THE PRIVATE HEALTH FACILITIES BILL 1999: A NEW REGULATORY FRAMEWORK FOR PRIVATE HEALTH FACILITIES IN QLD

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1. INTRODUCTION

The private hospital sector provides a substantial contribution to Australia's health care system. At both a National and State level, private hospitals consistently account for more than one third of total hospital admissions (refer to Appendix A).[1]

In 1992 there were 49 licensed inpatient private hospitals providing 4404 beds in Queensland. In 1993, licensing was extended to private day hospitals.[2] Today, there are currently 52 licensed inpatient private hospitals providing 5508 beds and 29 licensed day hospitals which provide a full range of health services.[3] There is also a continued trend toward shorter inpatient stays. The proliferation of private day hospitals in a

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1 King J, Private Hospitals Association of Queensland, *Newsletter*, October 1998, p 4; Australian Institute of Health and Welfare, Health Services Series, *Australian Hospital Statistics 1997-98*, Canberra 1999, Table 4.2, pp 41-43.

2 The current definition of **"day hospital"**in s 63 of the *Health Act 1937* was inserted in 1993.

3 Information provided by the Private Health Establishments Unit, Queensland Health.

comparatively short time is a marker of the recent advances in medical technology for minor surgical procedures.

The move toward co-location of private and public hospitals is another notable recent development for the private hospital sector in Queensland.

In a wider context, changes such as the decreasing numbers of privately insured people in the community, pressure on Commonwealth/State funding arrangements and the adoption of National Competition Policy and Principles following the Hilmer Report have also impacted on the private hospital sector, which today faces constant pressure from rising health care costs and demands for health care services coupled with greater consumer expectations of appropriate high quality health care and improved health outcomes.

In Queensland, private hospitals have been regulated, by way of a licensing regime, under the provisions of Part 3, Division 4 of the *Health Act 1937* for over 60 years.

Over a substantial period in the 1990's, Queensland Health conducted a review of the current legislation relating to private hospitals in the wake of calls for legislative change from the private hospital sector, the upcoming expiration of the regulations and the introduction of National Competition Policy. The review resulted in the formulation of the Private Health Facilities Bill 1999.

A Discussion Paper, which sought comment on issues relevant to the review, was released in November 1994.[4] The absence of a major planning framework in the legislation formed a major focus of the review at that stage. A further factor contributing to the need for review was the continued development of industry based standards, indicating a trend away from physically based standards to standards based on processes and outcomes. The review process also involved consultation with key stakeholders such as the Private Hospitals Association of Queensland, the Australian Medical Association, the Australian Council on Healthcare Standards the Queensland Rural Doctor's Association and various health insurance bodies.

The Private Health Facilities Bill 1999 makes significant changes to the current legislation which governs the regulation of private inpatient and day hospitals in Queensland. It proposes to repeal the existing legislation and it introduces a new regulatory framework for private health facilities in Queensland that is linked to the maintenance of standards to ensure quality of patient care. The Bill proposes that licensees will first have to obtain an approval for a licence before applying for a licence. The Bill further incorporates mechanisms for the internal review of decisions and appeals that are not present in the current legislation.

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[4] Queensland Health, *Review of Legislation Relating to Private Hospitals: Discussion Paper*, November 1994, p 4.

This Legislative Bulletin considers the key provisions of the Private Health Facilities Bill 1999 and compares them where appropriate with the current legislation. The position of the other States is also briefly outlined where relevant.

2. THE PRIVATE HEALTH FACILITIES BILL 1999

2.1 PURPOSE OF THE BILL

The objective of the Private Health Facilities Bill 1999 as set out in **cl 3(1)** is:

> *…to provide a framework for protecting the health and well-being of patients receiving health services at private health facilities.*

The object will be mainly achieved by:

- Requiring persons proposing to operate private health facilities to first hold approvals
- Requiring persons to hold licences for the operation of the facilities
- Enabling standards to be made for the provision of health services at private health facilities
- Providing for compliance with the Act to be monitored and enforced. [5]

3. PRIVATE HEALTH FACILITIES WITHIN THE SCOPE OF THE BILL

The Private Health Facilities Bill 1999 applies only to private health facilities. A **"private health facility"** is defined in the Bill as a **"private hospital"** or a **"day hospital"**: **cl 8**.

A **"private hospital"** is a facility at which health services are provided to persons who are discharged from the facility on a day other than the day on which the persons were admitted to the facility: **cl 9(1)**.

It should be noted, however, that in this context, the Bill excludes from its operation:

- a state operated hospital, or
- a nursing home, hostel or other facility which provides accommodation and nursing or personal care to persons in permanent need of such care due to infirmity, illness, disease, incapacity or disability: **cl 9(2)**.

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[5] Private Health Facilities Bill 1999, **cl 3(2)**

It is possible that a private health facility could be comprised of a number of buildings, a single building or part of a building. For example, several floors in a building could be a private hospital while the remainder of the building may be part of a public hospital or used for purposes unconnected with the provision of health services.[6] This situation could encompass a situation of a co-location of a public and a private hospital.

The current definition of "day hospital" in the Health Act 1937 is broadly based on the type of *"surgical or medical treatment"* provided to a patient.[7] In the Explanatory Notes to the Private Health Facilities Bill 1999, it is noted that the current definition is imprecise and does not provide certainty as to what types of health facilities are covered by that definition.[8]

Furthermore, in the second reading speech on the introduction of the Private Health Facilities Bill 1999, the Minister for Health, Hon Wendy Edmond, explained that:

> *Advances in medical technology in recent times have resulted in an increasing range of complex, higher risk procedures being performed in day facilities. In light of this, a new definition of "day hospital" has been developed to ensure that licensing applies to day facilities which provide higher risk health services.*[9]

The definition of **"day hospital"** provided in the Bill is now based on the type of day hospital health service provided to patients at the facility:

> *A day hospital is a facility at which day hospital health services are provided to persons who are admitted to, and discharged from, the facility on the same day, but does not include a facility operated by the State*: **cl 10(1)**.

A **"day hospital health service"** is defined in **cl 10(3)** of the Bill as:

- a diagnostic, surgical or other procedure performed by a medical practitioner involving the administration of certain types of anaesthetic or sedation. Simple sedation, categorised as sedation of a patient which allows communication with the patient during the procedure and makes loss of the patient's consciousness unlikely, is excluded from the definition.
- a diagnostic, surgical or other procedure performed by, or under the direction of, a medical practitioner and involving a significant risk that the patient may,

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6 *Explanatory Notes*, Private Health Facilities Bill 1999, p 10.

7 *Health Act 1937* (Qld), s 63A(1).

8 Explanatory Notes, p 1.

9 Hon WM Edmond MLA, Private Health Facilities Bill 1999, Second Reading Speech, *Queensland Parliamentary Debates*, 18 August 1999, p 3198.

because of cardiac, respiratory or other complications, require resuscitation. These procedures must also be prescribed by regulation to come within the definition.

3.1 COMPARISON WITH OTHER STATES

There are some similarities between the current definition of "day hospital" in Queensland and the comparable definitions contained in the current legislation of other Australian jurisdictions.[10] The general focus of the definitions in the other jurisdictions is on the type of treatment provided to a patient. For example, the definition in New South Wales is based on "medical, surgical or other treatment". In Victoria, problems with the definition of "day procedure centre", which is partly based on the volume of health services of a prescribed kind conducted at a centre, have been noted in a recent Discussion Paper which reviewed the *Health Services Act 1988* (Vic).[11] The Discussion Paper recommended that this reference to the volume of health care services carried on should be deleted from the definition. It reasoned that it is in the public interest that premises where invasive procedures are undertaken should be regulated in the interest of quality and safety of patients, irrespective of whether one procedure is performed or 20 are performed.

