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Dated 27 October 2022



TASMANIA

HEALTH ACT 1997

No. 13 of 1997

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HEALTH ACT 1997

No. 13 of 1997

An Act to make provision for quality assurance committees, for ensuring that certain Medicare principles are given effect to, and certain Medicare commitments are undertaken, in the provision of public hospital services and for other matters

[Royal Assent 19 June 1997]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Health Act 1997*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

admitted patient means an admitted patient as defined in the National Health Data Dictionary;

Commonwealth Act means the *Health Insurance Act 1973* of the Commonwealth;

eligible person means an eligible person within the meaning of the Commonwealth Act;

health service establishment means an establishment within the meaning of the *Health Service Establishments Act 2006*;

hospital services – see section 3A;

Medicare commitments means the commitments set out in Part 2 of Schedule 1;

Medicare principles means the principles set out in Part 1 of Schedule 1;

National Health Data Dictionary means the document published, whether in paper or electronic format, by the Australian Institute of Health and Welfare established under the *Australian Institute of Health and Welfare Act 1987* of the Commonwealth, as a reference of

standardised accepted terms and protocols for data collection in the health sector, as amended or substituted from time to time;

non-admitted patient means a person in receipt of non-admitted patient services;

non-admitted patient services means non-admitted patient services as defined in the National Health Data Dictionary;

professional association means an association, society, college or other body of health professionals.

3A. Meaning of *hospital services*

(1) In this section –

hospital patient means –

- (a) an admitted patient; or
- (b) a non-admitted patient.

(2) For the purposes of this Act, *hospital services* means the provision of any one or more of the following services to a hospital patient:

- (a) medical services;
- (b) diagnostic services;
- (c) nursing services;
- (d) paramedical services;

- (e) non-admitted patient services;
- (f) dental services;
- (g) accommodation.

4. Quality assurance committees

- (1) The Minister, by notice published in the *Gazette*, may declare that a specified committee established by the Secretary of the Department, the governing body of a health service establishment or a professional association is an approved quality assurance committee for the purposes of this Act and, by like notice, may revoke the declaration.
- (2) The Minister is not to make a declaration under subsection (1) unless satisfied –
 - (a) that the committee is established by the Secretary of the Department, by the governing body of a health service establishment or by a professional association; and
 - (b) that the committee's functions include the assessment and evaluation of the quality of health services provided by the State, a health service establishment or by members of a professional association including the review of the clinical practices or clinical competence of persons providing those services; and

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- (c) that the carrying out of the committee's functions and powers would be facilitated by the provision of immunities afforded by this section in respect of its proceedings; and
 - (d) that it is in the public interest that persons be prohibited from disclosing information given to the committee in the course of the performance of its functions.
- (3) A person who is or has been a member of a committee in respect of which a declaration under subsection (1) has been made must not either directly or indirectly –
- (a) make a record of, or divulge or communicate to any person, any information gained by or conveyed to that person as such a member while the declaration was in force; or
 - (b) make use of any such information –
- except to the extent necessary for the performance of the functions of that committee or of the person as such a member.
- Penalty: Fine not exceeding 50 penalty units.
- (4) A person who is or has been a member of a committee in respect of which a declaration under subsection (1) has been made is not required –

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- (a) to produce before any court, tribunal, board, agency or person any document in the person's possession or under the person's control as such a member while the declaration was in force; or
 - (b) to divulge or communicate to any court, tribunal, board, agency or person any matter or thing coming under the person's notice as such a member while the declaration was in force.
- (5) Subsections (3) and (4) apply to a person who prepares or has prepared information or documents concerning the proceedings, or for the purposes, of a committee in respect of which a declaration under subsection (1) has been made as if that person is or was a member of the committee.
- (6) Evidence of any information or document relating to the proceedings, or prepared for the purposes, of a committee at any time while a declaration under subsection (1) was in force in respect of it is not admissible in any action or proceedings before any court, tribunal, board, agency or person.
- (7) If there is an inconsistency between this section and a provision of any other Act or law, this section prevails to the extent of the inconsistency.
- (8) Section 62B of the *Health Complaints Act 1995* and section 17 of the *Ombudsman Act 1978* do

not apply to a disclosure or communication of information to which this section refers.

5. Medicare principles and commitments

The Minister is to ensure that in providing public hospital services on behalf of the State to eligible persons –

- (a) the Medicare principles are given effect to; and
- (b) the Medicare commitments are undertaken –

in accordance with any requirements under the *Federal Financial Relations Act 2009* of the Commonwealth.

6.

7. Fees

- (1) If any hospital service is provided to any person by or on behalf of the State, a fee determined in accordance with this section or, if not so determined, prescribed in the regulations is payable by or on behalf of that person.
- (2) The Secretary may waive the payment of the whole or part of any fee payable by or on behalf of a person under this section in such circumstances as the Secretary considers appropriate.

