (Suitability of persons to be authority holders).

<sup>6</sup> See schedule 3 (Dictionary).

- (b) if further information or a document is required by a notice given under section 18—the day that is 60 days after the information or document is given.

## **21 Application for an approval taken to be refused in certain circumstances**

The chief health officer is taken to have refused to grant the application if the chief health officer has not decided the application by the latest of the following days—

- (a) the day that is 60 days after receiving the application;
- (b) if further information or a document is required by a notice given under section 18—the day that is 60 days after the information or document is given;
- (c) if the day for deciding the application is extended under section 20—the extended day;
- (d) if another day for deciding the application is agreed to by the applicant and the chief health officer—the agreed day.

### *Division 3—Form, conditions and term of approvals*

## **22 Form of approval**

- (1) An approval must be in the approved form.
- (2) The approval must state the following particulars—
  - (a) the name of the approval holder;
  - (b) the day of issue of the approval;
  - (c) the term of the approval;
  - (d) details about the proposed private health facility to which the approval relates, including—
    - (i) the location of the proposed facility; and
    - (ii) the type of health services proposed to be provided at the proposed facility;
  - (e) the conditions of the approval.

## **23 Conditions of approval**

(1) An approval must be issued on condition that the approval holder must give the chief health officer written notice of a prescribed change within 21 days of the prescribed change.

(2) The chief health officer may issue an approval on additional conditions the chief health officer considers necessary or desirable for—

- (a) the proper operation of the proposed facility under a licence; or
- (b) the health and wellbeing of patients who may receive health services at the proposed facility.

(3) If the chief health officer decides to issue an approval on additional conditions, the chief health officer must immediately give the applicant an information notice about the decision.

(4) In this section—

**“prescribed change”** means a change—

- (a) in a matter disclosed by an approval holder in an application under this Act; and
- (b) of a kind prescribed under a regulation.

## **24 Term of approval**

An approval remains in force for the term, not more than 2 years, stated in the approval.

### *Division 4—Extension of term of approval*

## **25 Extension of term of approval**

(1) The chief health officer may, on application by an approval holder, extend the term of the approval by not more than 2 years.

(2) Subsection (1) applies whether or not the term of the approval has already been extended under this section.

(3) An application for an extension must—

- (a) be made to the chief health officer; and
- (b) be in the approved form; and

- (c) be accompanied by the fee prescribed under a regulation; and
- (d) be made within the period starting 60 days before the approval expires.

## **26 Further information or documents to support application for extension**

(1) The chief health officer may, by written notice given to the approval holder, require the approval holder to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) If the approval holder fails to comply with the requirement within the stated time, the approval holder is taken to have withdrawn the application.

## **27 Decision about application for extension**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may grant the application only if the chief health officer is satisfied that the approval holder has made reasonable efforts to progress the development of the proposed private health facility, taking into account—

- (a) the type of health services proposed to be provided at the proposed facility; and
- (b) the period that would reasonably be required to complete the development of the proposed facility.

(3) If the chief health officer decides to grant the application, the chief health officer must immediately issue another approval for the extended term.

(4) If the chief health officer decides to refuse the application, the chief health officer must immediately give the approval holder an information notice about the decision.

**28 Approval continues in force while application is considered**

(1) If an approval holder applies for an extension under section 25, the approval continues in force from the day that it would, apart from this section, have expired until—

- (a) if the application is granted—another approval is issued under section 27(3); or
- (b) if the application is withdrawn—the day the application is withdrawn; or
- (c) if the application is refused—the day the information notice about the decision is given to the approval holder.

(2) Subsection (1) does not apply if the approval is earlier suspended or cancelled.

***Division 5—Dealings affecting approvals******Subdivision 1—Changing approvals*****29 Changing approval—chief health officer acting on own initiative**

(1) The chief health officer may decide to change—

- (a) details about the proposed private health facility stated in the approval for the proposed facility, including the type of health services proposed to be provided at the proposed facility; or
- (b) the conditions of an approval under section 23(2), including by imposing additional conditions.

(2) However, subsection (1) applies only if the chief health officer considers it necessary or desirable to make the change—

- (a) for the proper operation of the proposed facility; or
- (b) for the health and wellbeing of patients who may receive health services at the proposed facility.

(3) Before deciding to change an approval, the chief health officer must first give the approval holder a written notice (a “**notice of intention**”) stating the following—

- (a) the proposed decision;



- (b) the grounds for the proposed decision;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) an invitation to the approval holder to show within a stated period (the “**show cause period**”) why the proposed decision should not be made.

(4) The show cause period must be a period ending at least 21 days after the notice of intention is given to the approval holder.

(5) The approval holder may make written representations about the proposed decision to the chief health officer in the show cause period.

(6) The chief health officer must consider all written representations made in the show cause period by the authority holder before deciding whether or not to change the approval.

(7) If, after giving the approval holder a notice of intention and taking into account any written representations made by the approval holder, the chief health officer decides to change the approval, the chief health officer must immediately give the approval holder an information notice about the decision.

(8) The change to the approval takes effect on the day the information notice is given to the approval holder.

### **30 Changing approval—application by approval holder**

- (1) An approval holder may apply to the chief health officer to change—
  - (a) details about the proposed private health facility stated in the approval for the proposed facility, including the type of health services proposed to be provided at the proposed facility; or
  - (b) the conditions of the approval under section 23(2).
- (2) An application to change an approval must—
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed under a regulation.

### **31 Further information or document to support application to change an approval**

(1) The chief health officer may, by written notice given to an approval holder, require the approval holder to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) A notice under subsection (1) must be given to the approval holder within 60 days after the chief health officer receives the application.

(5) If the approval holder fails to comply with the requirement within the stated time, the approval holder is taken to have withdrawn the application.

### **32 Decision about application to change an approval**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may decide to grant the application only if the chief health officer is satisfied—

- (a) the approval holder is a suitable person to continue to hold the approval;<sup>7</sup> and
- (b) under the changed approval, the proposed facility, and the health services proposed to be provided at the facility, will comply with the relevant standards.

(3) If the chief health officer decides to grant the application, the chief health officer must immediately give the approval holder a written notice (a “**change notice**”) stating the decision.

(4) If the chief health officer decides to refuse the application, the chief health officer must immediately give the approval holder an information notice about the decision.

---

<sup>7</sup> See part 4 (Suitability of persons to be authority holders).

(5) A change to the approval takes effect on the day the change notice is given to the approval holder.

### **33 Further consideration of application to change an approval**

(1) This section applies if the chief health officer considers more time is needed to decide the application because of the complexity of the issues that need to be considered in deciding the application.

(2) The chief health officer may, at any time before the final consideration day, give written notice to the approval holder that—

- (a) because of the complexity of the issues, the chief health officer needs more time to decide the application; and
- (b) the time within which the chief health officer must decide the application is extended to a stated day that is not more than 60 days after the final consideration day.

(3) In this section—

“**final consideration day**” means the later of the following days—

- (a) the day that is 60 days after the receipt of the application;
- (b) if further information or a document is required by a notice given under section 31—the day that is 60 days after the information or document is given.

### **34 Application to change an approval taken to be refused in certain circumstances**

The chief health officer is taken to have refused the application if the chief health officer has not decided the application by the latest of the following days—

- (a) the day that is 60 days after receiving the application;
- (b) if further information or a document is required by a notice given under section 31—the day that is 60 days after the information or document is given;
- (c) if the day for deciding the application is extended under section 33—the extended day;
- (d) if another day for deciding the application is agreed to by the applicant and the chief health officer—the agreed day.

**35 Recording changes to approvals**

(1) The approval holder must return the approval to the chief health officer within 7 days of receiving the information notice under section 29(7) or the change notice, unless the approval holder has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) On receiving the approval, the chief health officer must—

- (a) amend the approval in an appropriate way and return the amended approval to the approval holder; or
- (b) issue a replacement approval, incorporating the change, to the approval holder.

(3) Failure to record the change by amending the approval, or to issue a replacement approval recording the change, does not affect the validity of the change.

***Subdivision 2—Other dealings affecting approvals*****36 Surviving persons taken to be approval holder**

(1) This section applies if—

- (a) 2 or more individuals jointly are the holders of an approval; and
- (b) 1 or more, but not all, of the individuals die.

(2) The following persons are taken to hold the approval—

- (a) if only 1 individual survives—the surviving individual;
- (b) if more than 1 individual survives—the surviving individuals jointly.

**37 Surrender of approvals**

(1) An approval holder may surrender the approval by giving written notice to the chief health officer.

(2) The surrender of the approval takes effect—

- (a) the day the notice is given to the chief health officer; or
- (b) if a later day is stated in the notice—on the later day.

(3) If the approval is surrendered, the person who held the approval must, within 7 days after the surrender takes effect, return the approval to the chief health officer, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

### **38 Replacing approvals**

(1) An approval holder may apply to the chief health officer to replace the approval if it has been lost, stolen, destroyed or damaged.

(2) The chief health officer must consider the application and either grant or refuse the application.

(3) The chief health officer must grant the application if the chief health officer is satisfied the approval has been lost, stolen, destroyed or damaged in a way to require its replacement.

(4) If the chief health officer decides to grant the application, the chief health officer must, on payment of the fee prescribed under a regulation, issue another approval to the applicant to replace the lost, stolen, destroyed or damaged approval.

(5) If the chief health officer decides to refuse the application, the chief health officer must immediately give the applicant an information notice about the decision.