4. STANDARDS

4.1 THE CURRENT LEGISLATION

The current Queensland legislation focuses on specifying minimum physical standards for facilities.

Section 72 of the *Health Act 1937* provides for regulations to be made prescribing specified matters relating to private hospitals. These matters include:

- the control and management of private hospitals;
- the information to be contained in applications for licences or renewal of licences; and

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[10] *Private Hospitals and Day Procedures Act 1988* (NSW), s 3; *Hospitals Act 1918* (Tas), s4; *Health Services Act 1988* (Vic), s3; *Hospitals and Health Services Act* 1927 (WA), s2; *South Australian Health Commission Act 1976* (SA), s6.

[11] Victoria. Department of Human Services, *Health Services Policy Review: Discussion Paper*, prepared by Phillips Fox and Casemix Consulting, 1999, pp. 72,73.

- the terms and conditions upon which such licences may be granted.

The current regulations are contained in the *Health (Private Hospitals) Regulations 1978*. The types of matters dealt with in these regulations concern patient care, physical standards and safety requirements. It was also noted in a Discussion Paper released by Queensland Health in 1994, that the Draft Private Hospitals Regulations 1992 are not contained in legislation, but have been to a large extent voluntarily complied with by the industry.[12] The Discussion Paper further noted, however, that:

> · *Voluntary compliance by industry with the Draft Regulations in effect downgrades the relevance and status of existing statutes.*

4.2 THE PROPOSED LEGISLATION

In the Second Reading Speech of the Bill, the Minister for Health, Hon Wendy Edmond, made the observation that:

> *Whereas the current legislation lacks clarity as to the legislative basis for making standards, this Bill enables the Chief Health Officer to make standards about a comprehensive range of matters which impact directly on the quality and safety of health services provided at private health facilities.*[13]

Under the proposed legislation, the chief health officer has the responsibility to make standards for the protection of the health and well-being of patients at private health facilities: **cl 12**. The chief health officer is not able to delegate this power to make standards to another: **cl 148(2)(a)**.

The importance of the role of industry standards in the provision of care is acknowledged in the licensing system provided in the Bill: it is mandatory for licensees of private health facilities to comply with the relevant standards **cl 48(1)(e)**.

Clause 12(2) stipulates that standards may be made about specified matters, including:

- the types of health services required to support other health services at a facility eg. intensive care and coronary care services to support major surgical services
- the daily care and safety of patients
- infection control
- equipment, fittings and furnishings at facilities
- minimum patient throughput for health services provided at a facility

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12 Queensland Health, Discussion Paper, pp 5, 16, 19.

13 Hon WM Edmond MLA, p 3198.

- management and staffing arrangements.

It is of interest to note that the particular standards themselves are not included in the proposed Act. It is also not intended that the standards be prescribed in Regulations as such.

In the 1994 Discussion Paper, it was noted that:

> *Legislation in the form of an Act of Parliament might be preferred in the area of standards, given the lack of uniformity of existing measures. However, the legislative devices used in this area must have the flexibility to accommodate the continued development of the private health care industry.*[14]

Clause 12(3) provides that a standard is of no effect unless the Minister notifies the making of a standard by gazette notice. A standard is not itself subordinate legislation, however, the gazette notice which notifies the making of a standard is subordinate legislation: **cl 12(6)**.

The rationale for this approach to the making of standards is that many standards are of a complex nature and deal with technical and clinical issues and therefore cannot be easily translated into a legislative format.[15]

In the second reading speech to the Bill, the Minister noted that the standards are still under development and will, where appropriate, draw upon recognised standards, guidelines or protocols published by bodies such as the medical colleges, Standards Association of Australia and the National Health and Medical Research Council[16].

4.3 COMPARISON WITH OTHER STATES

In the other States, matters relating to various standards are contained in regulations prescribed under the primary Acts. The focus of the standards is mainly on physical criteria but does extend in some jurisdictions to matters such as the types of care provided. In Victoria, there is also a power to formulate guidelines based on policy

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[14] Queensland Health, Discussion Paper, p 20.

[15] Explanatory Notes, p 5.

[16] Hon WM Edmond MLA, p 3198.

matters.[17] Administrative guidelines are employed in Western Australia and New South Wales.[18]

5. LICENSING REQUIREMENTS

5.1 THE CURRENT LICENSING SYSTEM

The issuing of licences ensures that all operators of private hospitals are registered and meet set criteria in order to be granted a licence.[19] The current legislation provides for two types of licences: a license to **erect** a private hospital and a license to **use** a private hospital. There is no specific provision in the *Health Act 1937* for preliminary approvals in the licensing process.

The provisions in the current legislation do not set out criteria that must be addressed in an application for a licence nor does it detail the licensing process. However, Queensland Health has developed administrative guidelines, based on the 1978 Regulations[20], to provide guidance and directions for applicants as to the type of information required by the chief health officer to make a decision whether to grant a licence (refer to Appendix B).[21]

5.2 THE PROPOSED LICENSING SYSTEM

The Bill has retained a licensing system for private health facilities on the ground that licensing is the most effective means of protecting the health and well-being of patients.[22] The licensing system introduced in the Bill differs markedly from that prescribed in the current legislation.

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17 *Health Services Act 1988* (Vic), ss12-17.

18 Queensland Health, Discussion Paper, pp 11, 15.

19 Queensland Health, Discussion Paper, p 30.

20 Information provided by the Private Health Establishments Unit, Queensland Health.

21 Queensland Health. Private Health Establishments Advisory and Licensing Unit, *Guidelines For Submissions For The Establishment Of A New Private Hospital Or Day Hospital,* September 1997.

22 Hon WM Edmond MLA, p 3198.

Under the Bill, persons proposing to operate a private health facility must obtain an **approval** from the chief health officer prior to applying for a **licence** to operate a private hospital. As a pre-requisite to holding an approval or a licence, the chief health officer must determine that an applicant is a suitable person to hold such an **authority**.

The Bill sets out detailed procedures for making an application and criteria for decision-making by the chief health officer. Time limits for the making of decisions are also set. There is a measure of uniformity in the procedural provisions that relate to both applications for approvals and licences. The procedures in general are designed to provide *transparent decision-making processes*[23] and thereby increase accountability.

5.3 PRELIMINARY DETERMINATION: SUITABILITY OF PERSONS TO BE AUTHORITY HOLDERS

The criteria for deciding whether a person is suitable to hold, or continue to hold, an authority (an approval or a licence[24]) include matters such as:

- whether the person has the appropriate skills, knowledge and experience to operate the facility in accordance with the standards
- whether the person has previously held an approval or a licence under the legislation that was suspended or cancelled
- the person's current financial position and financial background
- whether the person has been convicted of an indictable offence or offence against the current or repealed Act, and the nature and circumstances of the commission of the offence: **cl 13(2).**

The chief health officer is authorised to investigate an applicant for an authority, an authority holder or an associate of an applicant or authority holder to help in deciding the suitability of an applicant or authority holder to hold an authority: **cl 15**. An **"associate"** means a business partner of, or party to an arrangement with, the applicant or authority holder, or a corporation of which the applicant or authority holder is a subsidiary: **Schedule 3**.

Clause 16 authorises the chief health officer, in investigating the suitability of an applicant authority holder or associate, to obtain from the commissioner of police a written report on the person's criminal history.

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23 Hon WM Edmond MLA, p 3199.