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- (3) The fee payable for hospital services provided to a person whose fees and charges are being funded by a licensed insurer, within the meaning of the *Workers Rehabilitation and Compensation Act 1988*, is the amount agreed from time to time by the Minister and the relevant licensed insurer for the provision of those services.
- (3A) The fee payable for hospital services provided to a person whose fees and charges are being funded by the Asbestos Compensation Commissioner appointed under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* is the amount agreed from time to time by the Minister and the Asbestos Compensation Commissioner for the provision of those services.
- (4) The fee payable for hospital services provided to a person whose fees and charges are being funded by the Motor Accidents Insurance Board is the amount agreed from time to time by the Minister and the Motor Accidents Insurance Board for the provision of those services.
- (5) The fee payable for hospital services provided to a person whose fees and charges are being funded by a registered organisation, within the meaning of the *National Health Act 1953* of the Commonwealth, is the amount agreed from time to time by the Minister and the registered organisation for the provision of those services.
- (6) The fee payable for hospital services provided to a person whose fees and charges are being funded by a prescribed department is the amount

agreed from time to time by the Minister and the Commonwealth Minister for the provision of those services.

(7) In this section –

Commonwealth Minister means the Minister responsible from time to time for the administration of the prescribed department;

prescribed department means the department or organ of government of the Commonwealth that is responsible for veteran's affairs or defence.

7A. Validation of certain fees charged, amendment of regulations, &c.

(1) In this section –

amending Act means the *Health Amendment (Fees Validation) Act 2015*;

former regulations means the *Health (Fees) Regulations 2007* as in force during the validation period;

rescinded regulations means the *Health (Fees) Regulations 1997* as in force during the validation period;

subsequent regulations means the *Health (Fees) Regulations 2007* as in force immediately after the amending Act commences;

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validation day means the day on which the amending Act commences;

validation period means the period beginning on 1 April 2007 and ending immediately before the validation day.

- (2) This section applies to a fee that was, before the validation day, charged, or purportedly charged, under regulation 5 of the former regulations, in respect of a period within the validation period, if the fee would have been, but for this section, invalidly charged by reason only that the former regulations, rather than the subsequent regulations, were in effect during the validation period.
- (3) This section also applies to a fee that was, before the validation day, charged, or purportedly charged, under regulation 6 of the rescinded regulations, in respect of a period within the validation period, if the fee would have been, but for this section, invalidly charged by reason only that the expression “nursing-home-type patient” did not have, in the rescinded regulations, the meaning set out in regulation 3A of the subsequent regulations.
- (4) A fee to which this section applies is taken to be, and to always have been, validly charged and, if collected or purportedly collected, validly collected.
- (5) Despite subsections (2) and (3), this section does not apply in relation to a fee charged, or purportedly charged, to a person if the fee was

collected, or purportedly collected, from the person and then refunded to the person before the validation day.

- (6) The amendment of the former regulations by Part 2 of the amending Act does not prevent the subsequent regulations being subsequently amended or rescinded by any regulations made under this Act.

8. Delegation

The Minister may delegate any of his or her functions or powers under this Act (other than this power of delegation).

9. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may –
- (a) be of general or limited application; and
 - (b) differ according to differences in place or circumstance; and
 - (c) authorise any matter or thing to be determined, applied or regulated by the Secretary of the Department.
- (3) The regulations may adopt, either wholly or in part and with or without modification and either specifically or by reference, any standard, rule, code, specification or method published or

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issued before or after the commencement of this Act.

- (4) A reference in subsection (3) to a standard, rule, code, specification or method includes a reference to an amendment of the standard, rule, code, specification or method, whether the amendment is published or issued before or after the commencement of this Act.
- (5) In subsection (4),
amendment includes –
- (a) the omission of matter; and
 - (b) the insertion of additional matter;
and
 - (c) the omission of matter and the substitution of other matter.
- (6) The regulations may –
- (a) prescribe different rates of fees in respect of different hospitals, facilities or services maintained, operated or provided by or on behalf of the State or in relation to different classes of persons or different services; and
 - (b) prescribe the circumstances in which, or the persons by whom, a fee is not payable for any facility or service provided by or on behalf of the State.
- (7) The regulations may –

- (a) provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations; and
 - (b) provide, in respect of any such offence, for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
- (8) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (9) A provision referred to in subsection (8) may, if the regulations so provide, take effect from the commencement of this Act or a later date.

10. Repeals

The Health Regional Boards Act 1991 and the Health (Regional Boards) Amendment (Medicare Agreement) Act 1994 are repealed.

11. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 3 have effect.

12. See Schedule 4.

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13. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Community and Health Services; and
- (b) the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.