## **PART 6—LICENCES**

### *Division 1—Licences for operation of private health facilities*

### **39 Licences required to operate private health facilities**

A person must not operate a private health facility unless the person holds a licence for the facility.

Maximum penalty—1 000 penalty units.

### **40 Licences not required to operate certain day hospitals**

(1) This section applies if—

- (a) a licensee operates a private hospital at a place under a licence; and
  - (b) another person operates a day hospital at the place; and
  - (c) in the application for the licence, or an application to change the licence, the licensee has asked for the licence to state that this section applies to the operation of the day hospital; and
  - (d) the licence includes the statement.
- (2) For this Act, apart from this section—
- (a) the operation of the day hospital is part of the licensee's operation of the private hospital; and
  - (b) the other person does not operate the day hospital.

*Division 2—Applications, and materials to support applications, for licences*

**41 Restriction on application for licence**

An application for a licence may only be made by an approval holder.

**42 Requirements about applications for licences**

An application for a licence must—

- (a) be made to the chief health officer; and
- (b) be in the approved form; and
- (c) be accompanied by the fee prescribed under a regulation.

**43 Further information or documents to support application for a licence**

(1) The chief health officer may, by written notice given to an applicant for a licence, require the applicant to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) A notice under subsection (1) must be given to the applicant within 60 days after the chief health officer receives the application.

(5) If the applicant fails to comply with the requirement within the stated time, the applicant is taken to have withdrawn the application.

### *Division 3—Deciding applications for licences*

#### **44 Decision about application for a licence**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer must grant the application if—

- (a) the applicant is an approval holder; and
- (b) the approval and the application apply to the same private health facility; and
- (c) any conditions on which the approval was issued have been complied with; and
- (d) for a facility that has never been occupied, a certificate of classification has been issued for the facility; and
- (e) for a facility to which paragraph (d) does not apply, the facility complies with the building code; and
- (f) the chief health officer is satisfied that—
  - (i) the applicant is a suitable person to hold the licence applied for;<sup>8</sup> and
  - (ii) when operational, the facility, and the health services proposed to be provided at the facility, will comply with the relevant standards.

(3) If the chief health officer decides to grant the application, the chief health officer must immediately issue the licence to the applicant.

---

8 See part 4 (Suitability of persons to be authority holders).

(4) If the chief health officer decides to refuse the application, the chief health officer must immediately give the applicant an information notice about the decision.

#### **45 Further consideration of application for a licence**

(1) This section applies if the chief health officer considers more time is needed to decide the application because of the complexity of the issues that need to be considered in deciding the application.

(2) The chief health officer may, at any time before the final consideration day, give written notice to the applicant that—

- (a) because of the complexity of the issues, the chief health officer needs more time to decide the application; and
- (b) the time within which the chief health officer must decide the application is extended to a stated day that is not more than 60 days after the final consideration day.

(3) In this section—

“**final consideration day**” means the later of the following days—

- (a) the day that is 60 days after receipt of the application;
- (b) if further information or a document is required by a notice given under section 43—the day that is 60 days after the information or document is given.

#### **46 Application for licence taken to have been refused in certain circumstances**

The chief health officer is taken to have refused the application if the chief health officer has not decided the application by the latest of the following days—

- (a) the day that is 60 days after receiving the application;
- (b) if further information or a document is required by a notice given under section 43—the day that is 60 days after the information or document is given;
- (c) if the day for deciding the application is extended under section 45—the extended day;



- (d) if another day for deciding the application is agreed to by the applicant and the chief health officer—the agreed day.

#### ***Division 4—Form, conditions and term of licences***

### **47 Form of licence**

- (1) A licence must be in the approved form.
- (2) A licence must state the following particulars—
- (a) the name of the licensee;
  - (b) the day of issue of the licence;
  - (c) the term of the licence;
  - (d) details about the private health facility to which the licence relates, including—
    - (i) the location of the facility; and
    - (ii) a description of the premises making up the facility; and
    - (iii) the type of health services to be provided at the facility;
  - (e) the conditions of the licence.

*Example for paragraph (d)(ii)*

A floor plan of the premises.

### **48 Conditions of licence**

- (1) A licence for a private health facility must be issued on the following conditions—
- (a) the licensee must give the chief health officer, within 21 days after a prescribed change, written notice of the prescribed change;
  - (b) within 90 days after the day of issue of the licence, the licensee must start a quality assurance program, conducted by a quality assurance entity, for the facility;
  - (c) within 3 years after the day of issue of the licence, the licensee must receive certification from the quality assurance entity that the facility operates under a quality assurance system;

- (d) after the certification mentioned in paragraph (c) or subsection (2) is received, the facility must continue to be certified under the program as a facility that operates under a quality assurance system;
- (e) the licensee must comply with the standards relevant to the facility;
- (f) the licensee must operate the facility in accordance with the details about the facility stated in the licence, including providing at the facility only the type of health services stated in the licence;
- (g) the licensee must ensure the premises making up the facility and all equipment, fittings and furnishings in the facility are kept in good repair and operational order;
- (h) the licensee must not make a prescribed alteration to the facility without the approval of the chief health officer under section 65.<sup>9</sup>

(2) Subsection (1)(b) and (c) do not apply if, when the licence is issued, the licensee has received certification from a quality assurance entity that the facility operates under a quality assurance system.

(3) Subsection (1)(b) does not apply if, when the licence is issued, the licensee has started, but not finished, a quality assurance program for the facility.

(4) The chief health officer may issue a licence on additional conditions the chief health officer considers necessary or desirable for—

- (a) the proper operation of the facility; or
- (b) the health and wellbeing of patients who may receive health services at the facility.

(5) If the chief health officer decides under subsection (4) to issue a licence on additional conditions, the chief health officer must immediately give the applicant an information notice about the decision.

(6) In this section—

**“prescribed change”** means a change—

---

9 Section 65 (Decision about applications for approval of prescribed alterations)

- (a) in a matter disclosed by the licensee in an application under this Act; and
- (b) of a kind prescribed under a regulation.

#### **49 Contravention of condition**

(1) A licensee must not contravene a condition of the licence.

Maximum penalty—200 penalty units.

(2) To remove doubt, it is declared that the penalty under subsection (1) may be imposed whether or not the licence is cancelled or suspended because of the contravention.

#### **50 Term of licences**

(1) A licence remains in force for the term stated in the licence.

(2) The stated term must not exceed—

- (a) if the private health facility to which the licence relates has been certified as operating under a quality assurance system—3 years; or
- (b) otherwise—1 year.

### *Division 5—Renewal of licences*

#### **51 Renewal of licences**

(1) The chief health officer may, on application by a licensee, renew the licence.

(2) An application for renewal must—

- (a) be in the approved form; and
- (b) be made within the period starting 60 days before the licence expires; and
- (c) be accompanied by the fee prescribed under a regulation.

**52 Further information or document to support application for renewal**

(1) The chief health officer may, by written notice given to the licensee, require the licensee to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) If the licensee fails to comply with the requirement within the stated time, the licensee is taken to have withdrawn the application.

***Division 6—Deciding applications for renewal*****53 Decision about application for renewal**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may grant the application only if the chief health officer is satisfied—

- (a) the licensee is a suitable person to continue to hold the licence;<sup>10</sup> and
- (b) the private health facility to which the licence relates, and the health services provided at the facility, comply with the relevant standards.

(3) If the chief health officer decides to grant the application, the chief health officer must immediately issue a new licence to the licensee.

(4) If the chief health officer decides to refuse the application, the chief health officer must immediately give the licensee an information notice about the decision.

---

<sup>10</sup> See part 4 (Suitability of persons to be authority holders).

**54 Licence continues in force while application is considered**

(1) If a licensee applies for a renewal under section 51, the licence continues in force from the day that it would, apart from this section, have expired until—

- (a) if the application is granted—the new licence is issued to the licensee under section 53(3); or
- (b) if the application is withdrawn—the day the application is withdrawn; or
- (c) if the application is refused—the day the information notice about the decision is given to the licensee.

(2) Subsection (1) does not apply if the licence is earlier suspended or cancelled.

*Division 7—Dealings affecting licences**Subdivision 1—Changing licences***55 Changing licence—chief health officer acting on own initiative**

(1) The chief health officer may decide to change—

- (a) details about the private health facility stated in the licence for the facility, including the type of health services provided at the facility; or
- (b) the conditions of a licence under section 48(4), including by imposing additional conditions.

(2) However, subsection (1) applies only if the chief health officer considers it necessary or desirable to make the change—

- (a) for the proper operation of the private health facility to which the licence relates; or
- (b) for the health and wellbeing of patients who are receiving, or may receive, health services at the facility.

(3) Before deciding to change the licence, the chief health officer must first give the licensee a written notice (a “**notice of intention**”) stating the following—

- (a) the proposed decision;

- (b) the grounds for the proposed decision;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) an invitation to the licensee to show within a stated period (the “**show cause period**”) why the proposed decision should not be made.

(4) The show cause period must be a period ending at least 21 days after the notice of intention is given to the licensee.

(5) The licensee may make written representations about the proposed decision to the chief health officer in the show cause period.

(6) The chief health officer must consider all written representations made in the show cause period by the licensee before deciding whether or not to change the licence.

(7) If, after giving the licensee a notice of intention and taking into account any written representations made by the licensee, the chief health officer decides to change the licence, the chief health officer must immediately give the licensee an information notice about the decision.