24 Private Health Facilities Bill 1999, **Schedule 3**: "authority" is defined as an approval or a licence.

5.4 APPROVALS

The approval process is set out in Part 5 of the Bill.

In most cases, a licensee must obtain an approval before applying for a licence.

The purpose of the approval process is to enable persons proposing to operate a private health facility to find out, prior to proceeding with the design, construction and fit-out of the facility, whether they are likely to be granted a license for the facility when it is operational.[25]

The chief health officer may only grant an approval if satisfied:

- the applicant is a suitable person to hold the approval, and
- the proposed health facility, and the health services proposed to be provided at the facility, will comply with the relevant standards: **cl 19(2)**

Clause 23 specifies that an approval must be issued on condition that the approval holder give the chief health officer written notice of a prescribed change within 21 days of the change. A **"prescribed change"** means a change in a matter disclosed by an approval holder in an application under the Act or prescribed by regulation: **cl 23(4)**. A change in the directorship of a corporate approval holder is an example of a matter that is expected to be prescribed under this provision.[26]

Clause 23 also enables the chief health officer to issue an approval on additional conditions if the chief health officer considers it necessary or desirable for:

- the proper operation of the proposed facility under a licence, or
- the health and well-being of patients who may receive health services at the facility.

An approval remains in force a maximum of two years and may be extended for one or more periods of up to two years: **cls 24, 25**.

5.4.1 Dealings Affecting Approvals

The Bill makes provision in **cls 29** to **38** for certain dealings affecting approvals. These provisions relate to matters such as changes to the details specified in approvals and the surrender of approvals.

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[25] Explanatory Notes, p 3.

[26] Explanatory Notes, p 12.

5.5 LICENCES

Only a licensee may operate a private health facility: **cl 40**. Only an approval holder for the facility, the transferee of the licence for the facility or a personal representative of a deceased licensee's estate taken to be a licensee under **cl 75,** may become a licensee.

It is an offence for a person to operate a private health facility without a licence for the facility: **cl 39**. A maximum penalty of 1,000 penalties units ($75,000.00) is imposed for the breach. The substantial nature of the penalty has been drawn to the attention of the Parliament by the Scrutiny of Legislation Committee in its report on the Bill.[27] An application for a licence may only be made by an approval holder: **cl 41**.

Clause 44 places a positive obligation on the chief health officer to decide the application. An approval holder will be granted a licence if certain criteria are met, for example:

- any conditions on which the approval was issued have been complied with;
- the facility and health services proposed to be provided at the facility comply with the relevant standards made by the chief health officer; and
- the facility complies with the building code.

Clause 48 specifies the conditions on which a licence must be issued. For example, the licensee must:

- operate a quality assurance program for the facility within a specified period of time. This requirement has been introduced in recognition that accreditation and other quality assurance programs are important in maintaining and improving the quality of health services.[28]
- must comply with the standards relevant to the facility
- operate the facility in accordance with the licence, including providing only the type of health services stated in the licence
- ensure the building and all equipment, fittings and furnishings are kept in good repair and operational order
- only make a prescribed alteration to the facility with the approval of the chief health officer.

The chief health officer can also impose such additional conditions he or she considers necessary or desirable to ensure the proper operation of the facility or the health and well-being of patients: **cl 48(4)**.

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[27] Queensland. Parliament. Scrutiny of Legislation Committee, *Alert Digest*, No. 11 of 1999, p 15.

[28] Hon WM Edmond MLA, p 3199.

Clause 49 makes it an offence to contravene a condition of the licence.

If a licensed facility is certified as operating under a quality assurance system, the licence is valid for up to three years. If the facility is not so certified, the licence is valid only for one year: **cl 50**. On application by a licensee, the chief health officer may renew a licence: **cl 51**.

5.5.1 Dealings Affecting Licenses

The Bill makes provision for certain dealings affecting licences.

Changes To The Detail Under A Licence

Clause 55 enables the chief health officer, acting on his or her own initiative, to change the details or conditions specified in the licence. The chief health officer can only make the change if he or she considers it necessary or desirable for the proper operation of the facility under the licence or for the health and well-being of the patients who are receiving or may receive health services at the facility.

Making Prescribed Alterations To Private Health Facilities

The chief health officer may grant an application for a prescribed alteration to be made to a private health facility: **cl 65**.

A **"prescribed alteration"** to a health facility means:

- a change in the purpose for which part of the facility is used; or
- a change to the physical structure of the facility: **cl 62(1)**.

Clause 62 (2) specifies that a prescribed alteration does not include a change to the facility for which a development permit under the *Integrated Planning Act 1997* (Qld) is required. According to the Explanatory Notes to the Private Health Facilities Bill 1999, this is to ensure that there is no duplication between the approval processes under clauses 63-66 and the development clauses under that Act.[29]

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[29] Explanatory Notes, p 17.

Transfer Of A Licence

A licensee can only transfer a licence if the chief health officer grants an application to transfer the licence: **cl 68**. **Clauses 69 to 72** set out the requirements which must be met for a transfer application in addition to the relevant time-frames and processes.

Death Of A Licensee

If a sole licensee dies, the personal representative is taken to be the licensee for six months or a longer period determined by the chief health officer: **cl 75**.

Surrender Of A Licence

A licensee may also surrender a licence by giving written notice of the surrender to the chief health officer: **cl 77(1)**. It is an offence for the licensee to continue operating a private health facility without a reasonable excuse, unless the licensee has surrendered the licence and the surrender has taken effect: **cl 78**. This measure is intended to enable the chief health officer to be satisfied that appropriate arrangements, such as transfer to another facility, have been made for the patients in the facility.[30]

5.6 SUSPENSION AND CANCELLATION OF AUTHORITIES

The Bill makes provision for the suspension and cancellation of authorities and outlines the procedures that must be taken in either situation: **cl 80-86**.

The chief health officer must give a show cause notice to an authority holder if the chief health officer believes a ground exists to suspend or cancel the authority: **cl 81**. The grounds for suspending or cancelling an authority include if the authority holder is not a suitable person to continue to hold an authority, bankrupt or has contravened the Act. If the ground involves a contravention of the Act, the chief health officer can issue a compliance notice to the authority holder to rectify the matter in question, instead of giving a show cause notice. The chief health officer must then proceed to give a show cause notice if the authority holder fails to comply with the compliance notice without reasonable excuse.

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[30] Explanatory Notes, p 19.

5.7 OTHER JURISDICTIONS IN COMPARISON

Legislation in all States provides for the licensing, inspection and monitoring of private hospitals. A power to approve in principle is given under the New South Wales and Victorian legislation.

In Victoria, licensing involves a two stage process comprised of obtaining of an approval in principle and final registration. The *Health Services Act 1988* (Vic) sets out several criteria that must be considered in determining whether to register a private hospital.[31] These criteria include financial capacity, the suitability of where premises are located and whether the development would result in more than adequate health services becoming available in the area.

A Discussion Paper, which reviewed the *Health Services Act 1988* (Vic) in the context of national competition policy, was recently released in Victoria.[32] One of the recommendations made in the Discussion Paper is that the sole criterion for registration should be whether the applicant is a "fit and proper" person to operate or be a director of a private hospital. One commentator has suggested that if this recommendation is adopted, it could have national implications; firstly, because New South Wales and Western Australia have similar licensing regimes and, secondly, as a precedent for the treatment of licensing issues under the national competition policy.[33]

6. INVESTIGATION, MONITORING AND ENFORCEMENT

A number of provisions in the Bill relating to investigation, monitoring and enforcement are of a type which are standard inclusions in modern licensing schemes set up under Queensland legislation[34]. Their inclusion in the Bill therefore appears to be consistent with current drafting practices.

