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K Woodward
Chief Parliamentary Counsel
Dated 28 July 2025



TASMANIA

HEALTH SERVICE ESTABLISHMENTS ACT 2006

No. 17 of 2006

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Objects of Act

PART 2 – LICENSING OF PREMISES

5. Requirement for licensing

PART 3 – HEALTH SERVICE ESTABLISHMENTS ADVISORY COMMITTEE

6. Constitution of Advisory Committee
7. Functions of Advisory Committee
8. Subcommittees of Advisory Committee

PART 4 – LICENSING OF ESTABLISHMENTS

Division 1 – Applications for and issue of licences

9. Application for licence
10. Approval in principle or refusal of application
11. Approval in principle to remain effective for one year
12. Issue of licence
13. Temporary licences

Division 2 – Provisions relating to licences

14. Classes of establishments
15. Form of licence
16. Conditions of licence
17. Duration of licence
18. Annual licence fees
19. Transfer of licence to another licensee
20. Notification of alterations or extensions of licensed establishments
21. Provision for repairs, &c.
22. Amendment of licences

Division 3 – General provisions relating to applications for licences, &c.

23. Additional information
24. Notice of reasons for refusal of application
25. Advertising of applications
26. Amendment of applications

Division 4 – Review of decisions of Secretary

27. Interpretation of Division 4
28. Right of appeal to Tasmanian Civil and Administrative Tribunal

Division 5 – Cancellation of licences

29. Cancellation of licence without notice
30. Cancellation of licence with notice

PART 5 – CONDUCT OF ESTABLISHMENTS

31. Duty to comply with *Aged Care Act 1997* of Commonwealth

- 32. Unauthorised procedures
- 33. Unlicensed private hospitals
- 34. Unlicensed day-procedure centres
- 35. Unlicensed residential care service
- 36. Executor or administrator regarded as licensee
- 37. Purposes for which establishments may be used
- 38. Overcrowding
- 39. Director of nursing of establishment
- 40. Title of “matron” and “director of nursing”
- 41. Registered nurse to be on duty
- 42. Register of patients
- 43. Copy of Act and regulations to be available

PART 6 – MISCELLANEOUS

- 44. Delegation
- 45. Disclosure of pecuniary interests to patients
- 46. Power to enter and inspect establishments
- 47. Power to inspect registers and records
- 48. Obstruction of officers
- 49. False or misleading statements, &c.
- 50. Evidentiary certificates
- 51. Service of notices by Secretary
- 52. Offences by corporations
- 53. Proceedings for offences
- 54. Provision of information
- 55. Confidentiality
- 55A. Infringement notices
- 56. Regulations
- 57. Savings and transitional provisions
- 58. Administration of Act
- 59 - 60.

**SCHEDULE 1 – MEMBERS AND PROCEDURE OF HEALTH
SERVICE ESTABLISHMENTS ADVISORY
COMMITTEE**

SCHEDULE 2 – SAVINGS AND TRANSITIONAL PROVISIONS

SCHEDULE 3 –

SCHEDULE 4 –



HEALTH SERVICE ESTABLISHMENTS ACT 2006

No. 17 of 2006

An Act to provide for the licensing and control of health service establishments and to repeal the *Hospitals Act 1918*

[Royal Assent 1 November 2006]

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Health Service Establishments Act 2006*.

2. Commencement

This Act commences on a day to be proclaimed.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 3

Part 1 – Preliminary

3. Interpretation

- (1) In this Act, unless the contrary intention appears –

Advisory Committee means the Health Service Establishments Advisory Committee established under section 6;

application means –

- (a) an application for a licence under section 9; or
- (b) an application for transfer of a licence under section 19; or
- (c) an application to alter or extend an establishment under section 20; or
- (d) an application for amendment of a licence under section 22;

commencement date means the date fixed by proclamation under section 2;

day-procedure centre means an establishment at which any patient is admitted and discharged on the same day for medical, surgical or other treatment, but does not include –

- (a) any such establishment conducted by or on behalf of the State; or
- (b) a public hospital or health service under the control of a public

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 1 – Preliminary

s. 3

health organisation within the meaning of the *Health Act 1997*; or

(c) a private hospital licensed under this Act; or

(d) a residential care service;

director of nursing means the director of nursing of an establishment as referred to in section 39;

establishment means –

(a) a day-procedure centre; or

(b) a private hospital; or

(c) a residential care service;

former Act means the *Hospitals Act 1918*;

funded resident means a resident of a residential care service whose care is partly or fully funded, either directly or indirectly, by the Commonwealth or a State or Territory of the Commonwealth;

licence means a licence issued under section 12 and in force under this Act, and includes a temporary licence;

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

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 3

Part 1 – Preliminary

licensed establishment means an establishment in respect of which a licence has been issued under this Act;

licensing standards means the standards prescribed by the regulations;

member means a member of an Advisory Committee appointed under section 6;

patient means –

- (a) in respect of a private hospital, a person accommodated in the private hospital for treatment; or
- (b) in respect of a day-procedure centre, a person admitted to the day-procedure centre for treatment; or
- (c) a person for whom any residential care service is provided;

personal care means –

- (a) assistance with one or more of the following:
 - (i) bathing, showering or personal hygiene;
 - (ii) dressing or undressing;
 - (iii) meals; or

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 1 – Preliminary

s. 3

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- (b) physical assistance or supervision for persons subject to a disability; or
 - (c) assistance or supervision in dispensing medicine; or
 - (d) the provision of substantial emotional support;

practitioner means a medical practitioner or a dentist;

premises includes any land, building and part of any building;

private hospital means premises at which any patient is provided with accommodation, medical, surgical or other treatment and with ancillary nursing care, for fee, gain or reward, but does not include –

- (a) an establishment conducted by or on behalf of the State; or
- (b) a day-procedure centre; or
- (c) a residential care service;

professional attention means –

- (a) medical or surgical treatment by or under the supervision of a registered medical practitioner; or
- (b) obstetric treatment by or under the supervision of a registered medical practitioner or a

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 3

Part 1 – Preliminary

registered nurse with obstetric qualifications; or

(c) dental treatment by or under the supervision of a registered dental practitioner; or

(d) podiatric treatment by a registered podiatrist;

public hospital means a State-funded hospital;

register of patients means the register that is required by section 42 to be kept at an establishment;

residential care service means premises where accommodation and personal care or nursing care are provided to an elderly person who is not a member of the immediate family of the proprietor of the service, but does not include a service providing accommodation for persons otherwise living independently even though the provision of accommodation may or may not include domestic services such as the preparation of meals, cleaning and laundry services;

Secretary means the Secretary of the Department;

temporary licence means a licence issued under section 13 and in force under this Act;

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 1 – Preliminary

s. 3

type A procedure means a procedure involving professional attention normally requiring admitted overnight hospital stay;

type B procedure means a procedure involving professional attention normally requiring admitted hospital treatment that does not include part of an overnight stay;

type C procedure means a procedure involving professional attention that does not normally require admitted hospital treatment.