(8) The change to the licence takes effect on the day the information notice is given to the licensee.

## **56 Licensee may apply to change a licence**

- (1) A licensee may apply to the chief health officer to change—
  - (a) details about the private health facility stated in the licence for the facility, including the type of health services provided at the facility; or
  - (b) the conditions of the licence under section 48(4).
- (2) An application to change a licence must—
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed under a regulation.

## **57 Further information or document to support application to change a licence**

(1) The chief health officer may, by written notice given to the licensee, require the licensee to give the chief health officer, within the reasonable

time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) A notice under subsection (1) must be given to the licensee within 60 days after the chief health officer receives the application.

(5) If the licensee fails to comply with the requirement within the stated time, the licensee is taken to have withdrawn the application.

## **58 Decision whether to change licence**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may decide to grant the application only if the chief health officer is satisfied—

- (a) the licensee is a suitable person to continue to hold the licence;<sup>11</sup> and
- (b) under the changed licence, the facility, and the provision of health services at the facility, will comply with the relevant standards.

(3) If the chief health officer decides to grant the application, the chief health officer must immediately give the licensee a written notice (a “**change notice**”) stating the decision.

(4) If the chief health officer decides to refuse the application, the chief health officer must immediately give the licensee an information notice about the decision.

(5) A change to the licence takes effect on the day the change notice is given to the licensee.

---

<sup>11</sup> See part 4 (Suitability of persons to be authority holders).

**59 Further consideration of application to change a licence**

(1) This section applies if the chief health officer considers more time is needed to decide the application because of the complexity of the issues that need to be considered in deciding the application.

(2) The chief health officer may, at any time before the final consideration day, give written notice to the licensee that—

- (a) because of the complexity of the issues, the chief health officer needs more time to decide the application; and
- (b) the time within which the chief health officer must decide the application is extended to a stated day that is not more than 60 days after the final consideration day.

(3) In this section—

“**final consideration day**” means the later of the following days—

- (a) the day that is 60 days after the receipt of the application;
- (b) if further information or a document is required by a notice given under section 57—the day that is 60 days after the information or document is given.

**60 Application to change a licence taken to be refused in certain circumstances**

The chief health officer is taken to have refused to grant the application if the chief health officer has not decided the application by the latest of the following days—

- (a) the day that is 60 days after receiving the application;
- (b) if further information or a document is required by a notice given under section 57—the day that is 60 days after the information or document is given;
- (c) if the day for deciding the application is extended under section 59—the extended day;
- (d) if another day for deciding the application is agreed to by the applicant and the chief health officer—the agreed day.



## **61 Recording change of licence**

(1) The licensee must return the licence to the chief health officer within 7 days of receiving the information notice under section 55(7) or the change notice, unless the licensee has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) On receiving the licence, the chief health officer must—

- (a) amend the licence in an appropriate way and return the amended licence to the licensee; or
- (b) issue a replacement licence, incorporating the change, to the licensee.

(3) Failure to record the change by amending the licence, or to issue a replacement licence recording the change, does not affect the validity of the change.

### *Subdivision 2—Making prescribed alterations to private health facilities*

## **62 Meaning of “prescribed alteration”**

(1) A “prescribed alteration”, to a private health facility, is—

- (a) a change in the purpose for which part of the facility is used; or
- (b) a change made to the physical structure of the facility.

*Example for paragraph (a)—*

A waiting room is converted to an operating theatre.

(2) However, a prescribed alteration does not include a change to the facility for which a development permit under the *Integrated Planning Act 1997* is required.

## **63 Requirements about applications for approval of prescribed alterations**

An application for approval of a prescribed alteration must—

- (a) be made to the chief health officer; and
- (b) be in the approved form; and
- (c) be accompanied by the fee prescribed under a regulation.

**64 Further information or document to support applications for approval of prescribed alterations**

(1) The chief health officer may, by written notice to a licensee, require the licensee to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) A notice under subsection (1) must be given to the licensee within 60 days after the chief health officer receives the application.

(5) If the licensee fails to comply with the requirement within the stated time, the licensee is taken to have withdrawn the application.

**65 Decision about applications for approval of prescribed alterations**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may grant the application only if the chief health officer is satisfied that, after making the prescribed alteration, the facility, and the provision of health services at the facility, will comply with the relevant standards.

(3) The chief health officer may grant the application on the condition in paragraph (a) or both of the following conditions—

- (a) the licensee must give the chief health officer written notice of having made the prescribed alteration immediately after making the prescribed alteration;
- (b) the licensee must not provide health services in the part of the facility affected by the prescribed alteration—
  - (i) unless the prescribed alteration has been made as specified in the application; and
  - (ii) until the earlier of the following days—

- (A) the day the chief health officer or an authorised person inspects the part of the facility affected by the prescribed alteration;
- (B) the day that is 14 days after the notice under paragraph (a) is given.

(4) If the chief health officer decides to grant the application, the chief health officer must immediately give the licensee a written notice stating the decision.

(5) If the chief health officer decides to refuse the application, the chief health officer must immediately give the applicant an information notice about the decision.

(6) If the chief health officer grants the application on a condition mentioned in subsection (3), the licensee must not contravene the condition.

Maximum penalty for subsection (6)—50 penalty units.

## **66 Application for approval of a prescribed alteration taken to be refused in certain circumstances**

The chief health officer is taken to have refused the application if the chief health officer has not decided the application by the latest of the following days—

- (a) the day that is 60 days after receiving the application;
- (b) if further information or a document is required by a notice given under section 64—the day that is 60 days after the information or document is given;
- (c) if another day for deciding the application is agreed to by the applicant and the chief health officer—the agreed day.

### *Subdivision 3—Transfers of licences*

## **67 Transfer of licence**

A licensee may transfer the licence only if the chief health officer grants an application to transfer the licence.

**68 Requirements about transfer applications**

(1) An application to transfer a licence may be made only by the proposed transferee of the licence.

(2) The application must—

- (a) be made to the chief health officer; and
- (b) be in the approved form; and
- (c) be accompanied by—
  - (i) a written consent in the approved form signed by the licensee; and
  - (ii) the fee prescribed under a regulation.

**69 Further information or documents to support transfer application**

(1) The chief health officer may, by written notice given to an applicant to transfer a licence, require the applicant to give the chief health officer, within the reasonable time stated in the notice (but not less than 30 days), further information or a document about the application.

(2) The information mentioned in subsection (1) must, if the notice requires, be verified by a statutory declaration.

(3) The requirement may only relate to information or a document that is necessary and reasonable to help the chief health officer decide the application.

(4) A notice under subsection (1) must be given to the applicant within 60 days after the chief health officer receives the application.

(5) If the applicant fails to comply with the requirement within the stated time, the applicant is taken to have withdrawn the application.

**70 Decision about transfer application**

(1) The chief health officer must consider the application and either grant or refuse the application.

(2) The chief health officer may grant the application only if the chief health officer is satisfied the proposed transferee is a suitable person to hold the licence.<sup>12</sup>

(3) If the chief health officer decides to grant the application, the chief health officer must give the transferee and the licensee written notice (a “**transfer notice**”) stating the decision.

(4) If the chief health officer decides to refuse the application, the chief health officer must give the proposed transferee and the licensee an information notice about the decision.

(5) A transfer of a licence—

- (a) takes effect on the day the transfer notice for the licence is given to the transferee; or
- (b) if a later day of effect is stated in the notice—on the later day.

## **71 Further consideration of application to transfer a licence**

(1) This section applies if the chief health officer considers more time is needed to decide the application because of the complexity of the issues that need to be considered in deciding the application.

(2) The chief health officer may, at any time before the final consideration day, give written notice to the applicant that—

- (a) because of the complexity of the issues, the chief health officer needs more time to decide the application; and
- (b) the time within which the chief health officer must decide the application is extended to a stated day that is not more than 60 days after the final consideration day.

(3) In this section—

“**final consideration day**” means the later of the following days—

- (a) the day that is 60 days after receipt of the application;
- (b) if further information or a document is required by a notice given under section 69—the day that is 60 days after the information or document is given.

---

<sup>12</sup> See part 4 (Suitability of persons to be authority holders).

**72 Application to transfer a licence taken to be refused in certain circumstances**

The chief health officer is taken to have refused the application if the chief health officer has not decided the application by the latest of the following days—

- (a) the day that is 60 days after receiving the application;
- (b) if further information or a document is required by a notice given under section 69—the day that is 60 days after the information or document is given;
- (c) if the day for deciding the application is extended under section 71—the extended day;
- (d) if another day for deciding the application is agreed to by the applicant and the chief health officer—the agreed day.

**73 Recording transfer of licence**

(1) A licensee must return the licence to the chief health officer within 7 days of receiving a transfer notice, unless the licensee has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) On receiving the licence, the chief health officer must—

- (a) amend the licence in an appropriate way and give the amended licence to the transferee; or
- (b) issue a replacement licence in the name of the transferee.

(3) Failure to record a transfer by amending the licence, or to issue a replacement licence in the name of the transferee, does not affect the validity of the transfer.

***Subdivision 4—Other dealings with licences*****74 Encumbrances have no effect**

An instrument or document purporting to encumber a licence is of no effect.

**75 Death of sole licensee**

(1) This section applies if only 1 individual is the licensee of a licence.

(2) If the licensee dies, the personal representative of the licensee's estate is taken to be the licensee for—

- (a) 6 months from the day of the licensee's death; or
- (b) a longer period the chief health officer decides, on written application made by the personal representative.