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31 *Health Services Act 1988*(Vic), s 83.

32 Victoria. Department of Human Services, *Health Services Policy Review: Discussion Paper*, p 61.

33 Baker R, 'What does "Fit and Proper" Mean?', *Private Hospital*, June/July 1999, p 15.

34 See, for example Qld Acts: *Interactive Gambling (Player Protection) Act 1998*; *Wagering Act 1998*; *Lotteries Act 1997*; *Keno Act 1996*.

6.1 AUTHORISED PERSONS

Clause 87 enables the chief health officer to appoint a person, other than a police officer, as an authorised person if the chief health officer considers the person has the necessary expertise or experience to be an authorised person.

The function of an authorised person is to conduct investigations and inspections to monitor and enforce compliance with the Act. The authorised person can utilise powers under the Act or another Act. These powers, however, may be limited by the chief health officer: **cl 88**.

The powers available under the Act to an authorised person are:

- Powers to enter places
- Powers after entry
- Power to obtain information
- Power to seize evidence

6.2 POWERS TO ENTER PLACES

Clauses 93 to **98** relate to the power of an authorised officer to enter places.

Clause 93(1) confers an authorised person with the right to enter a place if:

- the occupier consents; or
- it is a public place and the entry is made when it is open to the public; or
- the entry is authorised by a warrant; or
- it is a licensed private health facility and the entry is made when the facility is open for business or otherwise open for entry. The term "when the facility is open for business" includes when health services are being provided at the facility: **cl 93(3)**.

The rationale of giving an authorised person the right to enter a licensed private health facility without consent or a warrant, at any time when the facility is open for business, is contained in the Explanatory Notes:

> *A power of entry to licensed premises when the premises are open for business is consistent with other modern licensing legislation. In the case of private hospitals (where patients stay overnight), the power effectively allows entry at any time… the power to enter at any time when health services are being provided is necessary to ensure that the requirements of the Bill are*

being complied with and that the potential health risks to patients receiving health services are minimised.[35]

Clause 94 sets out the procedure an authorised person must use to obtain the consent of an occupier to enter a place. An authorised person may apply to a magistrate for a warrant for a place: **cl 95**. The conditions under which a magistrate can issue an warrant, and the information which must be contained in it are set out in **clause 96**. In urgent or other special circumstances, such as the authorised person's remote location, an authorised person may apply to a magistrate for a **special warrant** by phone, fax, radio or another form of communication: **cl 97.**

Clause 98 addresses the procedures that must be followed by an authorised officer before entering a place under a special warrant.

It would appear that the reference to the term "special warrant" in clause 98(1) may be a drafting error. The wording of the clause and the Explanatory Notes[36] disclose an intention to specify the procedures which must be followed by an authorised person prior to entering a place under **any** warrant. If the provision is read otherwise, the result could be that an authorised person may not be required to follow the procedures set out in clause 98(2) in circumstances where a warrant other than a special warrant has been issued.[37]

6.3 POWERS AFTER ENTRY

Clauses 99 to 102 relate to the powers of an authorised officer after entry to a place. **Clause 99** specifies the powers that may be exercised by the authorised person after entering a place for the purposes of monitoring or enforcing compliance with the Act.

When entering a place, an authorised person must not do anything that may adversely affect the health or physical privacy of a person in the place: **cl 100**. According to the Explanatory Notes, **Clause 100** has been included in the Bill to safeguard against the inappropriate exercise of powers by an authorised person in these circumstances.[38]

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35 Explanatory Notes, pp 6,7.

36 Explanatory Notes, p 22. Note also comparative provisions in other legislation, for example: *Explosives Act 1999* (Qld), s88.

37 The Department has indicated that this provision will be amended at the committee stage.

38 Explanatory Notes, p 7.

6.4 POWER TO SEIZE EVIDENCE

Clauses 103 to **113** relate to the seizure of evidence by an authorised person. The Court may order the forfeiture to the State of seized property owned by a person on the conviction of that person of an offence against the Act: **cl 110**.

6.5 POWER TO OBTAIN INFORMATION

Clauses 114 to **119** relate to the powers of an authorised person to obtain information and prescribe offences for non-compliance with a request for information made by an authorised person.

6.6 ENFORCEMENT MATTERS

6.6.1 Notice Of Damage

Clause 120 requires an authorised person to give to the person who appears to be the owner of the property, a written notice if an authorised person, or a person acting under the direction of an authorised person, damages the property when exercising or purporting to exercise a power.

6.6.2 Compensation

Clause 121 provides that a person may claim compensation from the State if he or she has incurred loss or expense because of the exercise of power or purported exercise of a power by an authorised person.

6.6.3 False And Misleading Statements Or Documents

It is an offence for a person to make a statement or give a document the person knows is false and misleading in a material particular to an authorised person **cls 122, 123**.

6.6.4 Obstruction and Impersonation

Clause 124 makes it an offence to obstruct an authorised person, acting in the exercise of a power, without reasonable excuse, or to impersonate him or her.

6.6.5 Compliance Notices

Clause 125 enables the chief health officer to issue a compliance notice to an authority holder if the chief health officer or an authorised person reasonably believes:

- a person is contravening a provision of the Act or has contravened a provision of the Act in circumstances that make it likely that the contravention will continue or be repeated;
- the matter is reasonably capable of being rectified;
- it is appropriate to give the authority holder the opportunity to rectify the matter; and
- a show cause notice under **clause 81** has not been given.

7. REVIEW AND APPEALS

7.1 INTRODUCTION

Part 9 of the Private Health Facilities Bill 1999 introduces a mechanism for internal review of a decision by the chief health officer and provides an avenue of appeal of the reviewed decision to the District Court, not formerly available.

The current legislation does not contain these types of provisions. There is no requirement to give reasons for decisions and time limits in which decisions must be made.

The current practice is that if the chief health officer is considering refusing to grant a licence, the applicant is given the opportunity to make submissions prior to a decision being made.[39]

However, in the context of a formal review process, a decision of the chief health officer can only be reviewed by way of judicial review. (Judicial review is not a review on the merits of a decision but focuses on the legality of the decision-making process.).

7.2 REVIEWS

An appeal against an original decision can only be commenced by way of an application for internal review: **cl 126**. Such a review is limited to certain types of decision - those for

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[39] Queensland Health. *Guidelines For Submissions For The Establishment Of A New Private Hospital Or Day Hospital,* September 1997, p 2.

which an information notice must be given under the Act - set out in **Schedule 1** to the Act: **cl 127**.

A person who is given, or entitled to be given, an information notice for a decision (the **"original decision")** and who is dissatisfied with the decision may apply to the chief health officer for a review of the decision: **cl 127**. The process and time-frames for making an application for such a review are contained in **clause 128**.

After reviewing the decision, the chief health officer must make a further decision (the **"review decision"**) to confirm or amend the original decision or substitute another decision in its place: **cl 129(1)**. The chief health officer is obliged to immediately give the applicant written notice of the review decision: **cl 129(2)**. If the decision is not the decision sought by the applicant, the review notice must state the reasons for the decision and information about rights of appeal available to the applicant: **cl 129(3)**.

Clause 130 makes provision for the District Court to stay the operation of the original decision to secure the effectiveness of the review and a later appeal to the court. The original decision may be stayed up until the time the chief health officer makes a review decision or later if allowed by the court to enable the applicant to appeal against the review decision .