- (2) A reference in this Act to medical, surgical or other treatment includes a reference to a diagnosis for the purposes of any such treatment.
- (3) A reference in this Act to the conduct of an establishment (however expressed) is a reference to the carrying on of the business of the establishment.
- (4) A reference in this Act to a person who conducts an establishment (however expressed) is a reference –
 - (a) to a corporation which conducts the establishment, except where that corporation is acting only in its capacity as an agent; or
 - (b) to a natural person who conducts the establishment (whether jointly with other persons or alone), except where that

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 4

Part 1 – Preliminary

person is acting only in the person's
capacity as an employee or an agent.

- (5) For the purposes of this Act, a corporation is not a fit and proper person to be a licensee unless each director and each person concerned in the management of the corporation is a fit and proper person to be a licensee.

4. Objects of Act

The objects of this Act are to ensure –

- (a) the quality and safety of services provided at private health establishments by specifying the standards to be met by those establishments; and
- (b) that services are provided to meet effectively the needs of Tasmanians in accordance with clinical practice guidelines as to the provision of services and standards observed in Tasmania and elsewhere in Australia.

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 2 – Licensing of Premises

s. 5

PART 2 – LICENSING OF PREMISES

5. Requirement for licensing

- (1) Premises where type A procedures are undertaken require licensing as a private hospital.
- (2) Premises where type B procedures but no type A procedures are undertaken require licensing as a day-procedure centre whether or not any type C procedures are undertaken.
- (3) Any premises where only type C procedures are undertaken do not require licensing as a private hospital or a day-procedure centre unless the Secretary is satisfied that, having regard to considerations of public safety and the quality of service to be provided, the premises should be licensed as a private hospital or a day-procedure centre.
- (4) Any premises where no type A, type B or type C procedures are undertaken do not require licensing as a private hospital or a day-procedure centre unless the Secretary is satisfied that, having regard to considerations of public safety and the quality of service to be provided, the premises should be licensed as a private hospital or a day-procedure centre.
- (5) A residential care service is required to be licensed unless –

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 5

Part 2 – Licensing of Premises

- (a) the services are provided only to funded residents; or
 - (b) in a case where the services are provided to funded residents and residents who are not funded, the Secretary certifies in writing that he or she is satisfied that the same standards of care are, or will be, provided to all residents of the service.
- (6) The Secretary may exempt a residential care service from the requirement to be licensed if the Secretary is satisfied that –
 - (a) the residential care service does not provide, or is unlikely to provide, nursing care service for its residents; and
 - (b) a council has given approval for the service to be provided; and
 - (c) there are plans for fire safety and evacuation acceptable to the Tasmania Fire Service; and
 - (d) there are appropriate arrangements to facilitate access to any medical and nursing services as may be required by any resident; and
 - (e) there are acceptable guidelines to be observed for the management of medication for residents.
- (7) The Secretary may, by order published in the *Gazette*, declare that any premises where a service is provided, for which funding is

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 2 – Licensing of Premises

s. 5

provided by the State, is exempt from the requirement to be licensed.

- (8) The Secretary may not exempt a public hospital from the requirement to be licensed unless he or she is satisfied that administrative arrangements are in place which will enable the public hospital to provide substantially the same quality of service as is required of private hospitals under this Act.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 6

Part 3 – Health Service Establishments Advisory Committee

**PART 3 – HEALTH SERVICE ESTABLISHMENTS
ADVISORY COMMITTEE**

6. Constitution of Advisory Committee

- (1) There is established by this Act the Health Service Establishments Advisory Committee.
- (2) The Advisory Committee is to consist of at least 3 and no more than 7 members, as the Minister may determine.
- (3) The members are to be appointed by the Minister.
- (4) Of the members –
 - (a) at least one is to be a State Service officer or a State Service employee; and
 - (b) at least one is to be a person nominated by the private hospital industry; and
 - (c) one is to be a person who is not concerned in the management of an establishment and who is nominated by the Minister to represent the interests of the persons for whom services are provided by establishments.
- (5) Schedule 1 has effect with respect to the members and procedure of the Advisory Committee.

Health Service Establishments Act 2006
Act No. 17 of 2006

7. Functions of Advisory Committee

The functions of the Advisory Committee are –

- (a) to provide advice to the Secretary in respect of applications for approval for new, altered or expanded private hospital services or services to be provided by other establishments taking account of –
 - (i) any relevant hospital services planning guidelines; and
 - (ii) the critical mass of patients required to comply with clinical practice recognised throughout Australia and with any guidelines as to the provision of services which are so recognised; and
 - (iii) any other similar matter that the Advisory Committee considers to be supported by expert opinion; and
 - (iv) the current availability of services in the local area; and
 - (v) the suitability of the applicant to provide any such services; and
- (b) to prepare such reports for the Minister, giving such advice, as may be required by the Minister from time to time.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 8

Part 3 – Health Service Establishments Advisory Committee

8. Subcommittees of Advisory Committee

- (1) The Advisory Committee may establish subcommittees to assist it in connection with the performance of any of its functions, and any or all of the members of a subcommittee need not be members of the Advisory Committee.
- (2) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings are to be as determined by the Advisory Committee or, subject to any determination of the Advisory Committee, by the subcommittee.

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 9

PART 4 – LICENSING OF ESTABLISHMENTS

Division 1 – Applications for and issue of licences

9. Application for licence

- (1) An application for a licence for an establishment may be made to the Secretary by a person who intends to conduct the establishment.
- (2) The application –
 - (a) is to be in accordance with a form approved by the Secretary; and
 - (b) is to specify the class or classes of establishments in respect of which the licence is sought; and
 - (c) in the case of a proposed private hospital, is to specify the maximum number of patients that it is proposed to accommodate overnight at any one time at the hospital; and
 - (d) in the case of a proposed day-procedure centre, is to specify the number of procedure rooms that are proposed to be provided at the centre; and
 - (e) in the case of a proposed residential care service, is to specify the maximum number of residents to be accommodated; and
 - (f) is to be accompanied by such particulars as to the establishment and the conduct

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 10

Part 4 – Licensing of Establishments

of the establishment as the Secretary may require; and

- (g) is to be accompanied by the prescribed application fee.