(3) The chief health officer may act under subsection (2)(b) only if—

- (a) the chief health officer has received written notice from the personal representative that a person intends to apply to transfer the licence; and
- (b) the chief health officer reasonably believes that it is appropriate to extend the period for which the personal representative is taken to be the licensee to enable an application to transfer the licence to be made and decided.

(4) Also, subsection (2) applies subject to any transfer, suspension, cancellation, surrender or expiry of the licence under this Act.

**76 Surviving persons taken to be licensee**

(1) This section applies if—

- (a) 2 or more individuals jointly are the licensee of a licence; and
- (b) 1 or more, but not all, of the individuals die.

(2) The following persons are taken to hold the licence—

- (a) if only 1 individual survives—the surviving individual;
- (b) if more than 1 individual survives—the surviving individuals jointly.

**77 Surrender of licences**

(1) A licensee may surrender a licence by giving the chief health officer written notice of the surrender.

(2) The surrender of the licence takes effect—

- (a) 30 days after the day the notice is given to the chief health officer; or

(b) if a later day of effect is stated in the notice—on the later day.

(3) If the licence is surrendered, the person who held the licence must, within 7 days after the surrender takes effect, return the licence to the chief health officer, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

## **78 Surrender before operation of facility stops**

A licensee must not stop operating a private health facility unless the licensee has surrendered the licence and the surrender of the licence has taken effect, unless the licensee has a reasonable excuse.

Maximum penalty—50 penalty units.

## **79 Replacing licences**

(1) A licensee may apply to the chief health officer to replace the licence if it has been lost, stolen, destroyed or damaged.

(2) The chief health officer must consider the application and either grant or refuse the application.

(3) The chief health officer must grant the application if the chief health officer is satisfied the licence has been lost, stolen, destroyed or damaged in a way to require its replacement.

(4) If the chief health officer decides to grant the application, the chief health officer must, on payment of the fee prescribed under a regulation, issue another licence to the applicant to replace the lost, stolen, destroyed or damaged licence.

(5) If the chief health officer decides to refuse the application, the chief health officer must immediately give the applicant an information notice about the decision.



## **PART 7—SUSPENSION AND CANCELLATION OF AUTHORITIES**

### **80 Grounds for suspension or cancellation**

(1) A ground for suspending or cancelling an authority exists if the authority holder—

- (a) is not a suitable person to continue to hold an authority of that kind;<sup>13</sup> or
- (b) contravenes a provision of this Act or a condition of the authority in a way that may result in the health and wellbeing of a patient being affected in an adverse and material way; or
- (c) is affected by bankruptcy action, or by control action under the Corporations Act.

(2) Also, a ground for suspending or cancelling an authority exists if the authority was issued because of a materially false or misleading representation or declaration.

(3) For subsection (1)(c), an authority holder is affected by bankruptcy action if the authority holder—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) as a debtor, has otherwise taken, or applied to take, advantage of any law about bankruptcy.

(4) For subsection (1)(c), an authority holder is affected by control action under the Corporations Act if the authority holder—

- (a) has executed a deed of company arrangement under that Act; or
- (b) is the subject of a winding-up (whether voluntarily or under a court order) under that Act; or
- (c) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.

---

13 See part 4 (Suitability of persons to be authority holders).

**81 Show cause notice**

(1) This section applies if—

- (a) the chief health officer believes a ground exists to suspend or cancel an authority; and
- (b) the chief health officer—
  - (i) has not given, and does not propose to give, the authority holder a compliance notice under section 125(2) to rectify a matter to which the ground relates; or
  - (ii) has given the authority holder a compliance notice under section 125(2) to rectify a matter to which the ground relates and the authority holder—
    - (A) fails to comply with the compliance notice within the period stated in the notice; and
    - (B) does not have a reasonable excuse for failing to comply with the notice.

(2) The chief health officer must give the authority holder a written notice (a “**show cause notice**”) stating the following—

- (a) the action (the “**proposed action**”) the chief health officer proposes taking under this part;
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the authority, the proposed suspension period;
- (e) an invitation to the authority holder to show within a stated period (the “**show cause period**”) why the proposed action should not be taken.

(3) The show cause period must be a period ending at least 21 days after the show cause notice is given to the authority holder.

(4) The authority holder may make written representations about the proposed action to the chief health officer in the show cause period.

**82 Consideration of representations**

The chief health officer must consider all written representations (the “**accepted representations**”) made in the show cause period by the authority holder.

**83 Ending show cause process without further action**

(1) This section applies if, after considering the accepted representations for the show cause notice, the chief health officer no longer believes a ground exists to suspend or cancel the authority.

(2) The chief health officer must not take further action about the show cause notice.

(3) The chief health officer must, immediately after making the decision, give the authority holder written notice that no further action about the show cause notice is to be taken.

**84 Suspension and cancellation of authorities**

(1) This section applies if after considering the accepted representations for the show cause notice, the chief health officer—

- (a) still believes a ground exists to suspend or cancel the authority; and
- (b) believes suspension or cancellation of the authority is warranted.

(2) This section also applies if there are no accepted representations for the show cause notice.

(3) The chief health officer may—

- (a) if the proposed action stated in the show cause notice was to suspend the authority for a stated period—suspend the authority for not longer than the stated period; or
- (b) if the proposed action stated in the show cause notice was to cancel the authority—either cancel the authority or suspend it for a period.

(4) The chief health officer must immediately give an information notice about the decision to the authority holder.

(5) The decision takes effect—

- (a) on the day the information notice is given to the authority holder;  
or
- (b) if a later day is stated in the notice—on the later day.

(6) If the authority is cancelled or suspended, the person who held the authority must, within 7 days after receiving the information notice, return the authority to the chief health officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(7) The chief health officer must, immediately after the suspension stops operating, give to the authority holder the authority that was returned to the chief health officer under subsection (6).

## **85 Immediate suspension of licence**

(1) The chief health officer may suspend a licence immediately if the chief health officer believes—

- (a) a ground exists to suspend or cancel the licence; and
- (b) the circumstances are of a nature that it is imperative to suspend the licence immediately to ensure the health and wellbeing of patients are not affected in an adverse and material way.

(2) The suspension—

- (a) must be effected by an information notice given to the licensee with a show cause notice; and
- (b) operates immediately the notices are given; and
- (c) continues to operate until the earliest of the following occurs—
  - (i) the chief health officer cancels the remaining period of the suspension;
  - (ii) the show cause notice is finally dealt with;
  - (iii) 60 days have passed since the notices were given to the licensee.

(3) If the licence is suspended, the person who held the licence must, within 7 days after receiving the notices, return the licence to the chief health officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) The chief health officer must, immediately after the suspension stops operating, give to the licensee the licence that was returned to the chief health officer under subsection (3).

### **86 Cancellation or reduction of period of suspension of authority**

(1) At any time a suspension of an authority is in force, the chief health officer may, for any reason the chief health officer considers appropriate—

- (a) cancel the remaining period of the suspension; or
- (b) reduce the remaining period of the suspension.

(2) The chief health officer must immediately give to the authority holder—

- (a) written notice of the decision; and
- (b) the authority that was returned by the authority holder to the chief health officer under section 84(6).

## **PART 8—INVESTIGATION AND ENFORCEMENT**

### *Division 1—Authorised persons*

### **87 Appointment and qualifications**

(1) The chief health officer may appoint a person as an authorised person.

(2) The chief health officer may appoint a person as an authorised person only if the chief health officer considers the person has the necessary expertise or experience to be an authorised person.

### **88 Functions and powers**

(1) An authorised person has the functions of conducting investigations and inspections to monitor and enforce compliance with this Act.

(2) An authorised person has the powers given under this or another Act.

(3) An authorised person is subject to the directions of the chief health officer in exercising the powers.

(4) An authorised person's powers may be limited—

- (a) under a condition of appointment; or
- (b) by written notice given by the chief health officer to the authorised person.

## **89 Appointment conditions**

(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person ceases holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; or
- (b) if the conditions of appointment provide—on ceasing to hold another office (the “**main office**”) stated in the appointment conditions.

(3) An authorised person may resign by signed notice of resignation given to the chief health officer.

(4) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

## **90 Identity cards**

(1) The chief health officer must give each authorised person an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) include an expiry date; and
- (d) identify the person as an authorised person under this Act.

**91 Failure to return identity card**

A person who ceases to be an authorised person must return the person's identity card to the chief health officer within 7 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**92 Production or display of identity card**

(1) An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces the authorised person's identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

*Division 2—Powers of authorised persons**Subdivision 1—Power to enter places***93 Power to enter places**

(1) An authorised person may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a private health facility to which a licence relates and the entry is made when the facility is open for business or otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) In subsection (1)(d)—

**“when the facility is open for business”** includes when health services are being provided at the facility.

### *Subdivision 2—Procedure for entry*

## **94 Entry with consent**

(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 93(1)(a).

(2) Before asking for the consent, the authorised person must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised person consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised person must immediately give a copy to the occupier.

(6) A court must find the occupier of a place did not consent to an authorised person entering the place under this division if—



- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 93(1)(a); and
- (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

## **95 Application for warrant**

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

## **96 Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or, within the next 7 days, may be at the place.

(2) The warrant must state—

- (a) that a stated authorised person may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for the entry; and
  - (ii) exercise the authorised person’s powers under this division; and

- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 97 Special warrants

(1) An authorised person may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised person's remote location.