It should be noted that the chief health officer cannot delegate the powers relating to internal review of applications: **cl 148(2)(b).**

7.3 APPEALS

A person who has applied for the review of an original decision and is dissatisfied with the review decision may appeal to the District Court against the review decision: **cl 131**. The notification and time-frame requirements for an appeal are set out in **clause 133**.

The District Court may stay the operation of the review decision to secure the effectiveness of the appeal up until the time the appeal is decided: **cl 134**. The appeal is by way of re-hearing: **cl 135 (2)**. In deciding an appeal, the court may confirm, set aside, or amend the review decision, remit the matter back to the chief health officer with appropriate directions or substitute the review decision with another made by the court: **cl 136**.

7.4 PROCEDURES FOR REVIEW AND APPEAL OF DECISIONS IN OTHER STATES

New South Wales, Tasmania and Victoria have provisions for review of decisions. New South Wales has a Committee of Review comprised of government, industry and other

representatives. There is also a requirement, under the New South Wales legislation for reasons for a decision to be given. Tasmania has a specialist tribunal called the Private Medical Establishment Appeals Tribunal which has defined membership and specific powers set out in the *Hospitals Act 1918* (Tas). In Victoria, the Victorian Civil and Administrative Tribunal reviews decisions. In Western Australia, the cancellation or non-renewal of a licence to conduct a private hospital may be appealed to the local court. The South Australian legislation makes provision for the appeal of a decision to the Supreme Court. [40]

8. LEGAL PROCEEDINGS

A number of provisions in the Bill relating to legal proceedings are of a type which are standard inclusions in modern licensing schemes set up under Queensland legislation[41]. Their inclusion in the Bill therefore appears to be consistent with current drafting practices.

Offences under the proposed Act must be dealt with as summary offences: **cl 141(1)**. The penalties for offences under the Act have been set at a level which reflects the potential harm that could be caused to patients as a result of a licensee's non-compliance.[42]

In a proceeding for an offence under the Bill, an act or omission of a person's representative is taken to have been done by the person, if the representative acted within the scope of his or her authority. The person can utilise the defence provided in cl 142(3), however, to prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission: **cl 142**.

Clause 143 requires an executive officer of a corporation to ensure the corporation complies with the legislation. If a corporation is convicted of an offence against the legislation, each executive officer of the corporation is taken to have committed an offence of failing to ensure that the corporation complies with the provision. However, it is a defence for an executive officer to prove that he or she acted with reasonable

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40 *Private Hospitals and Day Procedures Act 1988* (NSW), s31; *Hospitals Act 1918* (Tas), ss70G-70J; *Health Services Act 1988* (Vic), s110; *Hospitals and Health Services Act 1927* (WA), s 26H; *South Australian Health Commission Act 1976* (SA), s57J.

41 See, for example Qld Acts: *Interactive Gambling (Player Protection) Act* 1998; *Wagering Act 1998*; *Lotteries Act 1997*; *Keno Act 1996*.

42 Hon WM Edmond MLA, p 3199.

diligence to ensure the corporation complied with the provision; or that he or she was not in a position to influence the conduct of the corporation in relation to the offence.

8.1 PROTECTING OFFICIALS FROM CIVIL LIABILITY

Clause 146 confers on the Minister, the chief executive, the chief health officer, an authorised person, or a person acting under the direction of an authorised person, immunity from civil liability for an act or omission made honestly and without negligence under the Bill. The clause prevents civil liability from being attached to an individual as a consequence of carrying out his or her duties under the legislation in good faith. In these circumstances, the liability instead attaches to the State.[43] It should be noted that the proposed immunity does not extend to an individual who has been negligent even though he or she may have acted in good faith.

8.2 SUBMISSION OF REPORTS TO CHIEF HEALTH OFFICER

Clause 144 places an obligation on licensees of private health facilities to give reports to the chief health officer. Failure to provide such reports is an offence. The purposes of the reports are to:

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

Clause 147 makes it an offence for a person to disclose information obtained in the course of the person's functions under the Act or the repealed division unless expressly authorised under the provision. The information which is protected from disclosure is information likely to damage the commercial activities of the person to whom the information relates, personal health information or information obtained in a criminal history report under **cl 16**. The circumstances under which protected information may be disclosed is specified in **cl 147(4)**.

The chief executive is required, under **cl 147(9)** to include in the department's annual report a statement about any disclosures of information made in the public interest

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[43] Explanatory Notes, p 8.

authorised by the Minister. This purpose of this subclause is *"to ensure that a degree of public accountability applies to any disclosures authorised by the Minister"*.[44]

9. BUILDING RELATED REQUIREMENTS

Another change made to the current legislation is that the new legislation no longer specifies building related requirements for private hospitals. According to the Explanatory Notes, these requirements will be integrated into the Building Code of Australia which will enable them to be dealt with under the development approval processes of the *Integrated Planning Act 1997* (Qld).[45]

Clause 155 provides that an existing licence to erect a private health facility issued under the repealed division expires on the commencement of the Act. There is no equivalent to a 'licence to erect' under the Bill.

In its Report on the Bill, the Scrutiny of Legislation Committee has raised a concern as to whether any current holder of a licence to erect could be disadvantaged by the requirements of *the Integrated Planning Act 1997* (Qld) processes[46].

The Discussion Paper released recently in Victoria, where currently the licensing authority must approve building design and fit-out, has recommended that building standards for hospitals should be incorporated in to the Victorian Building Regulations.[47]

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44 Explanatory Notes, p 29.

45 Hon WM Edmond MLA, p 3199.

46 Queensland. Parliament, Scrutiny of Legislation Committee, *Alert Digest*, No 11 of 1999, p 20.

47 Victoria. Department of Human Services, *Health Services Policy Review: Discussion Paper,* pp. 57-61.

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- *Interactive Gambling (Player Protection) Act 1998* (Qld)
- *Keno Act 1996*. (Qld)
- *Lotteries Act 1997* (Qld)
- Private Health Facilities Bill 1999 (Qld)
- *Private Hospitals and Day Procedures Act 1988* (NSW)
- *South Australian Health Commission Act 1976* (SA)
- *Wagering Act 1998* (Qld)

APPENDIX A - AUSTRALIAN HOSPITAL STATISTICS 1997-98

Source: Australian Institute of Health and Welfare, Health Services Series, *Australian Hospital Statistics 1997-98*, Canberra 1999, Table 4.2, pp 41-43.
<http://.www.aihw.gov.au/publications/health/ah597-8/>

Table 4.2: Summary of separation, same day separation, average cost weight, patient day and average length of stay statistics, by hospital type, States and Territories, 1997–98