10. Approval in principle or refusal of application

- (1) The Secretary must, after considering an application for a licence under section 9 –
 - (a) approve the application in principle; or
 - (b) refuse the application.
- (2) The Secretary may impose conditions on an approval of an application in principle, including, but not limited to –
 - (a) conditions relating to the design and construction of any building to be constructed, altered or extended for the purposes of the proposed establishment; and
 - (b) the preparation and submission to the Secretary of a development timetable for any such building specifying the dates by which it is proposed that different stages in construction, alteration or extension will be completed.
- (3) The Secretary may refuse an application for a licence only if –
 - (a) the Secretary is of the opinion that the applicant, or any of the applicants, is not

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 10

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- a fit and proper person to be a licensee;
or
- (b) the Secretary is satisfied that the proposed establishment is not capable of being conducted in accordance with the licensing standards applicable to it; or
- (c) the Secretary is of the opinion that the application should be refused having regard to such development guidelines as may be prescribed by the regulations; or
- (d) the Secretary is of the opinion that the proposed establishment will have insufficient patients to ensure a critical mass for the maintenance of skills or the recruitment and retention of specialist staff.
- (4) A decision on the limiting of specialty services is to be based on clinical considerations relating to service quality and is to be consistent with established clinical practice and guidelines relating to specialty service planning published by the Australian Health Ministers Advisory Committee, the Medicare Services Advisory Committee, the National Health and Medical Research Council, the Royal Colleges, any health authority established in any other State or a Territory or any other similar body or authority.
- (5) The Secretary, in approving a licence in principle, is to state the type of specialty service

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 11

Part 4 – Licensing of Establishments

authorised to be provided under the licence and any conditions for the provision of that service.

- (6) If the Secretary approves an application in principle, the Secretary is to give the applicant written notice of that approval and any conditions to which the approval is subject.

11. Approval in principle to remain effective for one year

- (1) An approval in principle of an application for a licence is effective for a period of one year from the date on which the applicant is given notice of that approval under section 10(6) and for any such further period or periods as the Secretary may, at the request of the applicant, allow.
- (2) More than one request may be made by an applicant under subsection (1), but any such request is to be made while the approval in principle of the application is effective.
- (3) If the Secretary has, as a condition of an approval in principle of an application, required the applicant to provide particulars of how the establishment is to be conducted, the Secretary may grant an extension of the period for which that approval is effective only if the Secretary is satisfied that the applicant has made a reasonable attempt to comply with that condition.

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 12

12. Issue of licence

- (1) If the Secretary has approved in principle an application for a licence and any construction, alteration or extension of any building to which the application relates has been completed, the Secretary is to either –
 - (a) grant the application and issue a licence to the applicant; or
 - (b) refuse the application.
- (2) In any such case, the Secretary may not refuse the application for a licence unless –
 - (a) the approval in principle of the application expired before the completion of the construction, alteration or extension of any building to which the application relates; or
 - (b) any such building was not constructed, altered or extended in accordance with the approval in principle; or
 - (c) any other condition to which the approval in principle was subject has not been complied with.

13. Temporary licences

- (1) If an application is made for a licence in respect of an existing building, the Secretary may, pending the determination of the application, issue to the applicant a temporary licence.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 14

Part 4 – Licensing of Establishments

- (2) A temporary licence remains in force until –
- (a) the date of its expiry; or
 - (b) the application for the licence is granted;
or
 - (c) the temporary licence is cancelled –
- whichever first occurs.
- (3) The date of expiry of a temporary licence is –
- (a) except as provided by paragraph (b), such date (not exceeding 2 months after the date of issue of the temporary licence) as may be specified in the temporary licence; or
 - (b) such later date as the Secretary may, by notice in writing served on the applicant, direct.

Division 2 – Provisions relating to licences

14. Classes of establishments

For the purposes of this Act, there are to be such classes of establishments as may be prescribed by the regulations.

15. Form of licence

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

- (a) the person to whom it is issued; and

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 16

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- (b) the address of the establishment for which it is issued; and
 - (c) the class or classes of establishments in respect of which it is issued; and
 - (d) in the case of a private hospital, the maximum number of patients who may be accommodated overnight at any one time, as determined by the Secretary; and
 - (e) in the case of a residential care service, the maximum number of residents who may be accommodated, as determined by the Secretary; and
 - (f) in the case of a day-procedure centre, the maximum number of rooms available for day procedures.

16. Conditions of licence

- (1) The Secretary may issue a licence subject to such conditions as may be specified in the licence.
- (2) A licence is subject to the condition that the licensee must, in respect of the conduct of the establishment concerned, be insured under a policy of insurance approved by the Secretary to a prescribed minimum amount of cover.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 17

Part 4 – Licensing of Establishments

17. Duration of licence

A licence (other than a temporary licence) remains in force until it is cancelled under this Act.

18. Annual licence fees

The licensee of an establishment must, on or before 31 December in each year, pay to the Secretary such annual licence fee as may be prescribed by the regulations in respect of the establishment.

19. Transfer of licence to another licensee

- (1) The Secretary may, on application made in accordance with this section, transfer the licence for an establishment to another person who intends to conduct the establishment –
 - (a) by an appropriate endorsement on the licence; or
 - (b) by cancelling the licence and issuing a substitute licence to that person.
- (2) An application under this section –
 - (a) is to be in, or to the effect of, a form approved by the Secretary; and
 - (b) is to be accompanied by such particulars as to the establishment and the conduct of the establishment as the Secretary may require; and

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 20

(c) is to be accompanied by such fee as may be prescribed by the regulations.

(3) The Secretary may refuse an application if, in the Secretary's opinion, the proposed licensee, or any of the proposed licensees, is not a fit and proper person to be a licensee.

20. Notification of alterations or extensions of licensed establishments

(1) For the purposes of this section –

material alteration to or extension of, in relation to an establishment, means a material alteration to or extension of the establishment for which a permit is required under the *Building Act 2016*.

(2) If a licensee of an establishment proposes to make any material alteration to or extension of the establishment, the licensee must, within the period specified in subsection (3), apply to the Secretary for approval of the alteration or extension.

(3) The application is to be made at least 14 days –

(a) before an application for a permit in relation to the alteration or extension is made under the *Land Use Planning and Approvals Act 1993*; or

(b) if a permit is not required under the *Land Use Planning and Approvals Act 1993*, before an application under the *Building*

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 20

Part 4 – Licensing of Establishments

Act 2016 is made to a building surveyor
for a certificate of likely compliance in
relation to the alteration or extension.

- (4) The application is to be accompanied by the prescribed fee.
- (5) The application is to indicate –
 - (a) the purpose of the alteration or extension;
and
 - (b) any amendments to the licence held by the applicant that the applicant considers will be required –
 - (i) during the construction works to be undertaken in relation to the alteration or extension; or
 - (ii) as a result of the alteration or extension.
- (6) On receipt of the application together with the prescribed fee and an indication of the matters referred to in subsection (5)(a) and (b), the Secretary –
 - (a) may give ‘in principle’ approval to the alteration or extension and, if necessary, amend the licence to reflect the construction work to be undertaken in relation to the alteration or extension; or
 - (b) refuse to approve the alteration or extension.