**SCHEDULE 1 – MEDICARE PRINCIPLES AND
COMMITMENTS**

Sections 3 and 5

PART 1 – MEDICARE PRINCIPLES

The Commonwealth and the States are committed to the following principles in the provision of public hospital services:

Explanatory Note: The Principles focus on the provision of public hospital services to eligible persons, but operate in an environment where eligible persons have the right to choose private health care in public and private hospitals supported by private health insurance.

Choices of services

Principle 1: Eligible persons must be given the choice to receive public hospital services free of charge as public patients

Explanatory Note 1: Hospital services include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards.

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

Universality of services

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

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

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

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

Equity in service provision

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

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

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

PART 2 – COMMITMENTS

In order to achieve principles 1 to 3, the Commonwealth and States make the following commitments regarding public hospital services for eligible persons:

Information about service provision

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

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

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

Efficiency and quality in service provision

Commitment 2: The Commonwealth and the States are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery

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

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SCHEDULE 2 –

**SCHEDULE 3 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 11

1. Interpretation

In this Schedule –

Board means a Regional Health Board in existence immediately before the proclaimed day;

proclaimed day means the day proclaimed under section 2.

2. Assets and liabilities of Boards

(1) On the proclaimed day –

(a) the assets of a Board are, by virtue of this clause, vested in the Crown on the same terms and conditions as they were vested in the Board; and

(b) all rights, obligations and liabilities of a Board which are subsisting immediately before that day are transferred to the Crown.

(2) Any instrument made for the purposes of subclause (1) is exempt from stamp duty and may be filed, recorded or registered without payment of any fee.

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- (3) All money, land and other property which vests in the Crown as the successor of a Board remains subject to any trusts affecting that property at the time when it so vests and is to be appropriated and dealt with by the Minister for the purposes of those trusts and in accordance with the terms of those trusts.

3. Contracts and agreements

On and from the proclaimed day any contract or agreement entered into by or on behalf of a Board before that day is to be treated for all purposes as a contract or agreement entered into by the Crown.

4. References to Regional Health Board

On and from the proclaimed day a reference to a Regional Health Board in –

- (a) a law; or
- (b) a contract, award or other instrument to which a Board was a party –

is to be construed as a reference to the Crown.

5. Legal proceedings

Any legal or other proceedings which may, before the proclaimed day, have been instituted or continued by or against a Board may, on and after that day, be instituted or continued by or against the Crown.

6. Quality assurance committees

A committee declared by the Minister to be an approved quality assurance committee under the *Health (Regional Boards) Act 1991* is taken to have been declared as an approved quality assurance committee under this Act.

7. Employees

- (1) A person who immediately before the proclaimed day holds office as a person appointed or employed pursuant to section 22 of the *Health (Regional Boards) Act 1991* (as in force immediately before that day) continues, on that commencement, to hold office on the same terms and conditions as were applicable to that person immediately before that day.
- (2) A person referred to in subclause (1) retains all rights, entitlements and privileges which accrued during that person's employment pursuant to section 22 of the *Health (Regional Boards) Act 1991*.

8. Acts, &c., done by or to Regional Health Board

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, a Board before the proclaimed day have, on that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Crown.

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9. Unclaimed property

Any money or personal effects of a person who has died at a hospital or nursing home maintained and operated by a Board and which has not been dealt with before the proclaimed day in accordance with section 33 of the *Health (Regional Boards) Act 1991* may, on or after that day, be dealt with as if section 33 had not been repealed.

SCHEDULE 4

The amendments effected by Section 12 and this Schedule have been incorporated into the authorised version of the appropriate Acts.

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NOTES

The foregoing text of the *Health Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 24 October 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Health Act 1997</i>	No. 13 of 1997	1.7.1997
<i>Health Amendment (Quality Assurance Committees) Act 2007</i>	No. 33 of 2007	28.9.2007
<i>Health Service Establishments Act 2006</i>	No. 17 of 2006	1.10.2011
<i>Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011</i>	No. 28 of 2011	31.10.2011
<i>Health Amendment (Fees Validation) Act 2015</i>	No. 31 of 2015	6.10.2015
<i>Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2019</i>	No. 13 of 2019	18.6.2019
<i>Health Legislation (Miscellaneous Amendments) Act 2022</i>	No. 23 of 2022	24.10.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 17 of 2006, Sched. 3, No. 13 of 2019, Sched. 1 and No. 23 of 2022, s. 17
Section 3A	Inserted by No. 23 of 2022, s. 18
Section 4	Amended by No. 33 of 2007, s. 6
Section 5	Amended by No. 13 of 2019, Sched. 1
Section 6	Repealed by No. 13 of 2019, Sched. 1
Section 7	Amended by No. 28 of 2011, s. 24
Section 7A	Inserted by No. 31 of 2015, s. 9
Schedule 2	Repealed by No. 13 of 2019, Sched. 1