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Separations									
Public hospitals[a]	1,272,797	928,847	685,345	346,363	346,782	80,389	57,175	52,400	3,770,098
Public acute hospitals	1,261,314	927,327	683,867	343,164	342,459	79,826	57,175	52,400	3,747,532
Public psychiatric hospitals	11,483	1,520	1,478	3,199	4,323	563	. .	. .	22,566
Private hospitals[b]	544,351	484,201	388,078	160,358	147,420	50,997	17,571	n.a.	1,792,976
Private free-standing day hospital facilities	124,238	46,637	57,028	9,473	9,532	1,137	n.a.	. .	248,045
Other private hospitals	420,113	437,564	331,050	150,885	137,888	49,860	17,571	n.a.	1,544,931
Public acute & private hospitals[c]	1,805,665	1,411,528	1,071,945	503,522	489,879	130,823	74,746	52,400	5,540,508
Total	**1,817,148**	**1,413,048**	**1,073,423**	**506,721**	**494,202**	**131,386**	**74,746**	**52,400**	**5,563,074**
Same day separations									
Public hospitals[a]	511,361	430,182	294,007	148,337	149,435	36,807	28,055	26,545	1,624,729
Public acute hospitals	509,351	430,062	293,978	148,295	149,261	36,792	28,055	26,545	1,622,339
Public psychiatric hospitals	2,010	120	29	42	174	15	. .	. .	2,390
Private hospitals[b]	319,544	261,521	202,144	77,397	65,666	19,950	6,701	n.a.	952,923
Private free-standing day hospital facilities	124,238	46,637	57,028	9,473	9,532	1,137	n.a.	. .	248,045
Other private hospitals	195,306	214,884	145,116	67,924	56,134	18,813	6,701	n.a.	704,878
Public acute & private hospitals[c]	828,895	691,583	496,122	225,692	214,927	56,742	34,756	26,545	2,575,262
Total	**830,905**	**691,703**	**496,151**	**225,734**	**215,101**	**56,757**	**34,756**	**26,545**	**2,577,652**
Same day separations as a % of total									
Public hospitals[a]	40.2	46.3	42.9	42.8	43.1	45.8	49.1	50.7	43.1
Public acute hospitals	40.4	46.4	43.0	43.2	43.6	46.1	49.1	50.7	43.3
Public psychiatric hospitals	17.5	7.9	2.0	1.3	4.0	2.7	. .	. .	10.6
Private hospitals[b]	58.7	54.0	52.1	48.3	44.5	39.1	38.1	n.a.	53.1
Private free-standing day hospital facilities	100.0	100.0	100.0	100.0	100.0	100.0	n.a.	. .	100.0
Other private hospitals	46.5	49.1	43.8	45.0	40.7	37.7	38.1	n.a.	45.6
Public acute & private hospitals[c]	45.9	49.0	46.3	44.8	43.9	43.4	46.5	50.7	46.5
Total	**45.7**	**49.0**	**46.2**	**44.5**	**43.5**	**43.2**	**46.5**	**50.7**	**46.3**
Separations per 1,000 population[d]									
Public hospitals[a]	202.0	200.7	200.1	191.1	233.9	170.1	186.0	278.3	202.4
Public acute hospitals	200.1	200.3	199.6	189.4	231.0	168.9	186.0	278.3	201.2
Public psychiatric hospitals	1.8	0.3	0.4	1.8	2.9	1.2	. .	. .	1.2
Private hospitals[b]	86.4	104.6	113.3	88.5	99.4	107.9	57.2	n.a.	97.3
Private free-standing day hospital facilities	19.7	10.1	16.6	5.2	6.4	2.4	n.a.	. .	13.5
Other private hospitals	66.7	94.5	96.6	83.3	93.0	105.5	57.2	n.a.	83.8
Public acute & private hospitals[c]	286.5	304.9	312.9	277.9	330.5	276.8	243.2	278.3	297.5
Total	**288.3**	**305.3**	**313.3**	**279.6**	**333.4**	**278.0**	**243.2**	**278.3**	**298.7**
Total (age-standardised)	**277.0**	**292.8**	**311.4**	**282.8**	**313.0**	**268.2**	**266.1**	**340.8**	**290.6**

(continued)

Table 4.2 (continued): Summary of separation, same day separation, average cost weight, patient day and average length of stay statistics, all hospitals, States and Territories, 1997–98

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Average cost weight of separations[e]									
Public hospitals[a]	1.02	1.02	0.98	0.96	1.00	0.97	0.97	0.76	1.00
Public acute hospitals	1.02	1.01	0.98	0.95	0.99	0.97	0.97	0.76	1.00
Public psychiatric hospitals	1.42	1.71	1.73	1.76	1.73	1.53	. .	. .	1.58
Private hospitals[b]	0.92	0.96	0.97	0.95	1.00	1.01	1.07	n.a.	0.96
Private free-standing day hospital facilities	0.56	0.51	0.58	0.52	0.79	0.78	n.a.	. .	0.56
Other private hospitals	1.03	1.01	1.04	0.98	1.02	1.01	1.07	n.a.	1.02
Public acute & private hospitals[c]	0.99	0.99	0.98	0.95	0.99	0.98	0.99	0.76	0.98
Total	**0.99**	**1.00**	**0.98**	**0.96**	**1.00**	**0.98**	**0.99**	**0.76**	**0.99**
Patient days									
Public hospitals[a]	5,967,083	3,728,462	3,090,079	1,460,677	1,486,872	396,996	243,244	187,016	16,560,429
Public acute hospitals	5,489,378	3,694,640	2,539,631	1,308,619	1,357,396	331,709	243,244	187,016	15,151,633
Public psychiatric hospitals	477,705	33,822	550,448	152,058	129,476	65,287	. .	. .	1,408,796
Private hospitals[b]	1,641,136	1,684,185	1,374,361	522,636	536,759	180,984	64,866	n.a.	6,004,927
Private free-standing day hospital facilities	124,238	46,637	57,028	9,473	9,532	1,137	n.a.	. .	248,045
Other private hospitals	1,516,898	1,637,548	1,317,333	513,163	527,227	179,847	64,866	n.a.	5,756,882
Public acute & private hospitals[c]	7,130,514	5,378,825	3,913,992	1,831,255	1,894,155	512,693	308,110	187,016	21,156,560
Total	**7,608,219**	**5,412,647**	**4,464,440**	**1,983,313**	**2,023,631**	**577,980**	**308,110**	**187,016**	**22,565,356**
Patient days per 1,000 population[d]									
Public hospitals[a]	946.8	805.5	902.0	806.1	1,003.0	839.9	791.3	993.4	889.2
Public acute hospitals	871.0	798.2	741.3	722.2	915.7	701.8	791.3	993.4	813.6
Public psychiatric hospitals	75.8	7.3	160.7	83.9	87.3	138.1	. .	. .	75.6
Private hospitals[b]	260.4	363.8	401.2	288.4	362.1	382.9	211.0	n.a.	325.8
Private free-standing day hospital facilities	19.7	10.1	16.6	5.2	6.4	2.4	n.a.	. .	13.5
Other private hospitals	240.7	353.8	384.5	283.2	355.7	380.5	211.0	n.a.	312.3
Public acute & private hospitals[c]	1,131.4	1,162.0	1,142.5	1,010.6	1,277.7	1,084.7	1,002.3	993.4	1,136.0
Total	**1,207.2**	**1,169.3**	**1,303.2**	**1,094.5**	**1,365.1**	**1,222.8**	**1,002.3**	**993.4**	**1,211.7**
Total (age-standardised)	**1,125.3**	**1,084.4**	**1,282.6**	**1,106.9**	**1,197.9**	**1,133.7**	**1,170.6**	**1,313.0**	**1,150.5**
Average length of stay (days)									
Public hospitals[a]	4.7	4.0	4.5	4.2	4.3	4.9	4.3	3.6	4.4
Public acute hospitals	4.4	4.0	3.7	3.8	4.0	4.2	4.3	3.6	4.0
Public psychiatric hospitals	41.6	22.3	372.4	47.5	30.0	116.0	. .	. .	62.4
Private hospitals[b]	3.0	3.5	3.5	3.3	3.6	3.5	3.7	n.a.	3.3
Private free-standing day hospital facilities	1.0	1.0	1.0	1.0	1.0	1.0	n.a.	. .	1.0
Other private hospitals	3.6	3.7	4.0	3.4	3.8	3.6	3.7	n.a.	3.7
Public acute & private hospitals[c]	3.9	3.8	3.7	3.6	3.9	3.9	4.1	3.6	3.8
Total	**4.2**	**3.8**	**4.2**	**3.9**	**4.1**	**4.4**	**4.1**	**3.6**	**4.1**

(continued)

APPENDIX B- QUEENSLAND HEALTH - PRIVATE HEALTH ESTABLISHMENTS APPLICATION

QUEENSLAND HEALTH

PRIVATE HEALTH ESTABLISHMENTS APPLICATION

GUIDELINES FOR SUBMISSIONS FOR THE ESTABLISHMENT OF A NEW PRIVATE HOSPITAL OR DAY HOSPITAL

INTRODUCTION

The Chief Health Officer, Queensland Health, has a statutory responsibility under the Health Act 1937 and the Health (Private Hospitals) Regulation 1978 for the licensing of private hospitals in Queensland.