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 20

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- (7) If ‘in principle’ approval is given under subsection (6), the licensee, on completion of the alteration or extension, is to give the Secretary a copy of the certificate of completion (building work) under the *Building Act 2016* within 14 days of the certificate being issued under that section.
 - (8) On receipt of the certificate of completion (building work), and if the alteration or extension substantially complies with the application, the Secretary is to endorse the licence and, if necessary, amend the licence to reflect the changes effected by the alteration or extension.
 - (9) If a material alteration to or extension of the licensed establishment is made without the prior ‘in principle’ approval of the Secretary, the Secretary may cancel the licence under section 30.
 - (10) Notwithstanding subsection (9), a licensee may on payment of the prescribed late application fee make a late application for the approval of any material alteration to or extension of the establishment that has been commenced without the ‘in principle’ approval of the Secretary.
 - (11) The Secretary may accept a late application for approval referred to in subsection (10) and subsections (5), (6), (7) and (8) apply as if the late application were an application under subsection (2).

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 21

Part 4 – Licensing of Establishments

21. Provision for repairs, &c.

- (1) The Secretary may, by notice in writing, require the licensee of an establishment to carry out such repairs, maintenance, alterations, extensions or improvements to the establishment as may be specified in the notice.
- (2) A licensee must comply with the requirements of any such notice within the time specified in the notice or within such further time as the Secretary may allow.

Penalty: Fine not exceeding 20 penalty units.

- (3) Any such notice is not to take effect –
 - (a) until the expiration of 14 days after the notice has been given to the licensee; or
 - (b) if the licensee applies for a review of the Secretary's decision under Division 4 before the expiration of the period referred to in paragraph (a), until the application for review is dealt with or withdrawn.

22. Amendment of licences

- (1) The Secretary may amend a licence in one or more of the following ways:
 - (a) by specifying in the licence additional classes of establishments;
 - (b) by omitting any class of establishments specified in the licence;

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 22

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- (c) in the case of a private hospital, by increasing or decreasing the number of patients specified in the licence as the number of patients who may be accommodated overnight at any one time in the hospital;
 - (d) in the case of a residential care service, by increasing or decreasing the number of residents specified in the licence as the number of residents who may be accommodated;
 - (e) in the case of a day-procedure centre, by increasing or decreasing the number of rooms available for day procedures;
 - (f) by amending or revoking any condition to which the licence is subject, including a condition relating to a type of specialty service to be provided under the licence but excluding the condition referred to in section 16(2), or attaching further conditions to the licence.
- (2) The Secretary may amend a licence under this section if –
- (a) the licensee applies in writing to the Secretary to make the amendment and pays the prescribed fee; or
 - (b) the Secretary considers that the licence requires amendment.
- (3) The amendment is to be based on clinical considerations relating to service quality and is

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 22

Part 4 – Licensing of Establishments

to be consistent with established clinical practice and guidelines relating to specialty service planning published by the Australian Health Ministers Advisory Committee, the Medicare Services Advisory Committee, the National Health and Medical Research Council, the Royal Colleges, any health authority established in any other State or a Territory or any other similar body or authority.

- (4) A licence is amended under this section –
- (a) by an appropriate endorsement on the licence; or
 - (b) by the cancellation of the licence and the issue of a substitute licence incorporating the amendment; or
 - (c) by giving notice in writing to the licensee.
- (5) A licensee must forward his or her licence to the Secretary if the Secretary, by notice in writing, requires the licensee to do so for the purposes of this section.
- Penalty: Fine not exceeding 5 penalty units.
- (6) On the service of a notice referred to in subsection (4)(c), the licence to which the notice relates is taken to be amended in accordance with the notice.

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 23

***Division 3 – General provisions relating to applications for
licences, &c.***

23. Additional information

- (1) The Secretary may, by notice in writing served on an applicant for a licence, direct the applicant to provide such information to the Secretary as the Secretary may reasonably require for the purpose of determining the application.
- (2) The Secretary may refuse an application on the ground that the applicant has failed to comply with any such direction.

24. Notice of reasons for refusal of application

If the Secretary refuses an application for a licence under section 9 or an application for approval of a material alteration to or extension of a licensed establishment under section 20, the Secretary must immediately cause the applicant to be notified in writing –

- (a) that the Secretary has refused the application; and
- (b) of the grounds on which the Secretary has refused the application; and
- (c) if the Secretary refuses the application on the ground that the applicant is not a fit and proper person to be a licensee, of the reasons why the applicant is considered not to be a fit and proper person to be a licensee.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 25

Part 4 – Licensing of Establishments

25. Advertising of applications

Before –

- (a) approving in principle an application for a licence, or refusing any such application under section 12; or
- (b) determining an application to transfer a licence –

the Secretary is to cause the application to be publicly advertised in such manner as the Secretary thinks fit and is to take into consideration any representations made in respect of the application within the time specified in the advertisement.

26. Amendment of applications

An applicant may, with the approval of the Secretary, amend an application for a licence.

Division 4 – Review of decisions of Secretary

27. Interpretation of Division 4

In this Division –

decision of the Secretary means –

- (a) a decision of the Secretary to refuse an application; or
- (b) a determination by the Secretary, when issuing a licence, of the

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 27

class or classes of establishments
for which the licence is issued; or

- (c) a determination by the Secretary, when issuing a licence for a private hospital, of the maximum number of patients who may be accommodated overnight at any one time in the hospital; or
- (d) a determination by the Secretary, when issuing a licence for a residential care service, of the maximum number of residents who may be accommodated overnight; or
- (e) a determination by the Secretary of the conditions subject to which a licence is issued; or
- (f) a decision of the Secretary to require the licensee of an establishment to carry out repairs, maintenance, alterations, extensions or improvements to the establishment; or
- (g) a decision of the Secretary to amend a licence (otherwise than on the application of the licensee); or
- (h) a decision of the Secretary to cancel a licence.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 28

Part 4 – Licensing of Establishments

28. Right of appeal to Tasmanian Civil and Administrative Tribunal

A person aggrieved by a decision of the Secretary may appeal to the Tasmanian Civil and Administrative Tribunal.

Division 5 – Cancellation of licences

29. Cancellation of licence without notice

The Secretary may cancel the licence for an establishment without holding an inquiry or giving any notice to the licensee –

- (a) if the licensee requests the Secretary in writing to cancel the licence; or
- (b) if the premises to which the licence relates have ceased to be an establishment of a class in respect of which the licence was issued; or
- (c) in the case of a temporary licence, if the Secretary considers that it is appropriate to do so.