(2) Before applying for the special warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must promptly fax a copy (a “**facsimile warrant**”) to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised person—

- (a) the magistrate must tell the authorised person—
  - (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant is issued; and
- (b) the authorised person must complete a form of warrant (a “**warrant form**”) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) A court must find the exercise of the power by an authorised person was not authorised by a special warrant if—

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and
- (b) the special warrant is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the authorised person obtained the special warrant.

## **98 Warrants—procedure before entry**

(1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised person's identity card or a copy of another document evidencing the authorised person's appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 97(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised person is permitted by the warrant to enter the place;

- (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

(3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### *Subdivision 3—Powers after entry*

## **99 General powers after entering places**

(1) This section applies to an authorised person who enters a place.

(2) However, if an authorised person enters a place to get the occupier's consent to enter the place, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the authorised person may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
- (d) copy a document at the place; or
- (e) take into or onto the place any person, equipment and materials the authorised person reasonably requires for the exercise of a power under this division; or
- (f) require the occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e); or
- (g) require the occupier of a place, or a person at the place, to give the authorised person information to help the authorised person ascertain whether the Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

**100 Exercise of general powers**

When entering a place to exercise powers for monitoring or enforcing compliance with this Act, an authorised person must not do anything that may adversely affect the health or physical privacy of a person in the place.

*Example of how a person's physical privacy may be adversely affected—*

Entering a room while a person is being examined by a medical practitioner.

**101 Failure to help authorised person**

(1) A person required to give reasonable help under section 99(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If the requirement is to be complied with by an individual giving information, or producing a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement may tend to incriminate the individual.

**102 Failure to give information**

(1) A person of whom a requirement is made under section 99(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement may tend to incriminate the individual.

***Subdivision 4—Power to seize evidence*****103 Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place that may be entered under this division without the consent of the occupier and without a warrant, may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act.

### **104 Seizing evidence at place that may only be entered with consent or warrant**

(1) This section applies if—

- (a) an authorised person is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
- (b) the authorised person enters the place after obtaining the necessary consent or warrant.

(2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place if—

- (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the authorised person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.

(4) The authorised person may seize anything else at the place if the authorised person reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) hidden, lost or destroyed; or
  - (ii) used to continue, or repeat, the offence.

(5) Also, the authorised person may seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

### **105 Securing seized things**

Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or
- (c) if the thing is equipment—make it inoperable.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.

*Example of making equipment inoperable—*

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

### **106 Tampering with seized things**

(1) If an authorised person restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—100 penalty units.

(2) If an authorised person makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an authorised person's approval.

Maximum penalty—100 penalty units.

### **107 Powers to support seizure**

(1) To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by a notice in the approved form as soon as practicable.

(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

### **108 Receipts for seized things**

(1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt (given the thing's nature, condition and value).

### **109 Forfeiture by authorised person**

(1) A thing that has been seized under this subdivision is forfeited to the State if the authorised person who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against this Act.

(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.



(3) If the authorised person makes a decision under subsection (1)(c) resulting in the seized thing being forfeited to the State, the authorised person must immediately give the owner an information notice about the decision.

(4) Subsection (3) does not apply if—

- (a) the authorised person can not find the owner, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to give the information notice.

(5) Regard must be had to a thing's nature, condition and value—

- (a) in deciding—
  - (i) whether it is reasonable to make inquiries or efforts; and
  - (ii) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable; or
- (b) in deciding whether it would be unreasonable to give the information notice.

### **110 Forfeiture on conviction**

(1) On conviction of a person for an offence against this Act, the court may order the forfeiture to the State of anything owned by the person and seized under this subdivision.

(2) The court may make any order to enforce the forfeiture it considers appropriate.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **111 Dealing with forfeited things**

(1) On forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief health officer as the chief health officer considers appropriate.

(2) Without limiting subsection (1), the chief health officer may destroy or dispose of the thing.

(3) Despite subsection (1), the chief health officer must not deal with the thing in a way that could prejudice the outcome of a review applied for under section 128 or appeal started under section 133.

### **112 Return of seized things**

(1) If a seized thing is not forfeited, the authorised person must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing is forfeited, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

### **113 Access to seized things**

(1) Until a seized thing is forfeited or returned, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

### ***Subdivision 5—Power to obtain information***

### **114 Power to require name and address**

(1) This section applies if—

- (a) an authorised person finds a person committing an offence against this Act; or
- (b) an authorised person finds a person in circumstances that lead, or has information that leads, the authorised person to reasonably suspect the person has just committed an offence against this Act.

(2) The authorised person may require the person to state the person's name and residential address.

(3) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The authorised person may require the person to give evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address to be false.

### **115 Failure to give name or address**

(1) A person of whom a requirement under section 114 is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person's name and residential address by an authorised person who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

### **116 Power to require production of documents**

(1) An authorised person may require a person to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person—

- (a) a document issued to the person under this Act; or
- (b) a document required to be kept by the person under this Act.

(2) The authorised person may keep the document to copy it.

(3) If the authorised person copies a document mentioned in subsection (1)(b), or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(4) The authorised person must return the document to the person as soon as practicable after copying it.

(5) However, if a requirement (a “**document certification requirement**”) is made of a person under subsection (3), the authorised

person may keep the document until the person complies with the requirement.

**(6)** A requirement under subsection (1) is called a “**document production requirement**”.

### **117 Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **118 Failure to produce document**

**(1)** A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**(2)** It is a reasonable excuse for an individual not to comply with a document production requirement if complying with the requirement might tend to incriminate the individual.

### **119 Power to require information**

**(1)** This section applies if an authorised person reasonably believes—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

**(2)** The authorised person may, by written notice given to the person, require the person to give information about the offence to the authorised officer at a stated reasonable place and at a stated reasonable time.

**(3)** The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**(4)** It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

***Subdivision 6—Enforcement matters*****120 Notice of damage**

(1) This section applies if—

- (a) an authorised person damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction or authority of an authorised person damages property.

(2) The authorised person must immediately give written notice of particulars of the damage to the person who appears to the authorised person to be the owner of the property.

(3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person’s, or other person’s, control, the authorised person may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised person reasonably believes is trivial.

(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

**121 Compensation**

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following—

- subdivision 1
- subdivision 3
- subdivision 4.<sup>14</sup>

---

14 Subdivisions 1 (Power to enter places), 3 (Powers after entry) and 4 (Power to seize evidence)

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

## **122 False or misleading statements**

(1) A person must not state anything to an authorised person that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

## **123 False or misleading documents**

(1) A person must not give an authorised person a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised person, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.

## **124 Obstructing and impersonating authorised persons**

(1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
- (b) the authorised person considers the person's conduct an obstruction.

(3) A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

(4) In this section—

**“obstruct”** includes hinder and attempt to obstruct or hinder.

## **125 Compliance notices**

(1) This section applies if—

- (a) the chief health officer or an authorised person reasonably believes—
  - (i) an authority holder—
    - (A) is contravening a provision of this Act; or
    - (B) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
  - (ii) a matter relating to the contravention is reasonably capable of being rectified; and
  - (iii) it is appropriate to give the authority holder an opportunity to rectify the matter; and

- (b) if the matter relates to a ground to suspend or cancel the authority, the chief health officer has not given a show cause notice to the authority holder under section 81.<sup>15</sup>

(2) The chief health officer or authorised person may give the authority holder a written notice (a “**compliance notice**”) requiring the authority holder to rectify the matter.

(3) The compliance notice must state—

- (a) that the chief health officer or authorised person believes the authority holder—
- (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) the provision the chief health officer or authorised person believes is being, or has been, contravened; and
- (c) briefly, how it is believed the provision is being, or has been contravened; and
- (d) the matter relating to the contravention that the chief health officer or authorised person believes is reasonably capable of being rectified; and
- (e) the reasonable steps the authority holder must take to rectify the matter; and
- (f) that the authority holder must take the steps within a stated reasonable period.

(4) The authority holder must comply with the compliance notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) The authority holder can not be prosecuted for contravention of the provision unless the authority holder—

- (a) fails to comply with the compliance notice within the stated period; and
- (b) does not have a reasonable excuse for failing to comply with the notice.

---

15 Section 81 (Show cause notice)



## **PART 9—REVIEWS AND APPEALS**

### *Division 1—Reviews*

#### **126 Appeal process starts with internal review**

Every appeal against an original decision must be, in the first instance, by way of an application for internal review.

#### **127 Who may apply for review**

(1) A person who is given, or is entitled to be given, an information notice for a decision (the **“original decision”**) and who is dissatisfied with the decision may apply to the chief health officer for a review (an **“internal review”**) of the decision.

(2) To help users of this Act, schedule 1 identifies the decisions for which an information notice must be given under this Act.

#### **128 Applying for review**

(1) The application must be made within 28 days after—

- (a) if the person is given an information notice about the decision—the day the person is given the information notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

(2) The chief health officer may, at any time, extend the time for applying for review.

(3) The application for review must be in writing and state fully the grounds of the application.

#### **129 Review decision**

(1) After reviewing the original decision, the chief health officer must make a further decision (the **“review decision”**) to—

- (a) confirm the original decision; or
- (b) amend the original decision; or

(c) substitute another decision for the original decision.

(2) The chief health officer must immediately give the applicant written notice (the “**review notice**”) of the review decision.