This document is a guide and provides directions for applicants as to the type of information required by the Chief Health Officer to make a decision whether to grant a licence.

Applicants should be familiar with the Health Act 1937 and Health (Private Hospitals) Regulation 1978. It is advised that applicants consider these guidelines and develop their application in consultation with the Private Health Establishments Advisory and Licensing Unit (PHEALU) of the Chief Health Officer.

FOREWORD

These guidelines have been prepared by the Private Health Establishments Advisory and Licensing Unit (September 1997) and are designed to facilitate efficient, transparent, consistent and equitable treatment of all proposals for the private sector involvement in Queensland's health services.

In the best interests of patient care, Queensland Health seeks to ensure that the issue of quality is systematically and comprehensively addressed across the State's health care services.

- Continuous Quality Improvement strategies should be evident within the proposal including;
- Current best practice clinical techniques
- Monitoring of outcome standards
- Development of local quality programs that reflect the use of external standards and external review - including accreditation by recognised bodies.

Any information provided will be treated in ***"Commercial in Confidence".***

Address: The Chief Health Officer
Queensland Health
GPO Box 48
BRISBANE Q 4001

Contact: The Manager
Private Health Establishments Advisory & Licensing Unit
Office of the Chief Health Officer
Ph: (07) 3234 1162
Fax: (07) 3221 7535
The Assessment Project Officer: (07) 3234 1072

APPLICATION PROCESS

There is a 2-step application process:

- Application for Licence to Erect a Private Hospital
- Application to Use a Private Hospital

APPLICATION FOR LICENCE TO ERECT A PRIVATE HOSPITAL

Applications must be made on the approved form and be accompanied by the prescribed fee (currently $223.00).

Applications must also be accompanied by a copy of the plans and specifications of the building work involved in the erection of the proposed private hospital drawn to scale and consisting of a general plan and a site plan (see s.6 Regulations). This is required in order to ascertain if the design of the private hospital provides adequate provision of a suitable environment for the care and treatment of the patients and suitable working areas for all staff as per *Health (Private Hospitals) Regulation 1978 s.7 (2).*

Your application should include a comprehensive statement of the strategic direction and underlying intention of the facility in accordance with the attached criteria (i.e. pages 5 - 8).

You are encouraged to discuss the development of your application with PHEALU prior to its submission. In particular, you may wish to discuss conceptual plans (design layout) with PHEALU prior to preparation of full architectural plans - scale 1:100. However, the discretion to grant or to refuse to grant a licence remains at all times with the Chief Health Officer. The Chief Health Officer will consider, but is not bound by, the advice of PHEALU.

If the Chief Health Officer is considering refusing to grant a licence, you will have the opportunity to make submissions prior to a decision being made.

LICENCE TO USE INFORMATION

Application must be made in the approved form and be accompanied by the prescribed fee (currently $223).

Upon receipt of your application, an officer of PHEALU will conduct an on-site audit of the completed facility. You will be provided with a written report of the inspection detailing any requisitions and given an opportunity to take appropriate corrective action, if any. The report of the on-site audit and a report of your compliance with any requisitions will be considered in the assessment of your application.

If the Chief Health Officer is considering refusing to grant a licence, you will be given the opportunity to make submissions prior to a decision being made.

The following information is also required to be submitted:

1. A completed application for a licence to use form and the prescribed fee of $223.

2. Details of the proposed Licensee, if differs from Licence to Erect.

3. Information as required by the Commonwealth Department of Health & Family Services (copy attached).

4. A Chief Executive Officer and Chief Nurse with appropriate qualifications current Queensland registration has been appointed.

5. In the case of class (e) Day Hospital, a standing arrangement with a nearby hospital to provide overnight and or emergency hospitalisation of patients when necessary, is required.

6. Compliance with Queensland Health data collection requirements (telephone 3234 0889)

7. Documentation requirements:

   (i) Local Authority Certificate of Classification, or/if existing facility current report building inspection report conducted by Queensland Fire Services.
   (ii) Radiation Health compliance certificate if applicable, for lead shielding installations.
   (iii) Issue of air conditioning compliance certificates for all operating suites and any other clean areas of the Facility, test reports for air quality testing & certification of HEPA filters.
   (iv) Fire retardant certificate for bed screens and curtains.
   (v) A certified engineer has carried out testing of all medical equipment, medical gas and electrical and emergency generation installation.

8. A comprehensive Policy and Procedure Manual has been prepared dealing with amongst other things:

   (i) Patient admission and separation procedures;
   (ii) Information to be provided to patients on fees and other matters;
   (iii) Patient consent procedures;
   (iv) Patient complaint procedures;
   (v) Patient discharge and follow-up procedures;
   (vi) Procedures for storage and collection of waste, including contaminated waste;
   (vii) Theatre listing procedures;
   (viii) Staff selection procedures;
   (ix) Infection control;
   (x) Procurement, storage, recording and administration of medicines;
   (xi) Medical records, data collection/reporting requirements:
   (xii) Emergency procedures; and
   (xiii) Quality Assurance program.

9. Medical staffing structures and rosters are in place and accrediting of medical practitioners and delineation of clinical responsibilities are established.

10. The Operator's staffing rosters setting out shifts and staff numbers for the provision of the Services are available.

11. All hospital staff, ambulance and fire brigade personnel have attended hospital orientation programs including emergency procedure training.

12. The Health Act 1937 s. 63 to 73 have been complied with, inclusive of an onsite audit prior to the issue of a Licence to Use.

QUEENSLAND HEALTH

APPLICATION FOR THE ESTABLISHMENT OF A PRIVATE HOSPITAL OR DAY HOSPITAL

SECTION A

1. Full name of applicant: _____

2. Postal address of applicant: _____

3. Contact person:
   (where applicant is a body corporate provide the names of the person responsible on behalf of the body corporate of the application and state that person's relationship with the body corporate) _____

4. Telephone number of contact person during business hours: _____

SECTION B

Tick appropriate box.

1. Indicate the kind of health service establishment to which this application relates:
   - ☐ private hospital - classes (a) to (d)
   - ☐ day hospital - class (e)

2. Indicate the proposal to which this application relates:

   - ☐ for premises proposed to be constructed for use as a health service establishment
   - ☐ use of existing premises as a health service establishment

3. Address of land or premises to which this application relates:

   _____

   _____

SECTION C

I/We declare that:-

1. all persons who have an interest in the land as either owners or lessees have been notified, in writing, of this application; and

2. to the best of my/our knowledge, the information provided and the details which have been completed on this form are correct.

   Signature of Applicants
   Name of each signatory in BLOCK LETTERS

   _____ (Signature) _____ (Signature)

   _____ (BLOCK LETTERS) _____ (BLOCK LETTERS)

   Date: _____

NOTE : THIS APPLICATION MUST BE ACCOMPANIED BY A WRITTEN SUBMISSION

APPLICATION GUIDELINES

Submit a brief statement of the strategic direction and underlying intention of the facility.