30. Cancellation of licence with notice

- (1) The Secretary may cancel the licence for an establishment –
 - (a) if the annual licence fee payable under section 18 in respect of the establishment has not been paid by the due date; or

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 30

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- (b) if the licensee is considered no longer to be a fit and proper person to be a licensee; or
 - (c) if the licensee or, where the licensee is a corporation, any director or other person concerned in the management of the corporation is convicted of an offence under this Act or the regulations; or
 - (d) if the licensee (or, where the licensee is a corporation, any director or other person concerned in the management of the corporation) is convicted in Tasmania of an offence punishable by imprisonment for a period of 12 months or more, or is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be an offence so punishable; or
 - (e) if the licensee commits a breach of any condition to which the licence is subject; or
 - (f) if the licensee, in the case of a natural person, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) where the licensee is a corporation, if a receiver or manager has been appointed in respect of the property of the licensee

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 30

Part 4 – Licensing of Establishments

- or if the licensee has commenced to be wound up or is under official management; or
- (ga) if the establishment no longer meets the requirements of the licence because of the material alteration to or extension of it made by the licensee; or
- (h) if the establishment has not been conducted in accordance with the licensing standards applicable to it; or
- (i) if the establishment is conducted in such a manner –
- (i) that reasonable standards of patient care have not been maintained; or
- (ii) that the cancellation of the licence is otherwise, in the Secretary's opinion, in the public interest.
- (2) The Secretary may, for the purpose of exercising any of his or her powers under subsection (1), cause an inquiry to be made by a person appointed by the Secretary for the purpose.
- (3) The Secretary is not to cancel a licence under this section unless, before cancelling the licence, the Secretary –
- (a) has given notice to the licensee that he or she intends to cancel the licence; and

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 4 – Licensing of Establishments

s. 30

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- (b) has specified in that notice the reasons for the Secretary's intention to cancel the licence; and
 - (c) has given the licensee (whether in the course of an inquiry under subsection (2) or otherwise) a reasonable opportunity to make submissions to the Secretary in respect of the proposed cancellation; and
 - (d) has taken into consideration any such submissions by the licensee.
- (4) The cancellation of a licence under this section does not take effect until the expiration of 14 days after notice of the Secretary's decision is given to the licensee, subject to any order made by the Tasmanian Civil and Administrative Tribunal.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 31

Part 5 – Conduct of Establishments

PART 5 – CONDUCT OF ESTABLISHMENTS

31. Duty to comply with *Aged Care Act 1997* of Commonwealth

(1) In this section –

Commonwealth Act means the *Aged Care Act 1997* of the Commonwealth.

- (2) A licensee must provide for each resident of a residential care service who is not a funded resident a standard of accommodation and a standard of care as required by any enactment or under any guidelines published under any law of the Commonwealth or Tasmania.
- (3) Without limiting subsection (2), the Minister may, by order published in the *Gazette*, declare that any Quality of Care Principles in respect of aged care that are in force under Chapter 4 of the Commonwealth Act or any Principles made by the Minister administering that Act in force under Chapter 7 of that Act are to apply as a law of Tasmania.
- (4) It is the duty of the licensee of an establishment to provide for the health, wellbeing, personal care and social and cultural needs of all persons for whom any health service is provided and, in particular –
- (a) to maintain an adequate number of appropriately skilled staff to ensure that the needs of all such persons are met; and

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 5 – Conduct of Establishments

s. 32

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- (b) to provide care and services of a quality that is consistent with any rights and responsibilities of those persons; and
 - (c) to comply with the Accreditation Standards, Residential Care Standards, Community Care Standards and Flexible Care Standards, as may be appropriate, in force under the Commonwealth Act; and
 - (d) to provide access to an appropriate complaints mechanism for those persons; and
 - (e) to provide such care and services as are required by any other Principles in respect of aged care that are in force under this section.
- (5) A licensee who fails to discharge any of his or her duties under this section is guilty of an offence punishable on summary conviction by a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

32. Unauthorised procedures

If –

- (a) any type A or type B procedures are carried out without the authority of a licence as required under section 5(1); or

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 33

Part 5 – Conduct of Establishments

- (b) any type C procedures which require licensing under section 5(3) are carried out without the authority of a licence; or
- (c) any procedures are carried out in premises which are required to be licensed under section 5(4) but which are not so licensed –

the manager of the premises at which the procedures are carried out is guilty of an offence punishable on summary conviction by a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

33. Unlicensed private hospitals

- (1) A person must not conduct a private hospital unless –
 - (a) the private hospital is licensed; and
 - (b) the person is the licensee.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (2) If, in any proceedings, it is shown that –
 - (a) during any month, 2 or more persons who are not members of the family of the occupier of premises; or

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 5 – Conduct of Establishments

s. 34

- (b) during any year, 6 or more persons who are not members of that family –

have been accommodated in the premises and that those persons have been provided at the premises with medical, surgical or other treatment and with ancillary nursing care, that fact is evidence that the premises are a private hospital (whether or not there is any evidence that a charge was made for the treatment).

34. Unlicensed day-procedure centres

- (1) A person must not conduct a day-procedure centre unless –
- (a) the day-procedure centre is licensed; and
- (b) the person is the licensee.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (2) A day-procedure centre is not required to be licensed if it is conducted in the same premises as a licensed private hospital and by the same person who conducts the private hospital.

35. Unlicensed residential care service

A person must not provide a residential care service unless –

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 36

Part 5 – Conduct of Establishments

- (a) he or she holds a licence authorising the residential care service; or
- (b) residential care services are provided for funded residents only; or
- (c) the Secretary has exempted under section 5(6) the residential care service from the requirement to be licensed.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

36. Executor or administrator regarded as licensee

If the licensee of an establishment dies and he or she was the only licensee of the establishment, the executor of the will or administrator of the estate of the licensee is taken to be the licensee for a period not exceeding 2 months or such longer period as the Secretary may, in writing, approve.

37. Purposes for which establishments may be used

- (1) The licensee of an establishment must not cause or permit the licensed premises to be used for any purpose other than the following purposes:
 - (a) the conduct of an establishment of the class or classes specified in the licence;

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 5 – Conduct of Establishments

s. 38

- (b) a purpose permitted by a condition to which the licence is subject;
- (c) a purpose which is prescribed by the regulations for the purposes of this paragraph.

Penalty: Fine not exceeding 20 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.

- (2) A reference in subsection (1)(a) to the conduct of an establishment does not include a reference to the conduct of a pharmacist's shop or dispensary in the establishment.

38. Overcrowding

- (1) The licensee of an establishment must not cause or permit the number of patients accommodated overnight at any one time in the establishment to exceed the number of patients specified in the licence.

Penalty: Fine not exceeding 20 penalty units.

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

39. Director of nursing of establishment

- (1) This section applies to an establishment that is a day-procedure centre or a private hospital.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 39

Part 5 – Conduct of Establishments

- (2) The licensee of an establishment to which this section applies must not conduct the establishment unless –
- (a) there is a person who carries out the duties of director of nursing of the establishment and who is responsible for the care of the patients in the establishment as prescribed by the regulations; and
 - (b) that person is a registered nurse and has such experience as the Secretary considers necessary for the proper conduct of the establishment.

Penalty: Fine not exceeding 20 penalty units.

- (3) The licensee of an establishment to which this section applies is not guilty of an offence under subsection (2) merely because, from time to time (not exceeding at any one time a period of 21 days), there is no person who is a registered nurse with the experience referred to in subsection (2)(b) carrying out the duties of director of nursing of the establishment.
- (4) Except as may be provided by the regulations, the licensee of an establishment to which this section applies must notify the Secretary in writing of the full name and the qualifications of the person who carries out the duties of director of nursing of the establishment.