(3) If the review decision is not the decision sought by the applicant, the review notice must also state—

- (a) the reasons for the review decision; and
- (b) that the applicant may appeal against the review decision to the District Court within 28 days after the person is given the notice; and
- (c) how to appeal; and
- (d) that the applicant may apply to the court for a stay of the review decision.

(4) If the chief health officer does not give the review notice within 60 days after the application is made, the chief health officer is taken to have made a review decision confirming the original decision.

(5) If the review decision confirms the original decision, for the purpose of an appeal to the court, the original decision is taken to be the review decision.

(6) If the review decision amends the original decision, for the purpose of an appeal to the court, the original decision as amended is taken to be the review decision.

### **130 Stay of operation of decision**

(1) If an application is made for an internal review of an original decision, the applicant may immediately apply to the District Court for a stay of the decision.

(2) The court may stay the decision to secure the effectiveness of the review and a later appeal to the court.

(3) The stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of the stay must not extend past the time when the chief health officer makes a review decision about the original decision and any

later period the court allows the applicant to enable the applicant to appeal against the review decision.

(5) The application affects the decision, or carrying out of the decision, only if the decision is stayed.

### *Division 2—Appeals*

#### **131 Who may appeal**

A person who has applied for the review of an original decision under division 1 and is dissatisfied with the review decision may appeal to the District Court against the review decision.

#### **132 District Court to which appeal may be made**

The appeal may be made to—

- (a) the District Court nearest the place where the person resides or carries on business; or
- (b) the District Court at Brisbane.

#### **133 Starting appeal**

(1) An appeal is started by—

- (a) filing a written notice of appeal with the court; and
- (b) serving a copy of the notice on the chief health officer.

(2) The notice of appeal must be filed within 28 days after—

- (a) if the person is given a review notice for the review decision—the day the person is given the notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the review decision.

(3) The court may, at any time, extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal.

**134 Stay of operation of decisions**

(1) The court may grant a stay of the operation of the review decision to secure the effectiveness of the appeal.

(2) The stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of the stay must not extend past the time when the court decides the appeal.

(4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

**135 Hearing procedures**

(1) In deciding an appeal, the court—

- (a) has the same powers as the chief health officer; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) if the court is satisfied that the appeal involves an issue requiring special skill or knowledge—may appoint a person with the relevant skill or knowledge to help the court decide the issue.

(2) An appeal is by way of rehearing.

**136 Powers of court on appeal**

(1) In deciding an appeal, the court may—

- (a) confirm the review decision; or
- (b) set aside the review decision; or
- (c) amend the review decision in the way the court considers appropriate; or
- (d) send the matter back to the chief health officer and give the directions the court considers appropriate; or
- (e) set aside the review decision and substitute it with a decision the court considers appropriate.

(2) If the court amends the review decision or substitutes another decision for the review decision, the amended or substituted decision is, for this Act (other than this part) taken to be the chief health officer's decision.

## **PART 10—LEGAL PROCEEDINGS**

### *Division 1—Evidence*

#### **137 Application of div 1**

This division applies to a proceeding under this Act.

#### **138 Appointments and authority**

It is not necessary to prove—

- (a) the chief health officer's appointment; or
- (b) an authorised person's appointment; or
- (c) the authority of the chief health officer or an authorised person to do anything under this Act.

#### **139 Signatures**

A signature purporting to be the signature of the chief health officer or an authorised person is evidence of the signature it purports to be.

#### **140 Evidentiary aids**

(1) A certificate purporting to be signed by the chief health officer stating any of the following matters is evidence of it—

- (a) a stated document is one of the following things made, given, issued or kept under this Act—
  - (i) an appointment;
  - (ii) an approval or licence;
  - (iii) a decision;

- (iv) a notice, direction or requirement;
- (b) a stated document is a copy of a thing mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, a stated person was or was not an authority holder;
- (d) on a stated day, or during a stated period, an authority—
  - (i) was or was not in force; or
  - (ii) was or was not subject to a stated condition; or
  - (iii) was or was not suspended or cancelled;
- (e) on a stated day, or during a stated period, a person's appointment as an authorised person was, or was not, in force;
- (f) on a stated day, a stated person was given a stated notice under this Act;
- (g) on a stated day, a stated requirement was made of a stated person.

(2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of the matter stated.

### *Division 2—Proceedings*

#### **141 Summary proceedings for offences**

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

#### **142 Responsibility for acts or omissions of representatives**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

**“state of mind”**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **143 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## **PART 11—MISCELLANEOUS**

### **143A Authority holder to notify chief executive of certain events**

(1) An authority holder must give the chief executive notice, in the approved form, of the happening of any of the following events within 21 days of becoming aware of the event happening—

- (a) the authority holder, or an associate of the authority holder, is affected by bankruptcy action, or control action under the Corporations Act;
- (b) any of the following persons is convicted of an indictable offence or an offence against a corresponding law—
  - (i) the authority holder;
  - (ii) an associate of the authority holder;
  - (iii) if the authority holder is a corporation, an executive officer of the authority holder;
- (c) the equivalent of an authority under a corresponding law, held by the authority holder or an associate of the authority holder, is suspended or cancelled;
- (d) if the authority holder is an individual who jointly holds the authority with 1 or more other individuals, the other individual or any of the other individuals dies.

Maximum penalty—50 penalty units.

(2) For subsection (1)(a), an authority holder or an associate of an authority holder is affected by bankruptcy action if the authority holder or associate—

- (a) is bankrupt; or



- (b) has compounded with creditors; or
- (c) as a debtor, has otherwise taken, or applied to take, advantage of any law about bankruptcy.

(3) For subsection (1)(a), an authority holder or an associate of an authority holder is affected by control action under the Corporations Act if the authority holder or associate—

- (a) has executed a deed of company arrangement under that Act; or
- (b) is the subject of a winding-up (whether voluntarily or under a court order) under that Act; or
- (c) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.

#### **144 Submission of reports**

(1) The licensee of a private health facility must give reports to the chief health officer as required by this section.

Maximum penalty—50 penalty units.

(2) The purposes of the reports are as follows—

- (a) to monitor the quality of health services provided at private health facilities;
- (b) to enable the State to give information to the Commonwealth or another State, or an entity of the Commonwealth or another State (the “**recipient**”), under an agreement with the recipient prescribed under a regulation for section 147(4)(c);
- (c) to monitor the general state of health of the public having regard to the types and numbers of health services provided at the facilities.

(3) The reports must—

- (a) be in the approved form; and
- (b) be given at the times prescribed under a regulation.

**145 False or misleading report**

(1) A licensee must not give the chief health officer a report containing information that the licensee knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a licensee if the licensee, when giving the report—

- (a) tells the chief health officer, to the best of the licensee's ability, how it is false or misleading; and
- (b) if the licensee has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough to state that the report was, without specifying which, false or misleading.

**146 Protecting officials from liability**

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

**“official”** means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) the chief health officer; or
- (d) an authorised person; or
- (e) a person acting under the direction of an authorised person.

**147 Confidentiality of information**

(1) This section applies to the following persons—

- (a) a person who is, or was, the chief executive, the chief health officer or an authorised person;

*Private Health Facilities Act 1999*

---

- (b) another person who is, or was, involved in the administration of this Act, including, for example, as a health service employee or public service employee;
- (c) a member of an advisory committee;
- (d) a person who was involved in the administration of the repealed division.

(2) This section applies to information obtained by a person to whom this section applies in the course of performing the person's functions under this Act or under the repealed division.

(3) The person must not disclose the information if—

- (a) the disclosure of the information would be likely to damage the commercial activities of the person to whom the information relates; or
- (b) the information is personal health information; or
- (c) the information is contained in a report under section 16.<sup>16</sup>

Maximum penalty—50 penalty units.

(4) Subsection (3) does not apply if—

- (a) the information is disclosed—
  - (i) in the performance of functions under this Act; or
  - (ii) with the written consent of the person to whom the information relates; or
  - (iii) to the person to whom the information relates; or
- (b) the information is otherwise publicly available; or
- (c) the information is given in the following circumstances—
  - (i) the chief executive gives the information to the Commonwealth or another State, or an entity of the Commonwealth or another State (the “**recipient**”), under an agreement with the recipient;
  - (ii) the agreement is prescribed under a regulation for this paragraph;

---

16 Section 16 (Criminal history reports for investigation)

- (iii) the chief executive is satisfied the giving of the information is in the public interest; or
- (d) the information is disclosed to the chief executive to allow the chief executive to act under paragraph (c) or subsection (5); or
- (e) the information is disclosed to the Minister to allow the Minister to act under subsection (6); or
- (f) the disclosure of the information is authorised or permitted under an Act or required by law; or
- (g) the disclosure of the information is—
  - (i) authorised by the chief executive under subsection (5); or
  - (ii) authorised by the Minister under subsection (6).

(5) The chief executive may authorise the disclosure of the information to a person authorised to conduct scientific research or studies under the *Health Act 1937*, section 154M.<sup>17</sup>

(6) The Minister may authorise the disclosure of the information to a person if the Minister is satisfied the disclosure is in the public interest.

(7) The Commonwealth, other State or entity that receives information under subsection (4)(c)—

- (a) must not give the information to anyone else; and
- (b) must ensure the information is used only for the purpose for which it was given.

(8) If the Minister authorises the disclosure of the information to a person under subsection (6), the person—

- (a) must not give the information to anyone else; and
- (b) must ensure the information is used only for the purpose for which it was given.