This should include:

- the type of services proposed to be provided
- the number of beds and or recliners involved with your proposal;
- the expected average monthly volume of each of these services; and
- the types of anaesthesia/sedation that will be used (Day hospital Only)

CATEGORY 1 - PROPOSED LICENSEE

Applicant Details:

1. Is the applicant a registered company? If so, details provided should include:

    - As per the Health Act 1937 s65 (a) & (b) personal and professional details of applicants/Board of Directors;
    - As per the Health Act 1937 s 65(c) &(d) &(e) include details of the company i.e. Certified Copy of Certification of Incorporation; address of Registered Office; names and addresses and occupation of Company Office Bearers and shareholders.

2. Indicate whether any of the persons listed above, including the body corporate have ever been refused an application to establish a private health care facility. Where applicable please provide relevant details.

3. Indicate whether any of the said listed persons have been convicted of any offence involving fraud or dishonesty, had such an offence proved against them or have a charge pending against them in relation to such an offence. Where applicable, provide the names of the person(s), relevant date(s), jurisdiction(s), sentence(s) or details relating to pending charges.

CATEGORY 2 - COMMERCIAL VIABILITY & STANDING

The applicant must demonstrate financial stability, competence and a capacity to develop, manage and maintain the proposed service. In order to make an informed decision on the application the proposal must include the following:-

1. Audited financial statements of the company seeking approval, for the previous two financial years. If the facility is a subsidiary company, the financial statements of the parent company for the last two financial years must also be provided.

2. General details of the quantum and source of finance to be injected into the project, the amount the proprietor seeks, the proposed operating expenditure and the capacity for repayments.

3. If the facility forms part of a subsidiary company, a letter of guarantee for the provision of supporting funds from the director/s of the holding/parent company must be presented. Attached is a suggested format for your use. [*Form B*]

4. If the applicant is a natural person/s a copy of relevant documentation, proving financial stability for the previous two financial years should be provided and the attached Statutory Declaration signed.

Additionally:

a) Cash flow projections must be provided for the next two years specifying the basis upon which cash flows were calculated and any assumptions made.

b) A statement from their banker/financier/external accountant must be provided to verify that:

- all obligations for the last two years have been duly met; and
- in his/her opinion, the establishment has the financial capacity to continue operating for the next two years. Attached is a suggested format for your use.[*Form C*]

5. Indicate if contact has occurred with the health funds and the Health Insurance Section, Commonwealth Dept. Health & Family Services in relation to the proposal.

CATEGORY 3 - MANAGEMENT OF THE FACILITY

1. Provide details of the proposed management team (include names, professional details).

2. Provide a proposed organisational chart for the facility.

3. Indicate if the company has experience in owning and/or operating a health facility similar to the intended proposal and provide details where applicable.

CATEGORY 4 - PHYSICAL FACILITY

1. Provide a clear overview of the specific site plan which identifies the facility to be licensed - proposed site, location (include roads, frontages and adjoining properties).

2. Indicate whether Local Authority approval has been sought for the proposal.

3. Detail any specific public safety issues, workplace safety issues or specific environmental issues (e.g. radiation safety, disposal of toxic waste) posed by the proposal.

4. Indicate if the hospital is proposed to be leased, if so, provide a description of the proposed lease arrangements.

5. To identify the service needs of the area, the proposal should consider access to existing acute hospital services having regard to the catchment populations of existing hospitals and how adequately the district is serviced including consideration of the availability of public transport, distance and travelling times to existing hospitals and seasonal variation in demand.

CATEGORY 5 - SAFETY & CLINICAL STANDARDS

Queensland Health has a legitimate role in assessing the potential impact on standards of health care delivery of the proposal on behalf of all Queenslanders. Relevant factors that may impact on the applicant's ability to guarantee maintenance of clinical service standards delivered within the proposed facility are to be considered.

1. Provide detailed information as to the proposed clinical services profile and evidence of consideration of key demographic data for each clinical service. Does your proposal conform with Queensland Health's Guide to Role Delineation of Health services. Include reference to the provision of any related services such as acute/emergency services/critical care facilities/rehabilitation services.

2. State the proposed management of critical events and patient transfer arrangements.

If the proposal includes a Class (e) Day Hospital, provide evidence that there is a standing arrangement with a nearby hospital to provide overnight and emergency hospitalisation of patients when necessary.

3. State the proposed hours of operation (Day Hospital Only)

4. State the proposed research facilities/research activities (where applicable).

Structure and Function of Clinical Services

1. Identify the proposed clinical service models. This may include clinical services organisational charts and reference to contemporary research and evidence of best practice models of care where these exist.

2. Identify that the proposal will meet a minimum throughput as it relates to high technology, and superspecialty services. Specific guidelines may apply for these service e.g. Cardiac services.

3. Provide evidence of a compliance to College Guidelines or guidelines released from time to time by other recognised bodies, statuary bodies, non-government organisations e.g. NHMRC, AHEC, AHTAC relating to patterns of practice for specific services.

4. Include the proposed Clinical Quality structures, processes and monitoring of clinical outcomes as part of an organisation wide quality improvement program.

5. Indicate if there is an intention to pursue a quality improvement program and undergo periodic external review such as, ACHS/AQC/ISO900 accreditation; NATA accreditation and aspirations to comply with Australian Standards where they exist.

Workforce/Human Resource Issues

1. Indicate the feasibility of recruiting and retaining appropriately trained personnel with current (Queensland) registration or recognition by the appropriate state body.

2. Identify if there will be a key number/availability of providers and related support staff to ensure **continuity** in clinical service delivery.

3. Indicate the organisational arrangements to ensure there will be appropriately credentialled personnel across all disciplines with current registration and demonstrated competency to provide the proposed services (such as Medical Advisory Committee).

4. Indicate if discussions have commenced in relation to workforce insurance indemnity arrangements.

Related Services

1. Provide evidence of appropriate on - site contractual arrangements for clinical support services including pharmacy, medical records, pathology and diagnostic imaging.

2. Indicate any proposed outsourcing/leasing arrangements for clinical support services.

RESOURCE DOCUMENTS

The following examples of resources may be of use to applicants in providing information to assist in the development of a proposal.

LEGISLATION

- The Health Act (1937)
- Health (Private Hospitals) Regulation (1978)
- Judicial Review Act

GUIDELINES

Queensland Health Publications which may be available from the District Health Services Manager.

- Queensland Health Corporate Plan 1996-2001
- Queensland Health Improving Our Health Ten Year Health Services Plan For Queensland 1994-2003
- Queensland Health Guide To Role Delineation Of Health Services - December 1994

South East Queensland:

- South East Queensland Hospital Services Planning Project(SEQHSPP) As Prepared By Bernie Mackay & Associates (March 1993)

North And West Queensland:

- North And West Queensland Hospital Services Planning Project (NWQHSPP) As Prepared By Bernie Mackay & Associates (December 1994)

SPECIALTY AREAS

Specialty areas informational resources can be accessed through library searches, government, local councils, industry, or through contact with existing facilities or colleges. For example:

Cardiac

- Superspecialty Service Guidelines For Acute Cardiac Interventions (March 1995) prepared by the Australian Health Technology Advisory Committee
- Australian Health Ethics Committee

COLLEGES

- Australia And New Zealand College Of Anaesthetists
  Policy Documents Guidelines and Standards
  (Ph: (03) 9510 6299)

STANDARDS

- Australian Council Of Healthcare Standards (ACHS) Accreditation Standards
- Australian/New Zealand Standard: Risk Management AS/NZS 4360:1995