Penalty: Fine not exceeding 5 penalty units.

- (5) A notification under subsection (4) –

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 5 – Conduct of Establishments

s. 40

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- (a) is to be given before the person to whom it relates commences to carry out the duties of director of nursing or, if that is not practicable, immediately after that time; and
 - (b) is to be accompanied by such particulars as may be prescribed.
- (6) Nothing in this Act prevents the licensee of an establishment to which this section applies who is a natural person from carrying out the duties of director of nursing of the establishment if the licensee is qualified to carry out those duties.
- (7) It is a defence to a prosecution for an offence under this section if the person charged proves that he or she took all such steps as are reasonable in the circumstances to avoid the commission of the offence.

40. Title of “matron” and “director of nursing”

- (1) The licensee of an establishment or a person employed at the establishment must not use the title “matron” or “director of nursing” unless the licensee or person is the director of nursing of the establishment.

Penalty: Fine not exceeding 20 penalty units.

- (2) The licensee of an establishment must not permit a person employed at the establishment to contravene this section.

Penalty: Fine not exceeding 20 penalty units.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 41

Part 5 – Conduct of Establishments

41. Registered nurse to be on duty

The licensee of an establishment must, at all times while the establishment is being conducted, cause a registered nurse to be on duty in the establishment, unless the establishment is exempt from this requirement under any condition to which the licence is subject.

Penalty: Fine not exceeding 20 penalty units.

42. Register of patients

- (1) The licensee of an establishment must cause a register of patients to be kept, in a form approved by the Secretary, at the establishment.
- (2) The following particulars are to be entered in the register of patients:
 - (a) the name, age and residential address of each patient at the establishment;
 - (b) the date when the patient was received at the establishment;
 - (c) the date when the patient left the establishment or, in the event of the patient's death, the date of death;
 - (d) the name of the medical practitioner attending the patient;
 - (e) such other particulars as may be prescribed.

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 5 – Conduct of Establishments

s. 43

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- (3) The particulars referred to in subsection (2) are to be entered in the register of patients by the persons, at the time and in the manner, approved by the Secretary for the purposes of this subsection.
- (4) A person must not –
- (a) enter in the register of patients any particular that the person knows or has reason to believe to be false or misleading in a material particular; or
 - (b) wilfully fail to enter in the register of patients any particular which the person is required by subsection (2) to enter.

Penalty: Fine not exceeding 20 penalty units.

43. Copy of Act and regulations to be available

The licensee of an establishment must, at all times while the establishment is being conducted, cause a copy of this Act and the regulations to be readily available at the establishment for inspection by the director of nursing.

Penalty: Fine not exceeding 5 penalty units.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 44

Part 6 – Miscellaneous

PART 6 – MISCELLANEOUS

44. Delegation

The Secretary may delegate any of his or her functions or powers under this Act.

45. Disclosure of pecuniary interests to patients

(1) If a practitioner has a pecuniary interest in an establishment, the practitioner must not –

- (a) advise a person to be admitted to the establishment; or
- (b) arrange the admission of a person to the establishment; or
- (c) provide medical, surgical or other treatment to, or arrange the provision of any such treatment to, any patient in the establishment –

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

Penalty: Fine not exceeding 20 penalty units.

(2) The regulations may provide, for the purposes of subsection (1), that the manner of notification is to be any one or more of the following:

- (a) a statement made by the practitioner;

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 45

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- (b) a written notification given by the practitioner and, if so required by the regulations, signed by the person to whom it is given;
 - (c) a notice displayed prominently at the establishment;
 - (d) a notice displayed prominently in any surgery or other premises of the practitioner.
 - (3) A person is not guilty of an offence under subsection (1) if the person proves that he or she –
 - (a) contravened that subsection in the course of providing emergency medical, surgical or other treatment to a person; or
 - (b) was not, at the time the contravention occurred, aware that he or she had a pecuniary interest in the establishment concerned.
 - (4) For the purposes of this section, a practitioner has a pecuniary interest in an establishment only if the practitioner has an interest in the establishment of a kind which is prescribed by the regulations as a pecuniary interest in the establishment.
 - (5) The regulations may provide that an interest of a relative or associate of a practitioner is taken to be a pecuniary interest of the practitioner.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 46

Part 6 – Miscellaneous

46. Power to enter and inspect establishments

- (1) A person authorised by the Secretary to do so may, at any time, enter and inspect –
 - (a) any licensed establishment; or
 - (b) any premises which are the subject of an application for a licence.
- (2) Every person so authorised is to be provided by the Secretary with a certificate of authority, and on applying for admission to any premises which the person is empowered by this section to enter must, if requested to do so, produce the certificate to the person apparently in charge of the premises.

Penalty: Fine not exceeding 10 penalty units.

47. Power to inspect registers and records

- (1) In this section –

prescribed records, in respect of an establishment, means the register of patients or any other records required by or under this Act to be kept at the establishment.
- (2) A person authorised by the Secretary under section 46 –
 - (a) may inspect and take copies of, or extracts from, any prescribed records of an establishment; or

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 47

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- (b) may take and retain possession of any prescribed records of an establishment for such period as is necessary to enable those records to be inspected and copies of, or extracts from, those records to be taken.
- (3) Where a person retains possession of any prescribed records of an establishment under subsection (2)(b), the person must, during the period for which he or she retains possession of them –
- (a) permit a person who is entitled to inspect any one or more of those records to inspect at all reasonable times such of the records as he or she is entitled to inspect; and
- (b) permit a person who is required by or under this Act to make an entry in those records to make the entry at any reasonable time.
- (4) Subsection (2)(b) does not authorise a person who takes possession of any prescribed records of an establishment to remove those records from the establishment if those records –
- (a) relate to a person who is then a patient of the establishment; and
- (b) may be required to be referred to for the purposes of providing the patient with nursing care or medical, surgical or other treatment.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 48

Part 6 – Miscellaneous

- (5) Subject to subsections (6) and (7), in any legal proceedings (whether or not proceedings under this Act) a copy of or extract from a prescribed record is admissible in evidence as if it were the original record or the relevant part of the original record.
- (6) A copy of or extract from a prescribed record is not admissible in evidence under subsection (5) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.
- (7) For the purposes of subsection (6), evidence that a copy of or extract from a prescribed record is a true copy of the record or of a part of the record may be given by a person who has compared the copy or extract with the record or the relevant part of the record and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

48. Obstruction of officers

A person must not wilfully hinder, obstruct or delay any person in the performance of any function under this Act.

Penalty: Fine not exceeding 20 penalty units.

49. False or misleading statements, &c.

A person must not, in any application under this Act (including an application for review), or in

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 50

support of any such application, or for the purposes of any inquiry under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 20 penalty units.