Maximum penalty—50 penalty units.

(9) The chief executive must include in the department's annual report under the *Financial Administration and Audit Act 1977* a statement about authorisations by the Minister under subsection (6), including general details about—

---

<sup>17</sup> *Health Act 1937*, section 154M (Authority to conduct scientific research and studies)

(a) the nature of the information given to persons under the authorisations; and

(b) the purpose for which the information was given to the persons.

(10) The statement under subsection (9) must not identify any person.

(11) In this section—

**“commercial activities”** means activities conducted on a commercial basis.

**“information”** includes a document.

**“personal health information”** means information about a person’s health that identifies, or is likely to identify, the person.

## 148 Delegations

(1) The chief health officer may delegate the chief health officer’s powers under this Act to an appropriately qualified employee of the department.

(2) However, the chief health officer may not delegate the chief health officer’s powers under—

(a) part 3;<sup>18</sup> or

(b) part 9, division 1.<sup>19</sup>

(3) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of ‘standing’—*

If a person is an officer of the department, the person’s classification level in the department.

## 149 Advisory committees

(1) The chief health officer may establish committees to advise the chief health officer on any matter regarding the administration of this Act.

---

18 Part 3 (Standards)

19 Part 9 (Reviews and appeals), division 1 (Reviews)

(2) Members of a committee established under this section must be appropriately qualified to advise the chief health officer on the matter about which the committee was established to advise.

(3) Members of a committee may be appointed to the committee on the terms the chief health officer considers appropriate, including terms about remuneration.

### **150 Approval of forms**

(1) The chief health officer may approve forms for use under this Act.

(2) An approved form may require—

- (a) specified information or documents to be included in, attached to or given with the form; or
- (b) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way, including, for example, by statutory declaration.

### **151 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about fees, including the refunding of fees, for this Act.

## **PART 12—SAVING AND TRANSITIONAL PROVISIONS**

### *Division 1—Interpretation*

### **152 Definitions for pt 12**

In this part—

“**commencement day**” means the day on which the provision in which the term is used commences.

“**consent**” means a written consent, given by the chief health officer to a person who intended to apply for a licence to erect or use under the

repealed division, approving the establishment of a private health facility.

**“existing licence to erect”** means a licence to erect in force immediately before the commencement day.

**“existing licence to use”** means a licence to use in force immediately before the commencement day.

**“licence to erect”** means a licence to erect under the repealed division.

**“licence to use”** means a licence to use under the repealed division.

### *Division 2—Saving and transitional provisions*

#### **153 References to repealed division**

In an Act or document, a reference to the repealed division may, if the context permits, be taken as a reference to this Act.

#### **154 Consents**

(1) This section applies if, immediately before the commencement day—

- (a) a person held a consent; and
- (b) the person did not hold a licence to erect or use for the private health facility or proposed private health facility to which the consent related.

(2) The person is taken to be an approval holder under this Act.

(3) The consent is taken to be an approval under this Act.

(4) An approval under subsection (3)—

- (a) is taken to have been issued—
  - (i) on the same conditions as those subject to which the consent was subject immediately before the commencement day; and
  - (ii) on the further condition that the approval holder must give the chief health officer, within 21 days after a prescribed change, written notice of the prescribed change; and
- (b) expires 1 year after the commencement day.

(5) In this section—

“**prescribed change**” means a change—

- (a) in a matter disclosed by the approval holder—
  - (i) in the application for the consent; or
  - (ii) in an application under this Act; and
- (b) of a kind prescribed under a regulation.

### **155 Existing licences to erect**

(1) An existing licence to erect is taken to be an approval under this Act.

(2) A person who holds an existing licence to erect is taken to be an approval holder under this Act.

(3) An approval under subsection (1)—

- (a) is taken to have been issued—
  - (i) on the same conditions as those subject to which the existing licence to erect was subject immediately before the commencement day; and
  - (ii) on the further condition that the approval holder must give the chief health officer, within 21 days after a prescribed change, written notice of the prescribed change; and
- (b) expires 1 year after the commencement day.

(4) In this section—

“**prescribed change**” means a change—

- (a) in a matter disclosed by the approval holder—
  - (i) in the application for the existing licence to erect; or
  - (ii) in an application under this Act; and
- (b) of a kind prescribed under a regulation.

### **156 Existing licences to use**

(1) An existing licence to use is taken to be a licence under this Act.

(2) A person who holds an existing licence to use is taken to be a licensee under this Act.



**(3)** A licence under subsection (1) is taken to have been issued on the following conditions—

- (a) the licensee must give the chief health officer within 21 days of a prescribed change happening, written notice of the prescribed change;
- (b) within 90 days after the commencement day, the licensee must start a quality assurance program, conducted by a quality assurance entity, for the private health facility;
- (c) within 3 years after the commencement day, the licensee must receive certification from the quality assurance entity that the facility operates under a quality assurance system;
- (d) after the certification mentioned in paragraph (c) or subsection (4) is received, the facility must continue to be certified under the program as a facility that operates under a quality assurance system;
- (e) the licensee must comply with the standards relevant to the facility;
- (f) the licensee must operate the facility in accordance with the details about the facility stated in the licence, including providing at the facility only the type of health services stated in the licence;
- (g) the licensee must ensure the premises making up the facility and all equipment, fittings and furnishings in the facility are kept in good repair and operational order;
- (h) the licensee must not make a prescribed alteration to the facility without the approval of the chief health officer under section 65;<sup>20</sup>
- (i) the other conditions, not inconsistent with the conditions set out in paragraphs (a) to (h), to which the existing licence to use was subject immediately before the commencement day.

**(4)** Subsection (3)(b) and (c) do not apply if, on the commencement day, the licensee has received certification from a quality assurance entity that the facility operates under a quality assurance system.

---

20 Section 65 (Decision about applications for approval of prescribed alterations)

(5) Subsection (3)(b) does not apply if, on the commencement day, the licensee has started, but has not finished, a quality assurance program for the facility.

(6) Section 74<sup>21</sup> does not apply to an instrument or document in force before the commencement day purporting to encumber a licence mentioned in subsection (1).

(7) In this section—

**“prescribed change”** means a change—

- (a) in a matter disclosed by the licensee—
  - (i) in an application under the repealed division; or
  - (ii) in an application under this Act; and
- (b) of a kind prescribed under a regulation.

### **157 Pending applications**

(1) A pending application for a licence to use is taken to be an application for a licence under this Act.

(2) A pending application for renewal of an existing licence to use is taken to be an application for renewal under this Act.

(3) A pending application for approval to transfer an existing licence to use is taken to be an application for a transfer of a licence under this Act.

(4) The provisions of this Act dealing with making an application for a licence or transfer of a licence in the approved form and paying the fee do not apply to the applications mentioned in subsections (1) and (3).

(5) The provisions of this Act dealing with making an application for renewal in the approved form and paying the fee do not apply to the application mentioned in subsection (2).

(6) The following kinds of pending applications are taken to have been withdrawn—

- (a) a pending application for a licence to erect;
- (b) a pending application for renewal of an existing licence to erect;

---

21 Section 74 (Encumbrances have no effect)

- (c) a pending application for approval to transfer an existing licence to erect.

### **158 Action to cancel or suspend an existing licence to use**

(1) This section applies if—

- (a) immediately before the commencement day, a person held an existing licence to use; and
- (b) the person received a notification under the repealed division of a day, time and place for the person to show cause why the existing licence to use should not be cancelled or suspended; and
- (c) the commencement day precedes the day notified.

(2) The person may attempt to show cause as if this Act had not commenced.

(3) The chief health officer may, after the person has attempted to show cause, cancel or suspend the licence as if this Act had not been passed.

### **159 Suspended licences to use**

(1) This section applies if an existing licence to use has been suspended under the repealed division and the period of suspension has not ended on the commencement day.

(2) The suspension is taken to continue as a suspension of a licence under this Act.

### **160 Proposed additions or alterations**

(1) This section applies if—

- (a) immediately before the commencement day an approval of an addition or alteration given by the chief health officer under section 70 of the repealed division is in force; and
- (b) the addition or alteration has not been made.

(2) The addition or alteration may be made as if this Act had not commenced.

## **161 Offences**

(1) Proceedings for an offence against the repealed division may be started or continued, and the provisions of the repealed division and the *Health Act 1937* that are necessary or convenient to be used in relation to the proceedings continue to apply, as if this Act had not commenced.

(2) For subsection (1), the *Acts Interpretation Act 1954*, section 20<sup>22</sup> applies, but does not limit the subsection.

## **162 Application of offence provision requiring licences for day hospitals and other provision**

(1) This section applies if—

- (a) immediately before the commencement day—
  - (i) a person operated a facility that, after the commencement day, is a day hospital; and
  - (ii) the person did not have a licence to use under the repealed division for the day hospital; and
- (b) the person is required to be a licensee to operate the day hospital under this Act; and
- (c) the same health services are provided at the day hospital as were provided immediately before the commencement day.

(2) Section 39<sup>23</sup> does not apply to the operation by the person of the day hospital until 6 months after the commencement day.