50. Evidentiary certificates

A certificate which purports to be signed by the Secretary and which states that, on a date specified in the certificate –

- (a) a person so specified was or was not the licensee of an establishment so specified; or
- (b) any premises so specified were or were not licensed; or
- (c) the licence for an establishment so specified was cancelled; or
- (d) any particulars so specified were the particulars specified in the licence for an establishment so specified; or
- (e) the licence for an establishment so specified was subject to any condition so specified –

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 51

Part 6 – Miscellaneous

is admissible in evidence in any legal proceedings as evidence of the matters stated in the certificate.

51. Service of notices by Secretary

(1) If, under this Act, a notice or other document is required to be or may be given or served by the Secretary, that notice may be given to or served on –

(a) a natural person –

- (i) by delivering it to the person personally; or
- (ii) by leaving it at his or her place of residence last known to the Secretary with a person who apparently resides there or, if the person is a licensee, by leaving it at the establishment to which the licence relates with a person apparently employed at the establishment (if in either case the person is apparently 16 years of age or more); or
- (iii) by sending it by post addressed to the person at that place of residence or that establishment; or

(b) a corporation –

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 52

- (i) by delivering it to a person who is apparently engaged in the control or management of the corporation; or
 - (ii) by leaving it at the registered office of the corporation with a person who is apparently employed at that office or, if the corporation is a licensee, by leaving it at the establishment to which the licence relates with a person who is apparently employed at the establishment (if in either case the person is apparently 16 years of age or more); or
 - (iii) by sending it by post addressed to the corporation at that registered office or that establishment.
- (2) A notice or other document that is sent by post in accordance with subsection (1) must, in the absence of evidence to the contrary, be taken to have been given or served when it would have been delivered in the ordinary course of post.

52. Offences by corporations

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 53

Part 6 – Miscellaneous

person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision under subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

53. Proceedings for offences

Proceedings for offences against this Act or the regulations are to be dealt with summarily by a magistrate sitting alone.

54. Provision of information

A person who conducts an establishment must provide the Secretary with any information that in the opinion of the Secretary is required for the purposes of this Act.

Penalty: Fine not exceeding 100 penalty units.

55. Confidentiality

- (1) A person who is, or has been, employed in performing functions related to the administration of this Act must not disclose confidential information acquired in the course,

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 55A

or as a result, of performing those functions except –

- (a) in the course of carrying out official duties; or
- (b) as authorised by the person to whom the duty of confidentiality is owed; or
- (c) as authorised by the regulations; or
- (d) as required by a court or other lawfully constituted authority; or
- (e) as authorised by the Secretary after consultation, where practicable, with the person to whom the duty of confidentiality is owed.

Penalty: Fine not exceeding 200 penalty units.

- (2) No civil liability attaches to any person for a disclosure of confidential information made as authorised under subsection (1).

55A. Infringement notices

- (1) In this section –

infringement offence means an offence against this Act or the regulations made under this Act that is prescribed by the regulations made under this Act to be an infringement offence.

- (2) The Secretary may issue and serve an infringement notice on a person if he or she

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 56

Part 6 – Miscellaneous

reasonably believes that the person has committed an infringement offence.

- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (4) The regulations –
 - (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
 - (b) may prescribe different penalties for bodies corporate and individuals.
- (5)

56. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for, or with respect to, the following:
 - (a) fees payable to the Secretary for the administration of this Act;
 - (b) the display of licences at establishments;
 - (c) the supply by the licensee of an establishment to the Secretary of information relating to –

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 56

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- (i) any particulars that are required to be provided when an application for a licence is made; and
 - (ii) the number of patients, and the length of stay of patients, at the establishment and the provision of health services to those patients; and
 - (iii) staffing at the establishment;
 - (d) the supply by the licensee of an establishment to the Secretary of a copy of the register of patients for the establishment or a copy of a part of that register;
 - (e) the safety, care or quality of life of patients at establishments, including the following matters:
 - (i) design and construction of premises;
 - (ii) facilities and equipment;
 - (iii) clinical standards, including accreditation of practitioners to provide services at the establishment, delineation of clinical privileges of practitioners and quality assurance;

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 56

Part 6 – Miscellaneous

- (iv) staffing, including qualifications of staff members, number of staff and duties;
 - (v) operational matters, including administration and support services;
 - (vi) clinical records, including access by patients to, and confidentiality of, those records;
 - (vii) management of private hospitals and other establishments which are funded by the State;
- (f) the requirement that any information submitted for the purposes of this Act is to be supported by a statutory declaration.
- (3) The regulations may adopt, either wholly or in part and with or without modification and either specifically or by reference, any of the standards, rules, codes, specifications, management plans or similar documents of any body approved by the Minister, whether the standards, rules, codes, specifications, management plans or documents are published, made or amended before or after the commencement of the regulations.
- (4) A reference in subsection (3) to standards, rules, codes, specifications, management plans or documents includes an amendment of those standards, rules, codes, specifications, management plans or documents whether the

Health Service Establishments Act 2006
Act No. 17 of 2006

Part 6 – Miscellaneous

s. 57

amendment is published, made or issued before or after the commencement of the regulations.

- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (6) Any such provision may, if the regulations so provide, take effect from the commencement date or a later day.
- (7) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as –
 - (a) to affect, in a manner prejudicial to any person (other than the State or a statutory authority), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or a statutory authority) in respect of anything done or omitted to be done before the date of its publication.
- (8) A regulation (including a regulation prescribing a licensing standard) may create an offence punishable by a penalty not exceeding 5 penalty units.

57. Savings and transitional provisions

The savings and transitional provisions specified in Schedule 2 have effect.

Health Service Establishments Act 2006
Act No. 17 of 2006

s. 58

Part 6 – Miscellaneous

58. 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 Health and Human Services; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.

59. *See Schedule 3.*

60. *See Schedule 4.*

**SCHEDULE 1 – MEMBERS AND PROCEDURE OF
HEALTH SERVICE ESTABLISHMENTS ADVISORY
COMMITTEE**

Section 6(5)

1. Chairperson of Advisory Committee

- (1) One of the members is to be appointed, in the member's instrument of appointment or a subsequent instrument executed by the Secretary, as Chairperson of the Advisory Committee.
- (2) The Secretary may remove a member from the office of Chairperson.
- (3) A person who is a member and Chairperson is taken to have vacated office as Chairperson if the person –
 - (a) is removed from that office by the Secretary under this clause; or
 - (b) resigns that office by instrument in writing addressed to the Secretary; or
 - (c) ceases to be a member.

2. Deputies for members

- (1) The Secretary may, from time to time, appoint a person to be the deputy of a member of the Advisory Committee (including the Chairperson).

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 1

- (2) A person must not be appointed as a deputy of any member unless the person has the same qualifications as that member for appointment.
- (3) A deputy may act in the office of the member for whom he or she is the deputy during the illness or absence of that member and, while so acting, has all the functions of the member.
- (4) The Secretary may remove at any time a deputy from any office to which the deputy was appointed under this clause.
- (5) A deputy while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Secretary may from time to time determine in respect of the deputy.
- (6) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

3. Term of office

A member is to, subject to this Schedule, hold office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

4. Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Secretary may

from time to time determine in respect of the member.