## **163 Licences not required to operate certain day hospitals**

(1) This section applies if—

- (a) immediately before the commencement day—
  - (i) a person (the “**licensee**”) operated a facility (the “**licensee’s facility**”) and held a licence to use for the facility; and
  - (ii) another person operated another facility, at the same place as the licensee’s facility, but did not hold a licence to use for the other facility; and

---

22 *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

23 Section 39 (Licences required to operate private health facilities)

- (iii) the other facility was operated by the other person under the licence to use for the licensee's facility; and
- (b) under this Act—
  - (i) the licensee's facility is a private hospital operated by the licensee under a licence; and
  - (ii) the other facility is a day hospital operated by the other person.
- (2) For this Act, apart from this section—
  - (a) the operation of the day hospital is part of the licensee's operation of the private hospital; and
  - (b) the other person does not operate the day hospital.
- (3) Subsection (2) stops applying at the earliest of the following times—
  - (a) if the licence includes the statement mentioned in section 40(1)(c)—the day it first includes the statement;
  - (b) the day the licence stops being in force;
  - (c) 1 year after the commencement day.

### **164 Inclusion of statement in certain licences**

(1) The chief health officer may include in a licence mentioned in section 163 the statement mentioned in section 40(1)(c).

(2) If the chief health officer acts under subsection (1), section 40 applies as if the licensee asked, in an application to change the licence, for the licence to make the statement.

**SCHEDULE 1****DECISIONS FOR WHICH INFORMATION NOTICES  
MUST BE GIVEN**

section 127(2)

<b>Section</b>	<b>Description of decision</b>
19	Refusing application for an approval
23	Issuing an approval on additional conditions
27	Refusing application to extend the period for which an approval remains in force
29	Changing the details stated in, or conditions of, an approval
32	Refusing application to change an approval
38	Refusing application for replacement of approval
44	Refusing application for a licence
48	Issuing a licence on additional conditions
53	Refusing to grant application for renewal of a licence
55	Changing the details stated in, or conditions of, a licence
58	Refusing application to change a licence
65	Refusing application for approval of a prescribed alteration
70	Refusing application to transfer a licence
79	Refusing application for replacement of a licence

## SCHEDULE 1 (continued)

<b>Section</b>	<b>Description of decision</b>
84	Cancelling or suspending an authority
85	Immediately suspending a licence
109	Decision resulting in a thing being forfeited to the State

**SCHEDULE 3****DICTIONARY**

section 6

**“accepted representations”** see section 82.

**“admission”**, to a private health facility, includes allowing a person to enter the facility to receive health services at the facility.

**“approval”** means an approval under part 5.

**“approval holder”** means the holder of an approval.

**“associate”**, of an applicant for an authority or an authority holder, means—

- (a) a corporation of which the applicant or authority holder is a subsidiary; or
- (b) a party to an arrangement with the applicant or authority holder for the operation of the private health facility to which the application or authority relates; or
- (c) a partner of the applicant or authority holder for the operation of the facility to which the application or authority relates.

**“authorised person”** means a person appointed as an authorised person under this Act.

**“authority”** means an approval or a licence.

**“authority holder”** means the holder of an authority.

**“building code”** means the edition, in force at the relevant time, of the Building Codes of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board.

**“certificate of classification”** means a certificate of classification issued under the *Standard Building Regulation 1993*, part 9.<sup>24</sup>

**“change notice”**—

---

<sup>24</sup> *Standard Building Regulation 1993*, part 9 (Certificates of classification)



## SCHEDULE 3 (continued)

- for part 5, division 5, subdivision 1—see section 32(3)
- for part 6, division 7, subdivision 1—see section 58(3).

**“chief health officer”** means the chief health officer under the *Health Act 1937*.

**“commencement day”**, for part 12, see section 152.

**“compliance notice”** see section 125(2).

**“consent”**, for part 12, see section 152.

**“corresponding law”** means a law of another State, the Commonwealth or a foreign country that provides for the same matter as this Act or a provision of this Act.

**“day hospital”** see section 10.

**“discharge”**, from a private health facility, includes allowing a person to leave the facility after the person has received health services at the facility.

**“document certification requirement”** see section 116(5).

**“document production requirement”** see section 116(6).

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“existing licence to erect”** see section 152.

**“existing licence to use”** see section 152.

**“facsimile warrant”** see section 97(4).

**“health service”** see section 7.

**“information notice”**, for a decision made by the chief health officer or an authorised person, is a written notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may have the decision reviewed within 28 days;
- (d) the way the person may have the decision reviewed;

## SCHEDULE 3 (continued)

- (e) if the decision is that an authority be suspended or cancelled, a direction that the person surrender the authority within 7 days after receiving the notice;
- (f) if the decision is to change an authority, a direction that the person return the authority to record the change within 7 days after receiving the notice.

**“internal review”** see section 127(1).

**“licence”** means a licence under part 6.

**“licence to erect”** see section 152.

**“licence to use”** see section 152.

**“licensee”** means the holder of a licence.

**“original decision”** see section 127(1).

**“notice of intention”**—

- for part 5, division 5—see section 29(3)
- for part 6, division 7—see section 55(3).

**“patient”** means a person admitted to a private health facility to receive a health service.

**“place of seizure”** see section 105(a).

**“premises”** includes—

- (a) a building or other structure; and
- (b) land where a building or other structure is situated; and
- (c) part of the building, other structure or land.

**“prescribed alteration”**, to a private health facility, see section 62(1).

**“private health facility”** see section 8.

**“private hospital”** see section 9.

**“public place”** means a place the public is entitled to use, open to the public or used by the public, whether or not on payment of money.

**“quality assurance entity”** means an entity prescribed under a regulation that conducts a quality assurance program.

## SCHEDULE 3 (continued)

**“quality assurance program”** means a program, prescribed under a regulation, for certifying that a private health facility operates under a quality assurance system.

**“repealed division”** means the *Health Act 1937*, part 3, division 4,<sup>25</sup> as in force from time to time before its omission by this Act.

**“review decision”** see section 129(1).

**“review notice”** see section 129(2).

**“show cause notice”** see section 81(2).

**“show cause period”**—

- for part 5, division 5—see section 29(3)
- for part 6, division 7—see section 55(3)
- for part 7—see section 81.

**“special warrant”** see section 97(1).

**“standard”** means a standard made under part 3.

**“subsidiary”** has the same meaning as under the Corporations Act.

**“transfer notice”** see section 70(3).

**“warrant form”** see section 97(5).

---

<sup>25</sup> *Health Act 1937*, part 3 (Prevention, notification and treatment of disease or disability), division 4 (Private hospitals)

## ENDNOTES

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	98
3	Key . . . . .	98
4	Table of earlier reprints . . . . .	99
5	List of legislation . . . . .	99
6	List of annotations . . . . .	99
7	List of forms . . . . .	100

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 29 November 2001. Future amendments of the Private Health Facilities Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 46 of 2000	1 December 2000
1A	to Act No. 45 of 2001	27 July 2001

## 5 List of legislation

### **Private Health Facilities Act 1999 No. 60**

date of assent 29 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 30 November 2000 (automatic commencement under AIA s 15DA(2))

as amended by—

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

### **Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

### **Health Legislation Amendment Act 2001 No. 78 s 1 pt 17**

date of assent 15 November 2001

commenced on date of assent

## 6 List of annotations

### **Suitability of persons**

s 13 amd 2001 No. 78 s 183

### **Grounds for suspension or cancellation**

s 80 amd 2001 No. 45 s 29 sch 3; 2001 No. 78 s 184

**Show cause notice**

s 81 amd 2001 No. 78 s 185

**Appointment and qualifications**

s 87 amd 2001 No. 78 s 186

**Tampering with seized things**

s 106 amd 2001 No. 78 s 187

**Compliance notices**

s 125 amd 2001 No. 78 s 188

**Responsibility for acts or omissions of representatives**

s 142 amd 2001 No. 78 s 189

**Authority holder to notify chief executive of certain events**

s 143A ins 2001 No. 78 s 190

**PART 13—OTHER ACTS AMENDED**

pt hdg om R1 (see RA s 7(1)(k))

**Acts amended in sch 2**

s 165 om R1 (see RA s 40)

**SCHEDULE 1—DECISIONS FOR WHICH INFORMATION NOTICES MUST BE GIVEN**

amd 2000 No. 46 s 3 sch

**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

om R1 (see RA s 40)

**SCHEDULE 3—DICTIONARY**

def “subsidiary” amd 2001 No. 45 s 29 sch 3

**7 List of forms****Form 8938 Version 1—Application for Approval for a Private Health Facility**

pubd gaz 1 December 2000 p 1286

**Form 89211 Version 1—Application for a Change to an Approval**

pubd gaz 1 December 2000 p 1286

**Form 8936 Version 1—Application for Approval to Extend the Term of an Approval**

pubd gaz 1 December 2000 p 1286

**Form 812A Version 1—Approval for a Private Health Facility**

pubd gaz 1 December 2000 p 1286

**Form 8935 Version 1—Application for a Licence to Operate a Private Health Facility**

pubd gaz 1 December 2000 p 1286

**Form 8937 Version 1—Application for Renewal of a Private Health Facility Licence**

pubd gaz 1 December 2000 p 1286

**Form 89212 Version 1—Application for a Change to a Licence to Operate**

pubd gaz 1 December 2000 p 1286

**Form 890 Version 1—Application for Transfer of a Private Health Facility Licence**

pubd gaz 1 December 2000 p 1286

**Form 812L Version 1—Licence to Operate a Private Health Facility**

pubd gaz 1 December 2000 p 1286

**Form 891 Version 1—Application for Approval of Prescribed Alteration to a Licensed Private Health Facility**

pubd gaz 1 December 2000 p 1286