5. Vacation of office

- (1) A member is taken to have vacated office if the member –
- (a) dies; or
 - (b) absents himself or herself from 4 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of a period of 4 weeks after the last of those meetings, the member is excused by the Committee for being absent from those meetings; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (d) is being treated for a mental health condition or under guardianship; or
 - (e) is convicted in Tasmania of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Tasmania of an offence

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 1

which if committed in Tasmania would be an offence so punishable; or

(f) resigns the office by instrument in writing addressed to the Secretary; or

(g) is removed from office by the Secretary under subclause (2).

(2) The Secretary may remove a member from office at any time.

6. Filling of vacancy in office of member

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

7. Effect of certain other Acts

(1) The *State Service Act 2000* does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made –

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office –

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

- (3) The office of a member is not for the purposes of any Act to be taken not to be an office or place of profit under the Crown.

8. Liability of members, &c.

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

9. General procedure

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

10. Quorum

The quorum for a meeting of the Advisory Committee is a majority of the members for the time being appointed by the Secretary.

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 1

11. Presiding member

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present must preside at a meeting of the Advisory Committee.
- (2) The person presiding at any meeting of the Advisory Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12. Voting

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

13. First meeting of Advisory Committee

The Secretary must call the first meeting of the Advisory Committee in such manner as the Secretary thinks fit.

**SCHEDULE 2 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 57

1. Existing licences

- (1) A licence for an establishment that was in force under the former Act immediately before the commencement date is taken to have been issued under this Act.
- (2) The licence is taken to be subject to the conditions specified in the licence immediately before the commencement date.
- (3) Nothing in subclause (2) affects the operation of section 22.

2. Pending applications for licences

- (1) An application for a licence for an establishment made under the former Act that has not been determined before the repeal of section 61 of the former Act is taken to be an application for a licence under section 9.
- (2) If the Secretary has, under section 61 of the former Act, approved (whether or not subject to conditions) the plans and specifications relating to any building to be constructed, altered or extended that accompany an application for a licence for an establishment, the Secretary –
 - (a) may not, under section 10 of this Act, impose a condition relating to the construction or design of the building on

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 2

an approval of the application in principle; and

- (b) may, without limiting the operation of Division 2 of Part 4, refuse an application if the building is not constructed, altered or extended in accordance with those plans and specifications or if a condition to which the approval of the plans and specifications was subject has not been complied with.

3. Pending applications to transfer licences

An application to transfer a licence for an establishment made under section 61 of the former Act that has not been determined before the commencement date is taken to have been made under this Act and is to be dealt with in accordance with this Act.

4. Pending applications to alter establishments

An application to alter or extend an establishment made under section 65 of the former Act that has not been determined before the commencement date is taken to have been made under this Act and is to be dealt with in accordance with this Act.

5. Notice

- (1) A notice given to a licensee of an establishment under the former Act and in force immediately

before the commencement date is taken to have been given under section 21 and is to have effect accordingly.

- (2) If a notice was given to a licensee of an establishment under the former Act less than 14 days before the commencement date –
- (a) the licensee may apply to the Secretary for a review of the decision of the Secretary to issue the notice; and
 - (b) the notice does not take effect until the expiration of 14 days after the notice has been given to the licensee.

6. Pending applications to amend licences

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

7. Requests for review

A request for review of a decision of the Secretary relating to an establishment that was made under the former Act and that has not been determined by the Secretary immediately before the commencement date is taken to be an application for review made under this Act and must be dealt with in accordance with the provisions of this Act.

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 2

8. Inquiry

Where, immediately before the commencement date, an inquiry relating to the cancellation of a licence for an establishment was being made (or continued by the former Act), the inquiry may continue as if it were made under section 30(2) of this Act.

9. Cancellation

If, immediately before the commencement date, the licensee or manager of a private medical establishment, within the meaning of the former Act, is disqualified from holding a licence or being a manager under section 68 or 70A of that Act, he or she is taken to be disqualified from holding a licence under this Act.

10. Appeal

Any appeal against a decision of the Minister under section 70I of the former Act that was pending immediately before the commencement date is taken to be pending under section 28 of this Act and may be heard and determined accordingly.

11. Authority to enter and inspect premises

Any person who, immediately before the commencement date, was authorised under the former Act to perform any functions specified in that Act (in respect of any licensed establishment

or any premises of a proposed establishment) is taken to be a person authorised under this Act.

12. References to former Act

A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to, or required (immediately before the commencement date) to be construed as a reference to, the *Hospitals Act 1918*, in so far as the reference relates to establishments, is to be read as a reference to this Act.

13. Saving for type B procedures

Where, during the period of 12 months immediately before the commencement date, type B procedures but no type A procedures were undertaken in any premises, those premises are not required to be licensed until 6 months after that date.

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 3

SCHEDULE 3

The amendments effected by Section 59 and this Schedule have been incorporated into authorised versions of the following Acts:

- (a) *Ambulance Service Act 1982;*
- (b) *Approvals (Deadlines) Act 1993;*
- (c) *Duties Act 2001;*
- (d) *Health Act 1997;*
- (e) *Perinatal Registry Act 1994;*
- (f) *Public Health Act 1997;*
- (g) *Public Trustee Act 1930.*

Health Service Establishments Act 2006
Act No. 17 of 2006

sch. 4

SCHEDULE 4

*The amendments effected by Section 60 and this
Schedule have been incorporated into the
authorised version of the Hospitals Act 1918.*

Health Service Establishments Act 2006
Act No. 17 of 2006

NOTES

The foregoing text of the *Health Service Establishments Act 2006* 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 1 July 2025 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Health Service Establishments Act 2006</i>	No. 17 of 2006	1.10.2011
<i>Health Service Establishments Amendment Act 2011</i>	No. 10 of 2011	1.10.2011
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2013</i>	No. 20 of 2013	20.6.2013
<i>Building (Consequential Amendments) Act 2016</i>	No. 12 of 2016	1.1.2017
<i>Tasmanian Civil and Administrative Tribunal (Additional Jurisdictions) Act 2025</i>	No. 7 of 2025	1.7.2025

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 10 of 2011, s. 4
Section 20	Substituted by No. 10 of 2011, s. 5
	Amended by No. 12 of 2016, Sched. 1
Section 24	Amended by No. 10 of 2011, s. 6
Section 28	Substituted by No. 7 of 2025, s. 119
Section 30	Amended by No. 10 of 2011, s. 7 and No. 7 of 2025, s. 120
Section 39	Amended by No. 10 of 2011, s. 8
Section 40	Amended by No. 10 of 2011, s. 9
Section 43	Amended by No. 10 of 2011, s. 10
Section 55A	Inserted by No. 10 of 2011, s. 11
	Amended by No. 20 of 2013, s. 49